
(1957) 04 MP CK 0054
In the Madhya Pradesh High Court
Case No : C.S.A. No. 628 of 1954

Union of India

APPELLANT

Vs

Shantilal Jain

RESPONDENT

Date of Decision : 15-04-1957

Acts Referred:

Contract Act, 1872 — Section 151
Railways Act, 1890 — Section 72

Citation : (1957) J LJ 873

Hon'ble Judges : Bhutt, J

Bench : Single Bench

Advocate : K.V. Tambey and Sunderlal Golcha, for the Appellant; P.K. Tare, for the Respondent

Final Decision : Dismissed

Judgement

Bhutt, J.—This is an appeal by the defendant, Union of India, representing the Central Railway Administration, against the decree for damages.

2. The suit, out of which the appeal arises, was instituted by the plaintiff for recovery of Rs. 925-12-0 as damages for loss of goods. Plaintiff had booked a parcel of 77 cotton sarees at Burhanpar on 27th February 1952 for delivery to self at Kurwai Kathora. The consignments reached Kurwai Kathora on 3rd March 1952 and was deposited on open platform near the Verandah of the railway Station. The parcel was stolen in the night of 6/7-3-1952, The Courts below allowed the claim to the extent of Rs. 911-11-0.

3. The following points were urged:--

(1) That the railway had taken due care of the consignment in the circumstances of the case; and

(2) That the railway is absolved from liability under rule 29, Part I-A of the Goods Tariff.

4. Point (1). The parcel was kept on the open platform without entrusting it to any person. This is not the manner in which any person would have dealt with his own goods in similar circumstances. The amount of care enjoined on the Railway Administration under Sec. 72 of the Indian Railways Act, 1890, read with Sec. 151 of the Indian Contract Act, 1872, was not, therefore, taken. This inference is not effected by the fact that an Assistant Station Master was on general duty on the night of the theft, for unless he was entrusted with the goods, he was not likely to take that amount of care which is enjoined by law. The finding of the Courts below that due care was not taken of the goods, is, therefore, confirmed.

5. Point (2). Under rule 86-AA, Part I-A, of the Goods Tariff, 2 days' time is allowed for the goods to remain on the railway premises at the station of destination free of demurrage and wharfage. Rule 29 (2) provides that if the goods are not removed within that period, the railway is not liable in respect of any loss, destruction, deterioration of or damage to such goods from whatever cause arising, notwithstanding that the railway may have warehoused or otherwise kept the goods and notwithstanding that the railway shall be entitled to be paid the authorised charges for goods so left on their premises. There has been a divergence of judicial opinion on the question whether this rule, so far as it exempts the railway from liability, is valid.

6. In the case of a railway administrator by the Government, Sec. 47 of the Indian Railways Act empowers an officer to be appointed by the Central Government in this behalf to make general rules consistent with the Act. The purpose for which the rules may be made, as enumerated in the section, do not relate to the exemption of the railway from liability in respect of loss, destruction, deterioration of or damages to goods entrusted to them for carriage. Sec. 54 empowers a railway administration to impose conditions, not inconsistent with the Act or with any general rule thereunder, with respect to the receiving, forwarding or delivering of any goods. This provision also does not vest the railway administration with any power to make rules for exemption from liability for any loss, destruction, deterioration of or damage to goods. Rule 29 (2), Part I-A of the Goods Tariff is not, therefore, covered by the rule-making power of the railway administration. This was also the view held by Dhawan, J. in *Governor General in Council vs. Jagannath* AIR 1943 Lab. 244, although based on other grounds: See also *Sohan Pal Munnalal vs. E.I. R.* ILR 44 All. 218. The question of the exemption of a railway from liability, therefore, depends upon the general law.

7. In England the liability of a railway as a carrier ceases after the termination of transit and thereafter it retains the merchandise as a warehouseman at common law; accordingly the company holds the merchandise subject to usual charges but with the exceptions prescribed in S.R.O. 1927, No. 1009, A. 12 (Halsebury's Laws of England 2nd Edition, Part V, Page 127, Para 291, and third Edition, Volume 4, Page 149, Para 394). Thus in *Niteball vs. Lancashire and Yorkshire Railway Company* (1875) 10 Q.B. 256, it was held that the duty of the railway as

a carrier is discharged on the arrival of the goods at the destination. However, the railway thereafter retains the goods as a warehouseman (see *Chamman Vs. Great Western Railway*, 1880, 5 Q.B. 278) The responsibility of a railway in India, however, is limited under Sec. 72 of the Indian Railways Act to that of a bailee under Secs. 151, 152 and 161 of the Indian Contract Act and is not governed by the common law of England or the Carriers Act 1865.

