

(2004) 04 AP CK 0079

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 1831 of 1997

Union of India (UOI)

APPELLANT

Vs

Alapati Viswanatham

RESPONDENT

Date of Decision : 06-04-2004

Acts Referred:

Railways Act, 1989 — Section 106, 106(1), 106(2), 77
Railways Administration Act — Section 106

Citation : (2006) ACJ 1014 : (2004) 4 ALD 493 : (2004) 5 ALT 500

Hon'ble Judges : E. Dharma Rao, J

Bench : Single Bench

Advocate : N.V. Suryanarayana Murthy, for the Appellant; T. Ramakrishna Rao, for the Respondent

Final Decision : Allowed

Judgement

E. Dharma Rao, J.—This appeal is preferred by the appellant herein as against the order dated 16-11-1995 in O.A.No. 32 of 1994 on the file of Railway Claims Tribunal, Secunderabad Bench, Secunderabad.

2. On appreciation of both oral and documentary evidence and on consideration of facts and circumstances of the case, the Tribunal directed the appellant herein to pay sum of Rs. 4,55,000/- to the respondent-applicant towards compensation with interest at the rate of 12% per annum from the date of application till the date of payment. Accordingly, the application was allowed in part with proportionate costs. Aggrieved by the same, the appellant preferred this appeal.

3. The learned counsel for the appellant contended that the Tribunal below erred in not dismissing the application for non-compliance with Section 106 of the Railway Act, 1989 (herein after referred to as "Act" for the sake of convenience). The learned Counsel further contended that the Tribunal below erred in holding that simply because Railway authority gave reply to the letter, the railways have waived the notice u/s 106 of the Act. In support of his contentions, the learned Counsel for the appellant submitted that the Tribunal has wrongly relied on the

judgment of the Hon''ble Supreme Court reported in Jetmull Bhojraj Vs. The Darjeeling Himalayan Railway Co. Ltd. and Others, in which Section 77 requires a claim for compensation.

4. In the minority view the section requires a claim for compensation for the loss, destruction or deterioration of goods to be preferred to the railway administration within six months of the delivery of the goods to the railway for carriage. It is well settled that the section is mandatory. If a claim is not preferred within the time mentioned, it cannot be recovered from the railway; a suit for such recovery must be dismissed. On the other hand, the majority view is 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 provide 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. Bearing in mind the object of the section, a notice u/s 77 should be liberally construed. Wherein within six months of booking the consignment, the consignor brought to the notice of the railway administration by a letter that part of the consignment had not reached the destination and requested the General Manager of the Railway to make a search for the goods without delay. In those circumstances, it was held (per majority) that the letter amounts to a sufficient notice for the purposes of Sections 77. It is true that a claim for compensation has not been made by the consignor in the notice. However, such a claim must be deemed to be implied in the notice. The reason is obvious. Where a person says that his consignment has not been delivered as it should have been delivered according to the contract between him and the railway administration he must be regarded as making it clear that he would be holding the railway administration to its contractual engagement which necessarily involves the payment of damages for breach of that engagement. Therefore, not only the object underlying Section 77 is satisfied by the letter but also a claim for compensation is implied in that letter.

5. Further, the learned counsel for the appellant relied on the judgments in Governor General in Council Vs. Musaddi Lal, ; Birla Cement Works Vs. G.M., Western Railways, and another, , Brooke Bond India Ltd. Vs. Union of India (UOI) and Others, to that effect and submitted that consignment was entrusted to the Railway Administration for carriage on 20-3-1992 under R.R.No. B-804409 invoice No. 2. But the railway administration received letter from the respondent-claimant on 12-10-1992 wherein it is alleged that the said consignment did not reach the destination and therefore, intimated to the railway administration by letter dated 12-10-1992 and the claimant also sent reminder on 20-10-1992. To the above correspondence, the railway authorities have given reply on 25-11-1992 stating that the suit consignment was transhipped into three M.G. wagons on 21.7.1992 and that the consignment would be reaching the destination shortly. When the consignment was not delivered ultimately, he preferred claim on 18-1-1994. The appellant has taken objection that the claim was not preferred within the stipulated time of six months as required u/s 106 of

