(2006) 12 BOM CK 0012

In the Bombay High Court

Case No : F. A. No''s. 1394 to 1407, 1410 to 1413 of 2003, 670 to 682, 684 to 686 of 2005, 1839, 1840, 1844 of 2006, 130, 132 of 2003 and 943 of 2004

Union of India APPELLANT

Vs

State Trading Corporation Ltd. and another RESPONDENT

Date of Decision : 22-12-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Railway Claims Tribunal Act, 1987 — Section 33
Railways Act, 1989 — Section 106, 107, 77

Citation : (2006) 12 BOM CK 0012

Hon'ble Judges : D.B. Bhosale, J

Bench : Single Bench

Advocate : A.N. Samant, Union of India, for the Appellant; R.V. Govilkar with A.A. Motwani, New India Assurance Co. and Gurjar for State Trading Corporation, for the Respondent

Final Decision : Allowed

Judgement

D.B. Bhosale, J.—This group of first appeals raises common questions of law. The factual matrix against which the questions are raised and the parties in all the appeals are similar and, therefore, this group of the appeals is being disposed of by this common judgment.

2. The appeals are by the Union of India, owning and administering different Railway Administrations including Central Railway, North East Frontier Railway, South East Railway and Eastern Railway, with which we are concerned in these appeals. Respondent No. 1-State Trading Corporation Ltd., the company registered under the Indian Companies Act and having its registered office at New Delhi, is a Government of India Undertaking ("the STC", for short). Respondent No. 2, the New India Assurance Co. Ltd., is a company incorporated under the Indian Companies Act and having its registered office at Mumbai, ("the Assurance Company", for short) with whom the goods in transit were insured by

the STC and which, ultimately, reimbursed the STC by paying the amount which was claimed in the suit.

3. The STC entrusted the Central Railway at Mulund goods, Mumbai consignments of refined Soyabin Oil for dispatch and delivery to the Central Ware-Housing Corporation at different destination railway stations on "North East" and "Eastern" and "South East" Railways. At the destination stations on arrival of wagons, the STC noticed a shortage. On their written request for reweighing the consignment the respondent-railway authorities allowed Reweightment and the shortage was accordingly detected. The railway staff issued shortage certificates in all these cases. The STC on the basis of the shortage certificates, approached the appellants railway administrations claiming compensation for the shortages and since the compensation was not paid, they initially instituted suits in this Court. However, the suits were transferred to Railway Claims Tribunal, after it was established under the Railway Claims Tribunal Act, 1987. In all the claim applications, the STC alleged that the railway administrations have failed to use reasonable foresight and caution as a man of ordinary prudence takes for his own goods and as a result of gross negligence and failure to protect goods, they have suffered heavy loss due to shortage of product at the time of delivery and hence, they are liable to pay compensation.

4. All the claims were contested by the railway administrations by filing written statements. They have denied all the allegations and have specifically challenged the claim on the ground of territorial jurisdiction and non-compliance of the provisions of section 78-B of the Indian Railways Act, 1890 (for short, "Act of 1890"). In all the claim cases somewhat similar issues were framed. It would be advantageous to reproduce the issues framed by the Tribunal in one of the cases bearing No. O. A. No. 149/90. The issues read thus :

1. Whether the applicants prove that they had sent the statutory notice to the respondents in order to pursue their present claim?

2. Whether the applicant prove that they suffered loss by way of short delivery of Refined Rape Seed Oil in the present case on account of negligence and/or misconduct on the part of the respondent railways?

3. Whether the applicants prove that they are entitled to the compensation as claimed for in the present claim application?

4. Whether the respondent railways proves that the present Claim

Application is not maintainable under the law?

All the four issues were answered in favour of the respondents and the railway administrations were directed to pay compensation as claimed in each of the cases/claim applications. In some of the cases an interest at the rate of six per cent per annum from the date of filing of the applications was granted and in some nine percent. The Railway Administrations were granted three months time to make the payment.

