

(1957) 03 MP CK 0042

In the Madhya Pradesh High Court

Case No : First Appeal No. 156 of 1950

Union of India (UOI)

APPELLANT

Vs

Asharfi Devi and Others

RESPONDENT

Date of Decision : 01-03-1957

Acts Referred:

Contract Act, 1872 — Section 151, 182
General Clauses Act, 1897 — Section 10
Railways Act, 1890 — Section 140, 70, 72, 72(1)

Citation : AIR 1957 MP 114 : (1957) ILR (MP) 253

Hon'ble Judges : Sen, J; Bhutt, J

Bench : Division Bench

Advocate : K.V. Tambe, for the Appellant; A.L. Halve, for the Respondent

Final Decision : Dismissed

Judgement

1. The respondent Mithanlal, since deceased, had instituted Civil Suits Nos. 5-B and 8-B of 1948 in the Court of the 2nd Civil Judge, Class I, Sagar, against the appellant, Dominion of India, for recovery of damages. The two suits were consolidated as common questions of law and fact arose for decision. They were disposed of by a single judgment and decree. Only one appeal has, therefore, been filed against the decree which governs both the suits. It was not disputed that due to the amendment of Section 79, Civil Procedure Code, in 1950, the description of the appellant should be ""Union of India". The necessary correction, which is only of a technical nature shall accordingly be made in the heading of the memorandum of appeal. The present respondents are the legal representatives of Mithanlal.

2. Civil Suit No. 5-B of 1948 relates to the damage done to the consignment of tobacco from Naoli Railway Station on the Bombay Baroda and Central India Railway. The consignment was booked on 24-7-1947 to Sagar on the Great Indian Peninsula Railway and reached the destination on 14-8-1947. The connected suit (No. 8-B of 1948} was instituted for recovery of damages in

respect of the consignment of tobacco, booked at Rajuwadia on the same Railway on 4-8-1947, which reached Sagar on 21-8-1947. It was not disputed before us that the goods were damaged by rain sometime after their arrival while they were lying on the open platform. The lower Court estimated the damage at the rate at which the goods were purchased. At this rate, it granted a decree for Rs. 8,507-3-0 in Civil Suit No. 5-B of 1948 and for Rs. 4,793-15-0 in Civil Suit No. 8-B of 1948, inclusive of the proportionate amount of freight paid by the plaintiff. There is no contest on this point except as regards the rate at which the loss was valued. It was contended that the lower Court ought to have estimated the loss at the selling price of tobacco at Sagar on or about the dates of arrival of the consignments, and as there is no proof of this price, the decree could not stand.

3. The Naoli consignment has been found by the lower Court to have been booked on Risk Notes A and B, Exs. D-9 and D-9-A. This finding is based on the plaintiff's admission of the documents in reply to the defendant's notice and is apparently well founded. As regards the Rajuwadia consignment, we agree with the lower Court that there is no evidence on the defendant's allegation that it was booked on Risk Note A. The finding on this point, although challenged is, therefore, confirmed. The result is that as regards the Naoli consignment, the plaintiff had to prove misconduct on the part of the Railway Administration's servants, and as for the Rajuwadia consignment, that the Railway Administration failed to take the amount of care enjoined on a bailee u/s 151 of the Indian Contract Act, 1872: *Dwarkanath v. R. S. N. Co., Ltd.*, AIR 1917 PC 173 (A).

4. We are inclined to accept the lower Court's finding that the delay in the taking of the delivery of the goods by the plaintiff was due to the wrong information that the clerks on duty gave to his brokers. The Railway Receipts of Naoli and Rajuwadia consignments, Exs. D-1 and D-5, were presented at the Railway Station, as shown by the endorsements thereon, on 9-8-1947 and 21-8-1947, and on 11-8-1947 and 11-9-1947, respectively. These were non-delivery entries which were made when the receipts were presented for the consignments.

This is admitted by Beniprasad (D. W. 2), unloading foreman, who had made the entries on the Naoli Railway receipt, Ex, D-1. The entries on the railway receipt of Rajuwadia consignment were apparently misleading as the goods had arrived on 21-8-1947. However, even if these entries are ignored due to want of proof, it was admitted by "Beniprasad (D. W. 2) that the plaintiff's brokers came daily with the railway receipts to the Railway Station for taking delivery of the goods. These brokers were Uttamchand (P. W. 1), examined on commission, and Badriprasad (P. W. 4). It appears from their evidence that although they went to the Railway Station on several occasions, they were told each time that the goods had not arrived.

When they were informed of the arrival, is told by Uttamchand, from whose evidence it appears that the necessary information was given in September 1947, there is no reason to believe that the plaintiff was not anxious to take

delivery of the goods. It, therefore, appears that although his brokers were daily in touch with the Railway servants, they were not informed in time about the arrival of the consignments. This amounted to misconduct on the part of the railway servants.

5. Since the misinformation given by the servants of the Railway Administration was the proximate cause of the, damage, it is not necessary to enquire whether there were also other contributory factors. Therefore, even if the goods could not be removed to the shed earlier due to supervening papers or the damage was caused in spite of reasonable precaution for their safety while they were lying on the platform, the liability of the Railway Administration would not be affected. There is, however, no reason to suspect the evidence of Govindrao Deshpande (D. W. 4), Station Master, that the goods could not be removed earlier due to congestion in the shed and that they were duly protected by tarpolins, both beneath and above, while they were on the platform.

