

**(1974) 12 MAD CK 0008**  
**In the Madras High Court**  
**Case No : Appeal No. 690 of 1970**

|                                       |    |            |
|---------------------------------------|----|------------|
| Union of India (UOI) and Another      | Vs | APPELLANT  |
| Khandelwal Bros. (P) Ltd. and Another |    | RESPONDENT |

**Date of Decision :** 03-12-1974

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 34  
Railways Act, 1890 — Section 77C, 77C(1)

**Citation :** AIR 1975 Mad 389 : (1975) ILR (Mad) 131 : (1975) 88 LW 543

**Hon'ble Judges :** Ismail, J

**Bench :** Single Bench

## Judgement

Ismail, J.—The defendants in O. S. 3931 of 1967 on the file of the City Civil Court, Madras, are the appellants herein. The first plain tiff-

first respondent was a consignee of two consignments -- one consisting of 175 pieces of M. S. black pipes 4"" diameter and 88 pieces of G. 1.

pipes 3"" diameter and the other consisting of 143 pieces of G. I, pipes 4"" diameter and 148 pieces of G. I. pipes 2 "" diameter, which were

entrusted to the appellants herein for transportation from Sealdah to Royapuram under two railway receipts Nos, 322997 and 322998 dated 24-

4-1964, one of which has been marked as Ex. B.2 when the goods were taken delivery of at Royapuram, there was a shortage of 96 Nos. of

black pipes in the first consignment and 12 pieces of G. I. pipes 4"" diameter in the second consignment, as evidenced by the shortage certificate,

Ex. A.5 dated 10-7-1964. It is with reference to this shortage after issuing notice, the respondents instituted the suit for recovery of a sum of Rs.

3329-18 in respect of the first consignment and a sum of Rs. 1835-39 in respect of the second consignment, They also claimed interest at 6 per

cent per annum from 10-7-1964.

2. The appellants herein repudiated the claim of the respondents. They contended that they were not liable for the suit claim as there was no negligence or misconduct; that the consignors had not conformed to the packing conditions; that they had not bestowed the required care in despatching the goods; and that therefore u/s 77-C of the Indian Railways Act, the appellants were absolved of their liability. They also contended that the plaintiffs were not entitled to claim any interest and that the suit itself was barred by limitation.

3. On the basis of these pleadings, the following issues were framed by the trial Court-

1. Whether the plaintiffs have got the right, title and interest in the suit consignment;
2. Whether there was any negligence or misconduct on the part of the defendants;
3. Whether the plaintiffs conformed with the packing condition prescribed under the Railways Act;
4. Whether the defendants are exonerated from liability u/s 77-C of the Indian Railways Act due to the defective packing;
5. Whether the plaintiffs are entitled to claim any interest over the claim;
6. Whether the suit is barred by limitation;
7. To what reliefs are the parties entitled.

The learned VIII Assistant Judge, City Civil Court, Madras, held on issue 1 that Exs. A.1 and A-2 and B-1 and B-2 clearly proved that the first

plaintiff was the consignee and that therefore the suit instituted by the plaintiffs was maintainable; on issues 2 and 4, he found that the appellants

were not absolved of their responsibility and that the plaintiffs were entitled to the suit claim, on issue 3, beheld that in the absence of evidence he

had to hold that the consignments had conformed to the packing conditions; on issue 5, he held that the respondents-plaintiffs were entitled to

interest from 1-11-1966, the date on which the notice issued by the respondents was acknowledged; and on issue 6, his finding was that the suit

was not barred by limitation. In view of these findings, he decreed the suit for a sum of Rs. 5184-57 with interest at 8 per cent per annum from 1-

11-1966. It is against this judgment and decree that the present appeal has

been preferred by the defendants in the suit.

4. Mr. Srisailam, learned counsel for the appellants, advanced two arguments before me. One was that Section 77-C of the Indian Railways Act

absolved the appellants of all liability in respect of the suit claim and the other was that the respondents were not entitled to any interest from a

date prior to the institution of the suit. On the plea of limitation, the learned counsel for the appellants conceded that the limitation question was

raised by the appellants on an erroneous assumption that the suit was instituted only on 28-9-1967, and that since it was ascertained the the suit

was instituted on 6-9-1967 itself, the suit was within time and therefore he did not repeat that contention before this court.