5. I heard the learned counsel for the parties at length. Perused the impugned judgments and all other material to which my attention was specifically drawn. Mr. Samant, learned counsel for the appellants, submitted that the STC having subrogated their rights in favour of the Assurance company and having been received their monetary claim have no subsisting claim against the appellants. He then submitted that no decree can be passed against the two railway administrations by the Tribunal. He submitted that the Tribunal at Mumbai has no territorial jurisdiction over the second railway administration, as contemplated u/s 80 read with section 78-B. of the Act of 1890. The second railway administration is beyond the territorial limits of the Tribunal at Mumbai. Section 80 of the Act of 1890, according to Mr. Samant, provides that only one railway administration can be sued. He also referred to section 33 of the Railway Claims Tribunal Act, 1987 (for short, "The Tribunal Act") in support of this contention. Mr. Samant placed reliance upon the judgment of this Court in The Union of India (UOI) Vs. The Indian Hume Pipe Co. Ltd. and Another, and unreported judgment of the learned Single Judge in First Appeal No. 1136 of 1992 in Union of India vs. M/s Eknath Khemchand decided on 6-5-2005. Mr. Samant then submitted that the decree against other Railway Administrations must be set aside since the Tribunal at Mumbai has no jurisdiction over them and even the decree against the Central Railway also must fail since, admittedly, notice contemplated u/s 78-B of the Act, 1890, was not given to the Central Railway. In other words, he submitted that the claim applications of respondent No. 1 against Central Railway must fail and the impugned orders passed by the Tribunal deserve to be set aside for want of valid notice u/s 78-B of the Act, 1890. In support of this contention, he placed reliance upon the unreported judgment of this Court in Union of India vs. Cummins Diesel in F. A. No. 1150 of 1991 decided on 2nd May, 2003. He then invited my attention to the operative part of the judgments in some of the appeals to contend that the interest awarded at the rate of nine percent per annum deserve to be set aside and brought down to six per cent only as held by this Court in the case of Maharashtra State Electricity Board Vs. Union of India (UOI), . Mr. Samant, then fairly submitted that in view of the unreported judgment of this Court in Union of India vs. Century Textiles in First Appeal No. 14 of 1995 decided on 17-2-2005, and followed in several other appeals, the question of the "said to contain" railway receipts and the liability of the railways thereunder he cannot carry it further.

6. Mr. Govilkar, learned counsel for the Assurance Company in reply to the submissions of Mr. Samant on the question of territorial jurisdiction, submitted that he has instructions to press the decree only against the Central Railway and in view thereof he fairly stated that I need not enter into the question of territorial jurisdiction. In effect, Mr. Govilkar deemed to have conceded that the Tribunal at Mumbai has no jurisdiction over North East Railway. Mr. Samant, though raised several questions in view of the submission of Mr. Govilkar, on the point of jurisdiction, ultimately confined the challenge only on the ground that the claim applications must be rejected for want of service of notice to the

Central Railway as contemplated u/s 78-B of the Act of 1890 as also u/s 106 read with section 107 of Railways Act, 1989 (for short, "Act of 1989"). In the circumstances, I do not deem it necessary to enter into the question of territorial jurisdiction.

7. Mr. Govilkar, however, insofar as the question of notice contemplated u/s 78-B of the Act of 1890 is concerned, placed heavy reliance upon the judgment of this Court in Union of India vs. Kalinga Textiles, AIR 1969 Bombay 401 to contend that the notice u/s 78-B to North East Railway is deemed to be the notice under that provision to the Central Railway and on the basis thereof the Tribunal has rightly awarded the compensation. Mr. Govilkar submitted that the notice to one railway administration is notice to other railway administration also and the claim application would not fail on the ground that the notice u/s 78-B has not been given to the other railway. Admittedly, in the present case, the notice contemplated by section 78-B was given to other Railway Administration and not to the Central Railway against whom the respondents press confirmation of the order of compensation passed by the Tribunal. In support of this contention he placed reliance upon the judgments of other High Courts in Firm Deokishan Srigopal Vs. Union of India (UOI) (Formerly Dominion of India) and Others, , Traders Syndicate Vs. Union of India (UOI), and Union of India (UOI) Vs. Panipat Woollen and General Mills Co., Ltd., . Insofar as interest is concerned, Mr. Govilkar submitted that the Tribunal has rightly awarded 9% interest and deserves no interference by this Court. Mr. Gurjar, learned counsel for the STC, adopted the submissions advanced by Mr. Govilkar.

8. In view of the arguments advanced by the learned counsel for the parties in this group of the appeals, I now proceed to address the questions of service of notice contemplated u/s 78-B of the Act of 1890 and the interest.

