

(1971) 01 KL CK 0001
In the High Court Of Kerala
Case No : S.A. No. 62 of 1966

Union of India

APPELLANT

Vs

S.R.A. Reddiar and Company

RESPONDENT

Date of Decision : 12-01-1971

Acts Referred:

Citation : (1971) KLJ 255

Hon'ble Judges : T.C. Raghavan, J;E.K. Moidu, J

Bench : Division Bench

Advocate : K.P. Pathrose and M.C. Cheriyan, for the Appellant; P. Krishnamoorthy, for the Respondent

Final Decision : Allowed

Judgement

T.C. Raghavan, J.—The question in this second appeal is one of limitation--whether Article 30 of the Limitation Act of 1908 applies to the case or whether Article 31 applies. The question of limitation was not considered in full by the trial court, the Munsif just saying that it was not established how the suit was barred. Before the Subordinate Judge three decisions, two of the Travancore-Cochin High Court and one of the Calcutta High Court, were cited. And the Subordinate Judge, following them, has held that there was no limitation. The facts are simple. The appellant, the Southern Railway, short-delivered goods to the respondent, the consignee. The consignment was 22.330 tonnes and the delivery was 21 tonnes with the result that 1330 kilograms were short-delivered. The delivery was on 9th May 1961; and the suit was filed on 23rd July 1962 more than a year after the short-delivery. The Railway Administration claimed that the suit was barred under Article 31, while the respondent claimed that the suit came within Article 30. The second appeal came before a learned Judge of this Court; and the learned Judge placed the case before a Division Bench since in his opinion, the question involved, viz., whether it was Article 31 that applied or Article 30 that applied to a case of short-delivery, was an important question which required consideration by a Division Bench for an authoritative decision on

the question. That is how the case has come before us.

Article 30 and 31 read:

Description

of suit

Period of limitation

Time from which period begins to run

30.

Against a carrier for compensation for losing or injuring goods.

One year

When the loss or injury occurs.

31.

Against a carrier for compensation for non-delivery of, or delay in delivering, goods.

One year

When the goods ought to be delivered.

2. At the outset we shall dispose of the three decisions referred to by the Subordinate Judge, The two decisions of the Travancore Cochin High Court are Union of India v. Adam Hajee Peer Mohammed Essack (1956 KLT 40) and Muhammadi Steamship Co. v. Keserishih Vallabdas (1956 KLT 706); and the decision of the Calcutta High Court is Jainarain Vs. The Governor-General of India, These decisions have laid down that, where no time is fixed for delivery of the goods and where correspondence ensues between the consignor (in this case the consignee) and the Railway Administration in the course of which the railway assures or promises enquiries and never denies liability, limitation does not begin until the correspondence ends either fruitlessly or with a final repudiation of liability by the railway. These decisions appear to go against the language of Article 31, the third column of which says "when the goods ought to be delivered". The point of time contemplated by the third column is "when the goods ought to be delivered", i.e., the point of time after a reasonable time for delivery after the goods were entrusted with the carrier. At any rate, the matter is now put beyond doubt by the decision of the Supreme Court in Bootamal Vs. Union of India (UOI), . Wanchoo J. has stated in this decision that the correspondence between the carrier and the consignee cannot alter the starting point for limitation contained in Article 31. The learned Judge has said that the correspondence may be looked into if it has a bearing on the question of reasonable time (unless, of course the agreement itself is that the goods would be delivered on a particular day, in which case the reasonable time is the time

agreed upon). The learned Judge has said

But the correspondence can only be taken into account to determine what would be the reasonable time and not to show that because of the subsequent conduct of the railway the reasonable time got extended by the time taken by the railway in tracing the goods.

3. It is thus clear that, after the aforesaid decision of the Supreme Court, the three decisions mentioned above and other similar decisions of all the High Courts ceased to be good law.

4. The position is this. If there is a date agreed upon for delivering the goods, that is the starting point for limitation, since that is the time when the goods ought to be delivered. If no such time is fixed, the time for delivery is reasonable time depending upon the circumstances in each case, depending upon the time normally and reasonably taken for carrying the goods from the place of despatch to the destination: and limitation starts on the expiry of such reasonable time. If the correspondence between the carrier and the consignor or consignee, as the case may be, throws any light on the reasonable time in a particular case or enables to find out the reasonable time, the correspondence is relevant to that extent. If the correspondence reveals an acknowledgment of liability which may give rise to a fresh period of limitation, then also the correspondence can be looked into. But the correspondence cannot extend the reasonable time required for delivering the goods. Of course, the onus to establish what is the reasonable time and what is the starting point for limitation is on the one (the carrier) who claims bar of limitation.

5. In the same decision of the Supreme Court appears another passage, viz.,

Further there may be no difficulty in finding out the reasonable time where bulk of the goods has been delivered and only a part has not been delivered for in such a case in the absence of special circumstances it should be easy to see that the reasonable time is that within which the bulk of the good have been delivered.

6. It is on this observation of Wanchoo J. that the counsel of the railway relies and relies strongly; and it is this observation that persuaded the learned Single Judge to place the second appeal before us to decide the question whether in a case of short delivery Article 30 applied or Article 31 applied.

