

(1989) 06 GAU CK 0011
In the Gauhati High Court

Union of India (UOI) and Others

APPELLANT

Vs

Ram Chandra Singh

RESPONDENT

Date of Decision : 29-06-1989

Acts Referred:

Railways Act, 1890 — Section 78B, 78B

Citation : (1990) 1 ACC 378

Hon'ble Judges : B.P. Saraf, J

Bench : Single Bench

Judgement

B.P. Saraf, J.—The sole question for consideration in this second appeal is whether a notice u/s 78B of the Indian Railways Act, 1890, hereinafter the Act, will be invalid notice on account of mistake in the description of the forwarding station,

2. The facts of the case, relevant for the purpose, can be stated thus : The plaintiff booked a consignment of hard coke from Pathardih Railway Station to New Gauhati. Some shortage was discovered at the time of taking delivery. The plaintiff served a notice u/s 78-B of the Act on the Railways claiming compensation. In the said notice all there requested particulars namely, R/R number, date description of the goods, destination station, nature of the loss were correctly Stated. However, there was a mistake in stating the name of the forwarding station which was inadvertently shown to be "Kusunda. When the notice was served on the Railways, the Railway Receipt (R/R) was already with them and as such they could detect the mistake. A letter was written by the Railways to the plaintiff pointing out the said mistake. The plaintiff corrected the same. The Railways having rejected the claim, the suit was filed which was dismissed on the ground, inter alia, of defect in the notice. On appeal the appellate Court held that the Railway administration could trace out the records of the suit consignment from the said notice, which is a finding of fact. On the basis of the aforesaid finding the Appellate Court came to the conclusion that the aforesaid defect in the notice was only a technical defect and, therefore, held

that the suit was not liable to be dismissed on that ground. This second appeal has been filed against the aforesaid decision of the Appellate Court.

3. Mr. PP. Duara the learned Counsel for the appellants, submits that the mistake in the description of the name of the forwarding station is fatal and any notice containing such a mistake cannot be termed as a notice u/s 78-B of the Act, as, according to him, it affects the cause of action. In support of his aforesaid submission, Mr. Dpara has placed reliance on two decisions of the Patna High Court in Chaturbhai Bhailabhai Patel v. Union of India and Union of India v. Nageshwar Prasad, wherein it was held that failure to state correctly the name of the Railway Station from which the consignment was booked, is fatal defect.

4. I have considered the submission of Mr. Duara. I have also heard Mr. S.L. Jain, the learned Counsel for the respondent. Mr. Jain relies on the decision of the Supreme Court in Jetmull Bhojraj v. Darjeeling Himalayan Railways Co. Ltd., wherein the Supreme Court held that a notice u/s 77 (now 78-B) should be liberally construed and should not be allowed to be interpreted in a manner depriving the consignors of their legitimate claims for compensation.

5. I have considered the submission of learned Counsel of both the parties, Section 78-B was inserted in the year 1961 by Act 139 of 1961 in place of old Section 77, Section 78-B reads as under:

78-B Notification of claims to refunds of overcharges and to compensation for losses. A person shall not be entitled to refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction, damage,-deterioration or nondelivery of animals or goods delivered to be so 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 administrations mentioned above by or on behalf of the person within the 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.

5. From a plain reading of the aforesaid Section 78-B of the Act it is clear that the object of the aforesaid Section is only to provide an opportunity to the Railway administration to make prompt enquiry and investigation in regard to the loss, damage etc. for which compensation is claimed by the consignor. No form

of notice under the said section is prescribed. Section 78-B also does not specify any details or particulars which must be furnished in the notice. On the other hand by the proviso to Section 78-B it has been made clear that a notice in any form will meet the requirement of the section if it can enable the Railways to identify the consignment in relation to which the claim is made. A time limit of six months has been fixed for service of notice u/s 78-B. This time limit is also with a view to enable the Railways to make necessary enquiries, otherwise due to lapse of time it may not be possible on their part to do the needful. As held by the Supreme Court in *Jetmull Bhojraj v. D.H. Railway* (Supra) Section 78-B should be liberally construed. It should not be interpreted in a pedantic manner. A defect in the notice should not be used by the Railway Administration as means for depriving the claimants of their legitimate claims for compensation for the loss or damage caused to their consignment. In the case where from the notice the Railway Administration can understand or identify the consignment in question no plea of defect in the notice would be available to the Railways to frustrate a claim otherwise payable. It is the only reasonable interpretation that can be given to Section 78-B of the Act.

In the view of the aforesaid discussion and following the decision of the Supreme Court in *Jetmull Bhojraj v. D.H. Railway* (Supra) I find it difficult to follow the decisions of the Patna High Court referred to by Mr. Duara.

In the instant case the admitted position is that the R/R was already in the possession of the Railways much before the notice was served. The notice was in time. The particulars of the consignment were all supplied and the Railways could also trace out the R/R which was already in their possession. They simply noticed a mistake in the description of the forwarding station. The Railway administration was not misled by the aforesaid mistake in regard to the identity of the consignment. In that view of the matter the alleged defect in the notice in the instant case cannot be taken as a ground to deprive the consignor of his claim for loss or damage, if he is otherwise entitled to the same. I accordingly hold that the appellate Court was justified in holding that the defect in the notice was just a technical defect and was not fatal:

This appeal is therefore dismissed. In the facts and circumstances of the case make no order as to costs.