9. Mr. Govilkar, placed heavy reliance upon the judgment of the Division Bench of this Court in Kalinga Textiles (supra). In that case the Division Bench was considering a plea that there was no notice at all served upon either of the two railways, namely, the central railway and the South Eastern Railway. After considering merits of the submission, in paragraph 18 of the judgment it was held that a notice of claim u/s 77 was issued by plaintiff No. 1 therein and it was duly served upon the General Manager of the South Eastern Railway and that no such notice had been served upon the General Manager of the Central Railway. It is against this backdrop the Division Bench was considering whether notice to South-Eastern Railway u/s 77 could be treated as notice to Central Railway and/or whether claim would fail for want of notice to Central Railway. The suit was filed in Bombay. In that case provisions of section 77 which was subsequently replaced by section 78-B of the Act of 1890, fell for the consideration of the Division Bench. Section 78-B of the Act of 1890 was introduced in 1961. Sections 77 and 78-B need to be reproduced for better appreciation of the submissions advanced by the learned counsel for the parties and also the law laid down by this Court in Kalinga Textiles. The provisions contained in old section 77 and new

section 78-B read thus ;

"77. Notification of claims to refunds of overcharges and to compensation for losses.-A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction, or deterioration of animals or goods delivered to be carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the railway administration within six months from the date of the delivery of the animals or goods for carriage by railway."

"78-B. Notification of claims to refunds of overcharges and to compensation for losses. - A person shall not be entitled to a refund of an overcharge in respect of animals of goods carried by railway or to compensation for the loss, destruction, damage, deterioration or nondelivery of animals or goods delivered to be carried unless his claim to the refund or compensation has been preferred in writing by him or on his behalf -

(a) to the railway administration to which the animals or goods were delivered to be carried by railway, or

(b) to the railway administration on whose railway the destination station lies, or the loss, destruction, damage or deterioration occurred, within six months from the date of the delivery of the animals or goods for carriage by railway;

Provided that any information demanded or inquiry made in writing from, or any complaint made in writing to, any of the railway administration mentioned above, by or on behalf of the person within that said period of six months regarding the non-delivery or delay in delivery of the animals or goods with particulars sufficient to identify the consignment of such animals or goods shall, for the purposes of this section, be deemed to be a claim to the refund or compensation. Amendments. This section has been inserted by Act 39 of 1961. The corresponding old section was 77 which ran as follows; Provisions of section 80 also would be necessary and relevant and need to be reproduced. Section 80 reads thus;

"80. Application for compensation. - An application to the Claims Tribunal for compensation for loss of the life of, or personal injury to, a passenger or for loss, destruction, damage, deterioration or non-delivery of animals or goods may be made -

(a) if the passenger was, or the animals or goods were, booked from one station to another on the railway of the same railway administration, against that railway administration;

(b) if the passenger was, or the animals or goods were, booked, through over the railway of two or more railway administrations against the railway administration from which the passenger obtained his pass or purchased his ticket or to which the animals or goods were delivered for carriage, as the case may be, or against the railway administration on whose railway the destination station lies, or the loss, injury, destruction, damage or deterioration occurred."

10. Section 87-B of the Act of 1890 had been inserted by Act 39 of 1961. The corresponding old section was section 77 which provided for notification of the claims to refund of overcharges and to compensation for loss. Under this provision, a person was entitled to compensation for the loss of goods delivered to be carried, unless his claim has been preferred in writing to the "railway administration" within six months. It does not make any distinction between railway administrations to which goods were delivered to be carried by the railway and the railway administration on whose railway the destination station lies, or the loss, destruction, damage or deterioration occurred as we find it in section 78B. Even the proviso to section 77 uses the expression "railway administration" only. Whereas section 80 clearly makes distinction between different railway administrations. These provisions were under consideration before the Division Bench in Kalinga Textiles and even in Devkisan vs. Union of India and Traders Syndicate vs. Union of India (supra).

11. In the present case, Admittedly, all the consignments were booked prior to 1-7-1990 and, therefore, there is no dispute that the contracts between the parties in all the cases took place prior to this date and, therefore, all the cases are governed by the Act of 1890. Mr. Samant vehemently submitted that the provisions with which we are concerned in these appeals being procedural and do not create any kind of substantive right and obligation between the parties, provisions of sections 106 and 107 of the Act of 1989 are attracted. In short, he submitted that the provisions of sections 106 and 107 of the Act of 1989 have retrospective operation. In support of this submission, he placed heavy reliance upon the judgment of Sudhir G. Angur and Others Vs. M. Sanjeev and Others, .