7. Two or three other decisions of the Supreme Court have also been brought to our notice; and they may also be referred to. One of them is *Jetmull Bhojraj v. Darjeeling Himalayan Railway Co. Ltd.* (A.I.R. 1962 S.J. 1879), where the majority judgment pronounced by Mudholker J. states in paragraph 23 that, where the claim in a suit against the Railway Administration is for compensation for damage to the goods which were eventually delivered, the appropriate Article is Article 30 and not Article 31. The learned Judge then goes on to the earlier decision of the Supreme Court in *Union of India (UOI) Vs. Amar Singh*, , where

Subba Rao J. speaking for the Court, has held that the burden lies on the Rly. Administration to establish when the loss or the injury occurred to non suit the consignee on the ground of limitation. The latter decision has been relied upon by the counsel of the consignee (the respondent) in the case before us, because in that case Subba Rao J., has applied Article 30 and not Article 31: the counsel has argued that Article 30 applies to the present case too. The Railway Administration claimed in the case before the Supreme Court that Article 30 applied; and Subba Rao J., without deciding the question as to which was the proper Article, has proceeded to consider the contention of the railway assuming that Article 30 applied to the case. That decision is there fore not an authority that in a case like that it was Article 30 that applied. Subba Rao J. has considered the question further and has held that, if Article 30 applied, the onus of establishing the time when the loss occurred was on the carrier, and since the Railway Administration failed to establish that (the starting point of limitation), the suit was not proved to be out of time. The third decision of the Supreme Court is *The East and West Steamship Company, George Town, Madras Vs. S.K. Ramalingam Chettiar*, . This decision is relied upon, again by the counsel of the respondent. This was a case under the Carriage of Goods by Sea Act; and Das Gupta J., who delivered the judgment of the Court, has stated in paragraph 24 of the judgment that the word "loss" in the third clause of the sixth paragraph of Article III in the schedule to the Act meant and included any loss caused to a shipper or a consignee by reason of the inability of the ship or the carrier to deliver part or whole of the goods, to whatever reason such failure might be due. From this the counsel of the respondent has argued that, in the case before us also, the short-delivery must be construed as "loss" to the consignee of the goods short-delivered with the result that Article 30 applied to the case.

8. From the language of Article 30 it is clear that the loss or the injury mentioned therein is different from the ultimate loss or injury caused to the consignee as a result of "losing or injuring goods". The loss or injury in Article 30 must be loss or injury to the Railway Administration (the carrier) and not the ultimate loss to the consignee. Again, the language of Article 30 is not compensation for "loss or injury" but compensation for "losing or injuring" the goods, which can only mean that the losing or the injuring must be by the Railway Administration, the carrier: in other words, the losing or the injuring must be when the goods were in the possession of the carrier. Therefore, the Supreme Court decision relied upon by the respondent arising in a case under the Carriage of Goods by sea Act cannot apply to the present case. We do not think that any authority is required for the position that the losing or the injuring in Article 30 must be losing or injuring by the carrier. If one is required, the decision of Allahabad High Court *Jugal Kishore v. G.I.P. Rly. Co.* (I.L.R. 45 All. 43) might be referred to.

9. Article 30 applies to suits for compensation for losing or injuring goods by the carrier. The fact that the consignee or consigner also sustained loss ultimately as a result of such losing or injuring by the carrier will not alter the position and make Article 31 applicable to such cases. Article 31 applies to cases of

compensation for non-delivery or delayed delivery of goods. In the case before us where part of the goods were delivered and the rest not delivered, the goods short-delivered were evidently not delivered. In such cases. Article 31 must apply. Article 31 contemplates two possibilities, one, non-delivery and two, delayed delivery. If the goods short-delivered are delivered subsequently, such subsequent delivery becomes delayed delivery, the time when the goods ought to be delivered being the time when a portion of the goods was delivered. If the short delivered goods are not delivered at all, then the case is one of non-delivery, in which case also Article 31 applies. Non delivery need not necessarily be the result of losing the goods by the carrier: it might be due to other reasons too. So that, in the case of short-delivery, the goods short-delivered are, as already stated, not delivered and not necessarily lost by the Railway Administration. Of course, if the Railway Administration has a case that the non-delivery was the result of their losing the goods, then they may claim that Article 30 applies as was done in Amar Singh's case mentioned above, in which case the Railway Administration is bound to establish the time at which they lost the goods: otherwise, to such cases of short-delivery Article 31 applies.

10. We may add that in this case, the suits barred by limitation whichever of the two Articles applies. If article 31 applied, the starting point of limitation is the time when the bulk of the good were delivered, that being the time when the goods ought to be delivered. The suit, having been filed more than a year thereafter, is barred by limitation. If it is Article 30 that applies, the loss to the railway should have been earlier than the short-delivery, because the short-delivery appears then to be the consequence or the result of such loss by the railway. Then also the period that transpired after the loss is more than a year. In either case, the suit is barred by limitation. The question whether Article 30 applies or Article 31 applies will be of consequence only if the suit is within a year of the short-delivery but beyond a year from an earlier date, on which, the Railway Administration claims, they lost the goods. The 2nd appeal is consequently allowed, the decree concurrently passed by the lower courts is set aside and the suit is dismissed. However, in the circumstances of the case, we direct both parties to bear their respective costs throughout.