8. While Sec. 72 of the Indian Railways Act defines the nature of the railway's responsibility for the loss, destruction or deterioration of goods, it is not helpful to understand the period upto which the responsibility extends. The decisions on the question as to when the responsibility ceases are divergent. In *Jusef and Ismail Co. vs. Governor General in Council*, ILR (1947) Nag. 335, it was held by Padhye, J. that the railway remains a bailee till the date of the actual delivery and the liability does not come to an end at any earlier date when the consignee refuses to take delivery duly offered to him. It was also held that the railway continues to be the bailee and remains liable as such even after the consignee refuses delivery. Similar view was also held in *Secy. of State Vs. Ramdhan Das Dwarka Das Firm*, and recently in *Chhatumull Chowthmull Vs. Union of India (UOI)*, , it was even held that where the railway charges demurrage it is liable under Sec. 152 of the Indian Contract Act, on a contract of bailment for warehousing the goods. This is one view.

9. The other view is that the railway is not liable as a bailee for any damage caused after the expiry of a reasonable time for the consignee to take delivery. In *Lalji Raja vs. Governor General of India* 54 C.W.N. 902, 24 hours' time was held to be sufficient for taking delivery. On the other hand, in *Secretary of State vs. Firm Harkishan Das Kara Mal* ILR 7 Lah 370, it was held by a Division Bench of the Lahore High Court that the duty of the railway as a carrier is discharged on the arrival of the goods at their destination and it is not in the line of the railway administration to keep the goods after that as a warehouseman or a bailee for hire. It was also held in that case that the demurrage that a consignee is required to pay if he neglects to take delivery within the time fixed by the rules, is not hire and, therefore, the liability of the railway administration to the consignee after the arrival of the goods is not the same as that of a warehouseman or a bailee for hire. This view was also held by Achhru Ram J. in AIR 1949 166 (Lahore)

10. There is also an intermediate view. Thus in *B. and N.W. Railway vs. Mulchand* ILR 42 All. 655, it was held that the contract of carrier is not only to carry but also to deliver. It, therefore, follows that the custody of the goods by the railway as a carrier must extend beyond the period of their transit. It was also held in that case that a reasonable time must be allowed for the exigencies of traffic and the convenience of the consignee to whom delivery has to be made, but when the carrier is ready to deliver, the recipient is allowed only a reasonable time and no more to take delivery. As regards the liability of the railway as warehouseman, it was held that it would arise if such an arrangement was expressly or impliedly

made, but charging of demurrage does not necessarily give rise to such an implication. What should be considered to be a reasonable time for the consignee to take delivery of the goods after arrival, either with or without reference to the rules, was not considered in that case but the railway was absolved from liability when the goods were destroyed by fire on the third day of the arrival of the goods when delivery was asked for.

11. Sec 160 of the Indian Contract Act enjoins a duty on the bailee to return or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished. Sec. 161 provides that if, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible for any loss, destruction or deterioration of the goods from that time. His duty to deliver is subject to the condition that he has a right to retain the goods until he receives due remuneration for the services he has rendered in respect of them when the service is rendered in accordance with the purpose of the bailment. During all this period the liability to take care of the goods, enjoined on him by Sec. 151, must necessarily continue it is only when he takes the amount of care described in this section that in the absence of any special contract to the contrary, he is absolved under Sec. 152 from the responsibility for the loss, destruction or deterioration of the goods.

12. Rule 86-AA of Goods Tariff, Part I-A provides, for rules for the warehousing and retention of goods and levy of wharfage, It therefore appears certain that demurrage and wharfage are charged by the railway as a term and conditions of the contract of warehousing. So long as the period of the goods remaining in the railway premises free of these charges is concerned, the railway obviously retains the goods in pursuance of the original contract of carriage and is therefore, bound to take the amount of care of the goods as is prescribed under Sec, 151 of the Indian Contract Act. Thereafter, it is bound to do so as a warehouseman until the goods are disposed of as unclaimed goods under para II, Chapter I, of Goods Tariff, Part I-A. In this view, the decision of Padhye J. in Yusuf & Ismail Co. vs. Governor General in Council (supra) is correct, although it is based on different grounds, The view held above is in consonance with the decision in Chhatumal vs. Union of India (Supra) with which I am in respectful agreement.

13. AS the railway administration did not take due care of the goods, it was rightly held to be liable for their loss. The appeal accordingly fails and is dismissed with costs.