12. The Act of 1890 was amended by the Act of 39 of 1961 and section 77 therein was replaced with effect from 1-1-1961 by section 78-B. Section 78-B and the old section 77 provide for notification of claims to refunds of overcharges and to compensation for losses. u/s 77 a person entitled to compensation for the loss was required to give notice in writing to the "railway administration" within six months from the date of delivery of the goods for carriage by railway. By new section 78-B choice was given to the aggrieved person to serve notice on any of the three railway administrations, namely, to the railway administration to which the goods were delivered to be carried by railway, or the railway administration on whose railway the destination station lies or the loss, destruction, damage or deterioration occurred. Proviso to section 78-B provides that any complaint made in writing to any of the railway administrations mentioned in clauses (a) and (b) thereof by person within the period of six months be deemed to be a claim to the compensation. It is thus clear that by section 78-B the claimant is given choice/ option to give notice to one of the railway administrations mentioned in clauses (a) and (b) of section 78-B. The object of service of notice is obvious, to enable the railway administration to make an enquiry and investigate as to whether the loss, destruction etc. was due to the plaintiffs laches or due to wilful neglect of

the railway or its servants or due to theft or robbery committed by their servants and to determine the claim and pay the compensation accordingly. This provision does not contemplate filing of any suit/claim application before the appropriate forum. It provides that a person who has suffered a loss can bring it to the notice of one of the railway administrations in writing as mentioned in clauses (a) and (b) of section 78-B and claim the compensation further expecting the railway administration to determine the loss and pay the compensation for which one need not necessarily approach the Court/tribunal.

13. As against this, section 80 provides for filing of a suit for compensation for loss, destruction, damage, deterioration of goods delivered to the railway to be carried to the destination railway station. This section clearly given choice to the claimant to institute a suit against the railway administration where the goods were booked from one station to another on the railway of same railway administration, against that railway administration or if goods were booked, through over the railway of two or more railway administrations, against the railway administration to which the goods were delivered for carriage, or against the railway administration on whose railway the destination station lies, or the loss, injury, destruction, damage or deterioration occurred. In either case, a suit may be instituted in a Court having jurisdiction over the place at which goods were delivered for carriage, as the case may be, or over the place in which destination station lies or the loss, injury, destruction, damage or deterioration occurred. This section does not make any reference to the notice to be given before filing of the suit. A conjoint reading of section 78-B and section 80 would, however, show that a notice to the concerned railway administration is necessary for the railway administration to know and enquire and investigate as to whether the loss, destruction etc. occurred due to whose fault and to determine the compensation to be paid to the claimant. If the railway administration does not pay the compensation as contemplated by section 78-B or if pay less compensation it may be open for the complainant to institute a suit as provided for u/s 80 of the Act of 1890 either for compensation or for enhancement of the compensation awarded by the railway administration, as the case may be. Keeping the purport of both these provisions in view the submission will have to be examined whether a suit can be instituted against a particular railway administration even if the notice contemplated u/s 78-B is given to other railway administration.

14. The Division Bench in Kalinga Textiles had exhaustively dealt with the provisions contained in section 77, section 80 as also the expression "railway administration". The observations made by the Division Bench in paragraphs 38, 41, 45, 46 and 47 may be necessary and relevant to appreciate the submissions advanced by the learned counsel for the parties. The relevant paragraphs read thus :

"38. According to us, the provisions of section 77 of the Railways Act must be independently examined and effect must be given to them as they are found in