5. As far as the first point with regard to Section 77-C of the Indian Railways Act is concerned, the said section is as follows-

Section 77-C (1). When any goods tendered to a railway administration to be carried by railway-

(a) are in a defective condition as a consequence of which they are liable to damage, deterioration, leakage or wastage, or (b) are either defectively

packed or packed in a manner not in accordance with the general or special order, if any, issued under Subsection (4), and as a result of such

defective or improper packing are liable to damage, deterioration, leakage or wastage, and the fact of such condition or defective or improper

packing has been recorded by the sender or his agent in the forwarding note, then, notwithstanding anything contained in the foregoing provisions

of this Chapter, the railway administration shall not be responsible for any damage, deterioration, leakage or wastage, or for the condition in which

such goods are available for delivery at destination, except upon proof of negligence or misconduct on the part of the railway administration or any

of its servants.

(2) When any goods delivered to the railway administration to be carried by railway are found on arrival at destination to have been damaged or to

have suffered deterioration, leakage or wastage, then, notwithstanding anything contained in the foregoing provisions of this Chapter, the railway

administration shall not be responsible for the damage, deterioration, leakage or wastage of the goods on proof by the railway administration-

(a) that the goods were, at the time of delivery to the railway administration, in

a defective condition or were at that time either defectively packed or packed in a manner not in accordance with the general or special order, if any, issued under Subsection (4) and as a consequence of such defective condition or defective or improper packing were liable to damage, deterioration, leakage or wastage, and (b) that such defective condition or defective or improper packing was not brought to the notice of the railway administration or of any of the servants at the time of delivery of the goods to the railway administration for carriage by railway:

Provided that the railway administration shall be responsible for any such damage, deterioration, leakage or wastage if negligence or misconduct on the part of the railway administration or of any of its servants is proved.

(3) A railway administration shall not be responsible under Sub-section (1) or Sub-section (2) for any damage, deterioration, leakage or wastage occurring after the expiry of the period of seven, days after the termination of transit as defined in Sub-section (5) of Section 77.

(4) The Central Government may, by general or special order, prescribe the manner in which the goods delivered to a railway administration to be carried by railway shall be packed.

It will be seen that the above section refers only to four contingencies, namely, damage, deterioration, leakage or wastage of the goods carried. It

does not refer to loss, destruction or non-delivery of the goods. Various provisions of the Indian Railways Act deal with different circumstances

under which the railway may be held to be liable depending upon as to whether the event that occurred was damage to the goods or deterioration

of the goods or wastage of the goods or loss of the goods, or destruction of the goods or non-delivery of the goods as the case may be, However,

Section 77-CIT is confined only to four of the situations, namely, damage, deterioration, destruction, leakage or wastage. It has no application to

the loss or non-delivery of the goods. As far as the present case is concerned, as I have already pointed out, there has been a shortage in delivery

with regard to 26 Nos. of black pipes in the first consignment and 12 pieces of GI pipes 4" diameter in the second consignment. Therefore, that

will constitute either a loss of a portion of the goods carried or non-delivery of a portion of the goods entrusted for carriage to the railway

administration. Notwithstanding this, the learned counsel for the appellants

advanced a starting proposition by way of construction of the pro-vision concerned. According to the learned counsel, the word, "leakage" occurring in Section 77-C (1) (a) will cover the present case. The learned counsel also contended that the expression "the condition in which such goods are available for delivery at destination" occurring in Section 77-C (1) (a) will also apply to the present case. I do not have the slightest hesitation in stating that such a contention is frivolous and utterly untenable. In support of his contention that the word "leakage occurring in Section 77-C (1) will apply to the present case, the learned counsel wanted to rely upon the meaning given to the word, "leak" used as a noun occurring in Webster's New World Dictionary, 1962 Edn. One of the meanings attributed to the word leak" as a noun in the said dictionary is "any means of escape for something that ought not to be let out, lost, etc." The learned counsel contended that this meaning of the word leak" will show that leakage is not confined only to leakage of liquid, that it will include escape of anything else and that in the present case the loss of the pipes in question can be considered to be escape of the pipes occurring as a result of defective priding and that therefore the word, leakage" occurring in Section 77-C (1) will cover the present case. Such a contention has just to be stated to be rejected. I have already pointed out that the said meaning is given to the word, "leak" used as a noun. We are concerned in this case not with the meaning of "leak" used as a noun, but with the meaning of the word, "leakage". One of the meanings which will be relevant in this context which is found in the same dictionary for the word, "leakage" is, "in commerce, an allowance for a partial loss by leaking as of liquid in shipment". Therefore, if any assistance can be derived from the said dictionary, it is this meaning that is relevant and on the face of it that meaning will not cover the facts of the present case. By no stretch of imagination the loss of the pipes from the wagons or from any other place can be said to constitute a leakage of the pipes from the wagons resulting from the defective or improper packing. Therefore, I do not have any hesitation whatever in holding that the loss or short delivery of the pieces in the present case cannot be covered by the expression "leakage" occurring in Section 77-C (1) (a) of the Indian Railways Act