Railway Act, 1989 and it is also further contended that the respondent had no knowledge of the contents and the value of consignment and the applicant has to prove the same as wagon was loaded under "L" condition. But, however, the Tribunal relying on the judgment of the Hon"ble Supreme Court in Jetmull Bhojraj Vs. The Darjeeling Himalayan Railway Co. Ltd. and Others, taken up the second issue whether there was service of a valid notice u/s 106 of the Railways Act on the respondent. Relying on the judgment of the Supreme Court in Jetmull Bhojraj Vs. The Darjeeling Himalayan Railway Co. Ltd. and Others, and also on South Indian Co-operative Stores Ltd. Vs. Union of India (UOI), held that in view of the reply given by the appellant herein dated 15-12-1992 under Ex. A-3 assured the applicant that the subject wagon holding the consignment arrived new Bongaigaon and was marked sick for transshipment, the consignment was transshipped into three other M.G. wagons on 21.7.1992 and that the consignment would be reaching the destination shortly and he could effect delivery of the same. The respondent has waived his right to take objection for service of notice u/s 106 of the Act within six months from the date of booking and as held by the Hon"ble Supreme Court in Jetmull Bhojraj case that the notice u/s 77 of the Act should be liberally construed and allowed the claim petition.

6. Therefore, the learned counsel for the appellant submitted that liberal construction had held by the Supreme Court to Section 106 of the Act and it does not mean that notice issued after period of six months has to be taken into consideration as notice issued u/s 106 of the Act. In Jetmull Borax case the majority view is that when a consignment was not delivered and a letter was written to the railway administration though compensation was not claimed in the later, but the Supreme Court held that that letter has to be taken into consideration of the notice u/s 77 corresponding to Sec. 106 of the Act and though claim is not made for payment of compensation to the loss of the consignment, it is implied in the notice column damages for the loss or damage to the consignment. Therefore, the Tribunal is wrong in holding that the claim made by the claimant herein after the stipulated period of six months has to be construed liberally.

7. On the other hand, the learned counsel for the respondent reiterated his contention that when once the claimant sent notice to the appellant herein on 12-10-1992 and on 20-10-1992, they have not taken any objection that this claim was made after the stipulated period of six months from the date of booking. On the other hand, entertained the application and made enquiries and gave positive reply on 25-11-1992 that the consignment would be delivered shortly. This reply was given after conducting enquiry. Therefore, as rightly held by the Tribunal the appellant has waived their right to take up objection regarding the issuance of notice within six months as contemplated u/s 106 of the Act. Considering the above submissions made by both the counsel as held by the Hon"ble Supreme Court in Jetmull Bhojraj case, let us see the language in Section 106 of the Act.

8. Section 106: Notice of claim for compensation and refund of overcharge-(1) A person shall not be entitled to claim compensation against a railway administration for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway, unless a notice thereof is served by him or on his behalf.-

(a) to the railway administration to which the goods are entrusted for carriage; or

(b) to the railway administration on whose railway the destination station lies, or the loss, destruction, damage or deterioration occurs, within a period of six months from the date of entrustment of the goods. In this section the word "shall" is used. But in Jetmull Bhojrajt Sub-Section 2 of Sec. 106 of the Act was interpreted which means that 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 (1) by or on behalf of the person within the said period of six months regarding the non-delivery or delayed delivery of the goods with particulars sufficient to identify the goods shall, for the purpose of this Section, be deemed to be a notice of claim for compensation;