that section. Section 80 of the Railways Act may have relevance in understanding which administration is liable. However, section 80 must be understood in the manner in which it came to be introduced in the Act. The legislative history of section 80 as also the history of ownership and administration of the various major railways in this country by the Union of India must be remembered for the purpose of understanding the import of each of these sections. There was considerable controversy before 1890 over the liability of the various company-owned and administrated railways. Many company railways were in the habit of inserting a clause by which their liability was restricted to their handling of the goods and until they were travelling on their lines. In spite of such a clause, the contract of carriage was from one station to another, which many times fell upon the railway owned and administered by another company. The consignor or the consignee had not always the means to know where precisely the loss or damage occurred. In the circumstances, various shades of opinion were current in the decisions of the different High Courts. Some held that the contracting railway was an agent of the other administration over whose rails the goods were ultimately carried and delivered. Some held that the other administration was an agent for and on behalf of the contracting railway. The liability was accordingly being fixed either in the capacity of principal or agent. In order to set at rest this controversy, section 80 came to be introduced in the Railways Act. The provisions of section 80 are overriding provisions. That section opens with the clause "Notwithstanding anything in any agreement, etc." This means that whatever the contract of carriage, the liability in damages is statutorily fixed under the provisions of section 80. Even if a clause of terminating the liability of the contracting railway after the goods are handed over to the other railway were to be introduced in the contract, after 1890 the provisions of section 80 would override such a contract. Undoubtedly, the administration of the various company-railways vested in various companies when that section was introduced. Each company-railway was a separate railway administration in the eye of law. Each one of them was a separate legal entity capable of suing and being sued as such. This being the purpose for which section 80 was introduced even today that section has to serve the very purpose for which it was enacted."
"41. According to us, in the matter of claim for damages, what is mainly relevant is the incident of these damages. In other words, who is really the contracting party and who is really responsible to a claimant? The claimant no doubt deals primarily with some portion of the railway which is known by one of the names given to the zonal railways. However, the definition of the expression "railway administration" being an inclusive definition, it appears to us that the Manager of any of these railways always includes the Government. It may be noted that the expression "railway" means a railway or any portion of the railways. The entire system of Indian Railways should be "railway", as also any portion of it. The expression "Manager of the railway" would mean the Manager of a particular portion which may have been separated for the purpose of administrative convenience. Even if there is a small unit which is also "railway", in the smaller unit would always include the Government. The responsibility for loss,

destruction etc. arises under the Indian Contract Act, as we have already pointed out and not under the Indian Railways Act. It is the Union of India or the Government which is included in all the Managers representing the various portions of railways that is the contracting party and that is ultimately responsible for making goods the loss due to destruction or otherwise. This basic fact, according to us, is the main factor which must be taken into account in understanding the function, propose and sufficiency of notice u/s 77 of the Railways Act."

"45. The other two questions relate to the service of notice on a particular officer. On whom the notice should be served is also a question open to debate. We have already pointed out that in this appeal we are not deciding the question whether a notice upon a subordinate officer of a high rank but not upon the Manager himself is or is not sufficient notice. The third question is whether in the case of through traffic each of the managers is entitled to a notice or in the case of railways owned and administered by the Union of India, preferring of such a claim to one of the Managers whose railway has dealt with the consignment is sufficient compliance with section 77. So far as the last point is concerned, we have already pointed out the purpose and the intention of section 77. We have also pointed out that today most of the major railways are owned and administered by the Union of India. It is the Union of India that is ultimately responsible in damages. With this background, if we look at the fact that the railways are administered by the Government, we find that there is nothing in the provisions of the Railways Act which gives each of the zonal railways which is headed by a Manager a separate legal existence. Neither the definition contained in section 3(6) nor any other provisions seems to give an independent legal existence to such separate zonal railways. According to us, emphasis must be laid on the unity of administration and unity of ownership of the railways, it may be that there are certain functions to be performed by the Manager of a railway administration which are laid down in the Act. For the purpose of carrying out those functions, a Manager has to be provided for and the fact that such a Manager is the head of each section of the railways which is styled as a zone does not give him any separate legal existence in the eye of law. We do not think that each such zonal railway can sue or be sued in its own name."

"46. A claimant, who ultimately must file a suit against the Union of India for recovering his claim relating to loss or destruction during the course of the consignment being handled by the State-owned and administered railway, has to comply with two distinct provisions. He must prefer a claim u/s 77 of the Railways Act and he must again serve a notice u/s 80 of the Code of Civil Procedure. The purpose and function of both these notices is more or less similar. Section 77 is primarily meant to make the railway administration aware of the claim, so that immediate investigation is started. The notice u/s 80 of the Code is also meant to enable the Government to consider whether the claim is just and should be compounded. Both the sections conceive of the possibility of compounding of just claims and avoidance of unnecessary litigation. According to us, therefore, two important conclusions are now reached. One is that each zonal railway is not a separate legal entity and the other is that the purpose and functions of the notice u/s 77 of the Railways Act, as also section 80 of the Code of Civil Procedure, are primarily to avoid fraudulent and delayed claims, and in the second place, to enable just claims being compounded."