6. There is yet another reason for holding that the said section will have no

application to the present case so as to enable the appellants to escape from the liability for the loss in question. The section clearly shows that the damage, deterioration, leakage or wastage must be the result or consequence of defective or improper packing. In this particular case, Ex. B-1 one of the railway receipts, contains an endorsement against the entry "defective condition of the consignment or packing" as P/38F and P/41 not complied." The learned trial judge pointed out that what P. 38-F and P.41 stood for had not been made known and that in the absence of evidence as to what P-38-F and P.41 stood for, he had to hold that the consignors had conformed to the packing conditions. Apart from this, Sub-section (2) of Section 77-C, of the Indian Railways Act, clearly shows that even in such circumstances, the railway administration can escape liability only on proof that the goods were at the time of delivery to the railway administration, in a defective condition or were at that time either defectively packed or packed in a manner not in accordance with the general or special order, if any, issued under Sub-section (4) and as a consequence of such defective condition or defective or improper packing were liable to damage, deterioration, leakage or wastage and that such defective condition or defective or in proper packing was not brought to the notice of the railway administration or any of its servants at the time of delivery of the goods to the railway administration for carriage by railway. In other words, in order to enable the railway administration to escape from its liability for the loss in question, the following requirements must be satisfied by them, namely. (1) that the goods were, at the time of delivery to the railway administration in a defective condition or alternatively the goods were at that time either defectively packed or packed in a manner not in accordance with the general or special order, if any, issued under Sub-section (4); (2) that as a consequence of the defective condition or defective or improper packing the goods were liable to damage, deterioration, leakage or wastage; (3) that such defective condition or defective or improper packing was not brought to the notice of the railway administration or of any of its servants at the time of delivery of the goods to the railway administration for carriage by railway. As far as the first of the above three requirements is concerned, it was not the case of the appellants that the goods were, at the time of delivery to the

railway administration, in a defective condition. The only case of the appellants was that the packing conditions were not complied with Therefore,

the appellants will have to establish that the packing condition were not complied with and that as a result of the defective or improper packing, the

goods were liable to damage, deterioration, leakage or wastage and that such detective or improper packing was not brought to the notice of the

railway administration or of any of its servants. Whatever may be said with regard to the first two requirements, as far as the third requirement is

concerned, it is not certainly satisfied in the present case. Ex. B-2 contains two forwarding notes signed by Devi Prasad Khandelwal and Co Pvt.

Ltd., the consignors, and the two forwarding notes as against the column "the consignment is in bad condition as follows" state that "P. 38F and

P41, are not complied with". Therefore, once this statement has been made by the consignors in the forwarding notes themselves, it is clear that the

defective or improper packing of the consignments in question was brought to the notice of the railway administration or of its servants and

therefore the third requirement is not satisfied. The only witness who had been examined on behalf of the appellants was one Nagaraj as D. W. 1.

He was only an unloading clerk at Royapuram Goods Yard and therefore he was not competent to say anything about the defective or improper

packing not being brought to the notice of the railway administration or of any of its servants, notwithstanding the statement contained in the

forwarding notes, as pointed out already. Consequently the railway administration cannot escape from its liability to pay for the loss of the goods

in question. Hence, my conclusion in this behalf is that Section 77-C of the Indian Railways Act does not apply to the present case and that even if

Section 77-C can be said to apply to the present case, the requirements of Section 77-C (2) for enabling the railway administration to escape from

its liability have not been satisfied in the present case.

7. I may also point out that the same view was taken by the High Court of Delhi in Shiv Saran Dass Vs. Union of India, .

8. As far as the second contention with regard to payment of interest is concerned, the decision of the Supreme Court in the Union of India (UOI)

Vs. West Punjab Factories Ltd., , makes it clear that in the absence of any usage or contract express or implied, or of any provision of law to

justify award of interest: interest by way of damages cannot be awarded. In view of this decision of the Supreme Court, the learned counsel for

the respondents frankly conceded that he could not support the direction of the trial Court for payment of interest from 1-11-1966 onwards and

that the respondents will be entitled to interest only from 8-9-1967 the date of the suit.

9. Under these circumstances, subject to this minor modification, namely, that the respondents will be entitled to interest on the sum of Rs. 3184-

57 at 6 per cent per annum only from the date of the suit, namely, 8-9-1967, the judgment and decree of the trial court are confirmed and this

appeal is dismissed. Since the appellants have failed substantially, they will pay the costs of the respondents herein.