9. Therefore, for entitlement of compensation against the railway administration for the loss, destruction, damage, deterioration or non-delivery of goods entrusted to it, notice has to be given within six months from the date of entrustment of the goods to the Railway Administration for its transit. The notices also can be given to the railway administration on whose jurisdiction the destination station lies. It means that notice can be given not only to the Station Officer of the Railway Station where the goods were entrusted, but also it can be given to the railway administration of the destination railway station. There is an exemption u/s 106 of the Act that notice need not be in a particular form, but it can be if 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 (1) of Sec. 106 of the Act by or on behalf of the person within the said period of six months for the loss, destruction, deterioration or damage or non-delivery or delayed delivery of the goods with particulars sufficient to identify the goods, for the purpose of this section, be deemed to be a notice of claim or compensation. Therefore, according to sub-Section 2 of Sec. 106 of the Act, not only the person who entrusted the goods to the railway administration but also any person by or on behalf of person who entrusted the goods to the railway administration within the period of six months can demand any information or enquiry made in writing or any complaint made in writing to any of the railway administrations i.e., goods entrusted to the railway administration or where the goods reach its destination and such demand of information or enquiry made in writing or any complaint made in writing to the railway administration amounts to giving of notice contemplated u/s 106 of the Act, if it is made within six months.

10. Admittedly, in the present case, the 398 teak round logs worth Rs. 4,55,000/- were purchased by the claimant on 16-3-1992 and 17-3-1992 and

thereafter the said 398 teak round logs were entrusted to the railway administration under Ex. A-1 on 20.3.1992 when the consignment was not reached its destination, then a complaint was made on 12-10-1992 and 20-10-1992 by way of reminder. Therefore, when the goods were not reached its destination complainant gave a notice on 12-10-1992 beyond the period of six months from the date of booking of the goods or entrustment of the goods to the railway administration. Therefore, the claim was not made within the period of six months as contemplated u/s 106 of the Railways Act before the issuance of notice on 12-10-1992, there is no attempt made by the claimant within the period of six months from the date of demanding any information or making complaint in writing for the loss or destruction or deterioration or damage or non-delivery of the goods to the railway administration as held by the Supreme Court in Jetmull Bhojraj Vs. Darjeeling Himalayan Railway Co. Ltd., and others. Though u/s 106 of the Act it is held to be mandatory, but the majority view in Jetmull Bhojraj case is that the mere intimation to the railway administration for the loss or destruction or damage or deterioration or non-delivery of the goods by way of complainant is sufficient to treat it as notice u/s 106 of the Railway Administration Act. Even though the claim is not made in the said letter claiming damages, but claiming damages under the above said letter is implied. From the above discussion, it goes without saying that the ground of waiver is not available to the appellant and the Tribunal has rightly refused the same and thus, the question of waiver does not arise in this case, in view of the ratio laid down in Jetmull Bhojraj case by the Supreme Court. That notice u/s 106 of the Act within the period of six months from the date of booking has to be given and when a notice is not given as contemplated u/s 77 of the Act, therein, the suit was dismissed. On the other hand, the Supreme Court while interpreting Section 106 of the Act held that it has to be liberally construed i.e., a notice in a particular form is not required to be given demanding the payment of compensation, but a letter is written to the railway administration bringing the non-delivery of goods to the notice is sufficient and thus, the claim of compensation is implied by such a letter. Therefore, I am not able to accede the reasons given by the Tribunal that the respondent has waived his right to take objection u/s 106 of the Act and the demand is made by the claimant at a later stage is waived. Viewed from any angle, I am unable to agree with the reasons given by the Tribunal while allowing the claim made by the claimant.

11. Accordingly, following the ratio laid down by the Hon''ble Supreme Court in Jetmull Bhojraj case the claimant has not given notice and demanded information, or wrote any letter and made any complaint within the statutory period of six months from the date of booking of the goods, as contemplated u/s 106 of the Act, the claim is liable to be rejected and is accordingly rejected.

12. The appeal is allowed accordingly. There is no order as to costs.