"47. We have also pointed out that so far as the content of the notice u/s 77 of the Railways Act is concerned, it is now accepted as a uniform role that notice has to be liberally construed. Whether the contents of a particular notice are sufficient compliance with the provisions of section 77 may be, in the facts and circumstances of each case, a question to be decided independently. However, the principle on which that question has to be decided appears to be a settled one. If that is the primary purpose of section 77 of the Railways Act, we think that the service of notice upon the Manager of any of the railways which have handled the goods would serve the purpose of section 77 and would be sufficient compliance with it. Since, all the railways are now owned and administered by the Government, the Manager of any of those railways which has dealt with the goods and gets enough particulars from the claimant about the number of the railway receipt, the nature of the goods and the date of booking etc. should be in a position to know from the record of his own section what has happened to the goods. It should be possible for him to immediately communicate with the Manager of other sections or zones on whose rails the goods have also passed. A notice to any of these Managers through whose railway systems the goods has passed is a sufficient notice to the Government which is administering all these railways. Emphasis is laid upon the Article "the" used before the expression "railway administration" in section 77 . Mr. Tambe for the appellants argued that the intention is that the particular railway which is responsible must alone be served. If more than one railways are sought to be made liable, then each one of them must be served with a notice. We think that the only import of the expression "the railway administration" used in section 77 is to point out to the claimant that he must serve a notice upon that railway which has handled the goods. Any portion of a railway is also "railway" according to the definition contained in section 3(4). Therefore, the reference in section 77 is only meant to emphasis the fact that the notice must go out to some railway which has actually dealt with the goods and not to others. In this approach, we do not think that section 80 of the Railways Act either furnishes a clue or controls the interpretation. Section 80 is an independent provision made to point out the statutory liability irrespective of a contract."

15. The Supreme Court in Jetmull Bhojraj Vs. The Darjeeling Himalayan Railway Co. Ltd. and Others, points out that in enacting section 77 the intention of the legislature must have been to afford only a protection to the railway administration against fraud and not to prove a means for depriving the consignors of their legitimate claims for compensation for the loss of or damage caused to their consignments during the course of transit on the railways. They, therefore, pointed out that bearing this object in mind, the provisions of section

77 should be liberally construed. The Supreme Court further says that the purpose or the object of section 77 being to make the railway administration aware of the claim so that stale and fraudulent claims may not be lodged against it. In Prem Prakash Gupta Vs. Union of India (UOI) and Another, , the leaned Single Judge, after considering section 78-B which replaced old section 77, observed that section 78-B which replaced the old section 77 gives the choice to the aggrieved person to serve a notice on any one of the three railway administrations contemplated in clauses (a) and (b) of section 78-B. In yet another judgment, namely Firm Deokishan Srigopal Vs. Union of India (UOI) (Formerly Dominion of India) and Others, the very same High Court took a similar view that a notice to one of the railways meets the requirement of section 77. The Supreme Court in Niranjanlall Agarwalla Vs. Union of India (UOI), while dealing with the provisions of section 77 held that the requirement of compliance with the terms of section 77 should be liberally construed as the object of notice was only to enable the railway administration to make an enquiry and investigate into the cause of loss of the goods, consigned to it. In Traders Syndicate Vs. Union of India (UOI), , the learned Single Judge, after considering the provisions of section 78-B, held that service of notice u/s 78-B on one of the two railway administrations is sufficient under the said provision.

16. Mr. Samant, learned counsel, for the respondents, however, invited my attention to the provisions of the old section 77 which was in force till September, 1961 and submitted that a person who claims compensation for the loss of goods was required to prefer his claim in writing to the "railway administration". He submitted that there was no reference to any particular railway administration. There existed more than four Zonal railway administration in 1961 when it was found necessary to amend section 77 and accordingly new section 78-B was introduced. u/s 77 no distinction was made between two or more railway administrations, whereas section 78B, according to Mr. Samant, makes clear distinction between different railway administrations, and therefore, notice u/s 78-B to the railway administration is necessary against whom claimant desires to proceed. In other words, notice to the railway administration against whom one desires to proceed is made mandatory and in the absence thereof the claim should fail. He submitted that the law laid down by the Division Bench of Kalinga Textiles would, therefore, not apply to the facts of the present case. In that case the Court was dealing with old section 11.

17. It is true that section 77 was replaced by section 78-B and it came into force on 1st January, 1962. A plain reading of both the provisions would show that there is no difference between the two provisions except specifying that notice to one of the railway administrations contemplated in clauses (a) and (b) of section 78-B should be given. It does not state that a notice should be given to one railway administration which is responsible for the loss, destruction, damage or deterioration of goods delivered to be so carried. The provisions of section 78-B must be independently examined and effect must be given to them as they are found in that section. There is nothing in this provision or any other provisions of

the Railways Act which give each of the zonal railways which is headed by a General Manager, a separate legal existence, as observed by the Division Bench in Kalinga Textiles. Neither the definition contained in section 3(6) nor any other provision seems to give an independent legal existence to separate zonal railways. Each zonal railway, therefore, need not be sued in its own name. The only import of the expression "railway administration" used in section 78-B is to point out to the claimant that he must serve a notice upon that railway which has handled the goods. Any portion of a railway is also "railway" according to the definition contained in section 3(4). Therefore, what is necessary is only that a notice must go out to one of the railways which had actually dealt with the goods and not to others.

18. The statement of Objects and Reasons of the Act 39 of 1961 would show that the Railway Freight Structure Enquiry Committee had recommended that the responsibility of the railways in India as carriers of animals and goods, which is at present that of a bailee, should be changed to that of a common carrier. After a careful and detailed examination of the question the Government decided to accept the Committee''s recommendation and accordingly replaced section 77 by section 78-B. By introducing section 78-B the railways were given greater responsibility making them liable for loss or injury to the consignment in all cases arising when they are in the course of transit. In short by inserting section 78-B it was made clear that in the case of through booking of consignments over an Indian Railway and a Foreign Railway, the responsibility of the Indian railway as a common carrier would extend only over that portion of the carriage which is over the Indian Railway. This was made clear in the Statement of Objects and Reasons when the amendment by the Act 39 of 1961 was made.

19. By replacing section 77 by section 78-B of the Act of 1890 a complexion of both these sections, in my opinion, did not change and in view thereof the interpretation made by the Division Bench on the language of section 77, in Kalinga Textiles, would apply with equal force to section 78-B. I, therefore, hold that even if there was no notice to the Central Railway the claims would not fail. In other words, notice to other railway meets the requirement of section 78-B and that there is sufficient compliance of the provisions contained in section 78-B of the Act of 1890. The judgments relied upon by Mr. Samant are of no avail to the appellants in view of the observations made in the foregoing paragraphs.

20. The next submission of Mr. Samant, learned counsel for the railway that even if a notice u/s 78-B to the Central Railway in the instant appeals is held to be not necessary, the said provisions being procedural in character, the provisions contained in sections 106 and 107 of the Act of 1989 are attracted and since no notice under those provisions to the Central Railway was given by the claimants the decree is liable to be set aside.

21. The new Railways Act, 1989 replaced the old Indian Railways Act, 1890 and it came into force from 1-7-1990. Sections 106 and 107 of the Act of 1989 correspond with section 78-B of the Act of 1890. The difference made in the

language of these sections is clear. Under sections 106 and 107 that a notice is made mandatory to one of the three railway administrations mentioned in clauses (a) and (b) of section 106. Under sub-section (2) of section 106, any information demanded or enquiry made in writing from, or any complaint made in writing to, any of the railway administrations mentioned in sub-section (l)(a) and (b) is deemed to be a notice of claim for compensation. Similarly, under subsection (3) of section 106, a person shall not be entitled to a refund of an overcharge in respect of goods carried by railway unless a notice thereof has been served by him or on his behalf to the railway administration to which the overcharge has been paid, within the time specified thereunder. Section 107 of the Act of 1989 provides for an application to be filed for compensation for loss, destruction, damage, deterioration or non-delivery of goods against the railway administration "on whom a notice u/s 106 has been served". A conjoint reading of sections 106 and 107 would thus show that a notice is made mandatory and an application for compensation is also required to be filed "only" against the railway administration on whom a notice u/s 106 has been served. Mr. Samant, learned counsel for the Railways, submitted that the provisions of sections 106 and 107 of the Act of 1989 being procedural in character, have retrospective application and are, therefore, attracted in the present case and since, admittedly, no notice to the Central Railway was given the claim against the Railways should fail.

22. Admittedly, the STC had filed the suits against the Union of India in this Court which were subsequently transferred to the Tribunal after the same was established on 8-11-1989. There is no dispute that, the notices u/s 78-B of the Act of 1890 were served on South East Railway, Eastern Railway and North Frontier Railway. The destination stations in all these cases are on one or two of these railways. In all these cases, the goods were dispatched through Central Railway, from New Mulund Station, Mumbai. All the suits were instituted after section 77 was replaced by section 78-B by amending Act 39 of 1961. It is against this backdrop I would now like to consider the submissions of Mr. Samant, learned counsel for the Railways.

23. Even assuming the correctness of the contention that a purely procedural amendment should ordinarily be construed to be retrospective, it cannot be said that the amendment in the present case, was purely procedural and hence retrospective in operation. A plain reading of section 107 clearly demonstrate that a substantive liability is imposed on the claimant to make an application for compensation for loss, destruction, damage, deterioration and non-delivery of goods to the railway administration on whom a notice u/s 106 has been served. Such provision did not exist in the Act of 1890. That itself is an indication that such was not the condition precedent for making an application for compensation or under the Act of 1890 a notice to the railway administration against whom an application for compensation was filed, was not necessary. Section 107 is thus a substantive provision which obligates the claimant to proceed only against such railway administration on whom a notice u/s 106 has been served. The suits or

claim applications filed before the Act of 1989 was brought into force, would not fail in view of the fact that such provision was not in existence in the Act of 1890. Moreover, there is no provision, express or implied, in the Act of 1989 giving retrospective effect to the provisions to all or any of the provisions therein and in particular sections 106 and 107 thereof. The provisions whether procedural or otherwise, cannot be given retrospective effect, unless so expressed in the Act, which take away the rights of parties to the litigations who were entitled to enjoy or to maintain their litigations based on the provisions then in existence. If the Act of 1989 is held to be retrospective in operation, it would amount to re legislating the provisions of the Act of 1890 and in particular section 78-B therein by adding words which are not to be found in the said Act either expressly or by necessary intendment and it would amount to doing violence with the spirit of the Act of 1890. It may be borne in mind that the Act of 1989 is not the amending Act but it is a new legislation which repealed the Act of 1890. The judgment in Sudhir G. Angur and Others Vs. M. Sanjeev and Others, relied upon by Mr. Samant, is of no avail to the appellants. In that case, the question of determining the jurisdiction of the Court was under consideration and it was held that the Court is bound to take notice of the change in law and is bound to administer the law as it was when the suit came up for hearing. If the Court has jurisdiction to draw a suit when it comes for disposal it then cannot refuse to assume jurisdiction by reason of the fact that it had no jurisdiction to entertain it at the time of institution of the suit. This ratio would not help the appellants at all in view of the peculiar facts and circumstances of the case I have come across in the present case. For the selfsame reason the judgment relied upon by Mr. Samant in Shiv Bhagwan Moti Ram Saraoji vs. Onkarmal Ishar Dass, 1951 LTV BLR 330 is also of no avail to the appellants. In the circumstances, the submissions of Mr. Samant that the provisions of sections 106 and 107 of the Act of 1989 apply and Since, notice u/s 107 was not served to the Central Railway, the suits should fail, must be rejected.

24. That takes me to the last submission of Mr. Samant. In some of the cases, the same Tribunal has awarded six percent interest and in some nine percent interest. I do not see any logic or justification in making distinction while awarding interest. The Tribunal ought to have maintained uniformity in awarding the interest on the claim amount. This Court in Maharashtra State Electricity Board Vs. Union of India (UOI), in similar circumstances, granted six percent interest. Hence, I pass the following order :

(i) All appeals in which 9% interest has been awarded, namely, F. A. Nos. 130/03, 132/03, 943/04, 1839/06, 670/05, 671/05, 672/05, 673/05, 674/05, 676/05, 677/05, 678/05, 679/05, 680/05, 1840/06, stand partly allowed. The rate of interest in all these appeals stand reduced to 6% p.a. to be paid from the date of filing of the claim applications. While allowing respondent No. 1-Assurance Company to withdraw the amount of compensation that has already been deposited by the appellants, the difference, if any, due to reduction of the rate of interest, be deducted and it may be refunded to the appellants. Insofar as other appeals are concerned, the decrees against other Railways, that is, North East Frontier Railway, South East Railway and Eastern Railway, are set aside. The decrees against the Central Railway in all these appeals stand confirmed. All the appeals accordingly stand partly allowed in the aforesaid terms. The decrees in all these appeals be drawn up accordingly.

Mr. Samant, learned counsel for the appellants, prayed for stay of this judgment for a period of 16 weeks so as to enable the appellants to take up the matters in appeal before the Supreme Court. I am inclined to grant the stay, as prayed for. Order accordingly. The respondents shall not withdraw the amount, which has been deposited by the appellants, for a period of sixteen weeks from today.