The mere fact that the damage was caused cannot lead to an inference, for, in spite of reasonable precautions, it could be caused by the heavy rains during the two or three days when, according to the witness, the goods could not be removed to the shed. If therefore, had only the clerics on duty acted with due care and caution, while giving information to the plaintiff's brokers, there would be no case of the liability of the Railway Administration for the damage. In this view, it is not necessary to consider whether the liability terminated under Rule 29 (2), Chapter I, of the Goods Tariff, Part I-A No. 8, after the period during which the goods could remain on the railway premises free of demurrage and wharfage.

6. This brings us to the main question, namely, whether the plaintiff had given proper notice to the Railway Administration u/s 77 of the Indian Railways Act, 1890. The notices were given by the plaintiff on 26-1-1948, which were addressed to the General Traffic Manager, G. I. P. Railway, Bombay: See Exs. P-1 and P-8. A copy of the notice was forwarded to the Superintendent of Claims, G. I. P. Railway, Bombay, and that of Ex. P-8, also to the General Manager, Bombay, Baroda and Central India Railway.

A reply in respect of Rajuwadia consignment was received by the plaintiff from the Superintendent of Claims by letter dated 2-3-1948, Ex. P-9f and that in respect of the Naoli consignment, from the Chief Traffic Manager by letter dated 9-2-1948, Ex. P-13, to the effect that the matter was receiving attention. Another letter dated 2-4-1948, Ex. P-4, was sent by the plaintiff to the General Manager, G. I. P. Railway, Bombay, in which a reference was made to the claim of Naoli consignment coupled with a prayer to condone the delay in sending the notice. This letter was acknowledged by the Superintendent of Claims in the Chief Traffic Manager's Office, by letter dated 12-5-1948, Ex. P-10.

A similar letter dated 6-4-1948, Ex. D-3, was sent by him to the Secretary, Railway Board, Government of India, New Delhi. This letter and another letter

dated 12-4-1948 were forwarded by the Assistant Director, Railway Board, to the General Manager G. I. P. Railway, vide the Government of India, Ministry of Railways (Railway Board) letter, dated 17-5-1948, Ex. P-15, under intimation to the plaintiff. In reply to the letter dated 2-4-1948, addressed to the General Manager, the plaintiff received a letter from the Superintendent of Claims, vide the Chief Traffic Manager's Office letter dated 20-4-1948, Exhibit P-5, that the claim was barred by limitation and could not otherwise also be entertained. It was not disputed before us that the Superintendent of Claims also rejected the claim for other consignment. This, in short, is the previous history leading to the institution of the suits.

7. The challenge to the validity of the notices u/s 77 of the Indian Railways Act is two-fold. So far as the notice in respect of the claim of Naoli consignment" is concerned, it is contended that there was delay of two days in posting it and although the two previous days were public holidays when the post offices were closed, the delay could not be condoned u/s 10 of the General Clauses Act, 1897, which was wrongly applied by the lower Court to the case. In this connection, it was also urged that even if the delay is condoned the notice was bad because it could not have reached the addressee within the statutory period of six months. The second contention is that both the notices were invalid because they were not addressed to the proper authority, namely, the Manager of the Railway, as required by Section 140 (c) read with Section 3 (6) of the . Indian Railways Act.

8. Section 77 of the Indian Railways Act is as below:

"A person shall not be entitled to a refund of any 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 so carried, unless his claim to the refund of 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."

This provision requires (i) that the notice of the claim should be preferred in writing to the Railway Administration and (ii) that this should be done within six months from the date of delivery of the goods for carriage by railway. The term "Railway Administration" as defined in Section 3 (6) of the Act, means the Manager of the Railway and includes the Government. Section 140 deals with service of notice on Railway Administration. It provides that any notice required by the Act to be served on the Railway Administration may be served, in the case of a railway administered by the Government, on the Manager

(a) by delivering the notice to the Manager; or

(b) by leaving it at his office; or

(c) by forwarding it by post in a prepaid letter addressed to the Manager and registered under the Indian Post Office Act, 1866.

Section 142 provides that where a notice is served by post, it shall be deemed to

have been served at the time when the letter containing it would be delivered in the ordinary course of post.

9. In *Amarchand v. Union of India*, AIR 1955 Assam 221 (B), it is doubted whether the period of six months prescribed in Section 77 of the Indian Railways Act should be calculated from the date on which the goods were delivered to the consignee or from the date on which the goods were originally consigned to the railway. This was, however, the first time when a doubt was entertained on this point. The view of their Lordships that the words ""for carriage by railway"" may be read as qualifying the term "goods" only, and not the date of delivery of the goods appears, with the utmost respect, to be rather farfetched. We shall, therefore, proceed on the assumption that the date from which the period of six months has to be computed u/s 77 is the date" on which the goods were delivered to the railway company for carriage. In this view, the notice of claim in respect of Naoli consignment must be held to be delayed by two days.

The notice could not, however, be posted on the 24th January which was Sunday and also on the 25th January, as it was a public holiday. Section 10 of the General Clauses Act provides that where, by any Central Act or Regulation made after the commencement of the Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, the act or the proceeding shall be considered as done or taken in due time, if it is done or taken on the next day afterwards on which the Court or office is open, provided that this shall not apply to any act or proceeding to which the Indian Limitation Act applies.

The Indian Railways Act is of the year 1890, which is prior to the enactment of the General Clauses Act in 1897. However, the General Clauses Act, 1 of 1887, was then in force which had a similar provision in Section 7. Giving of a notice to the Railway Administration is an act which is covered by Clause (c) of Section 140, as it permits forwarding of the notice by post in a prepaid letter. There appears, therefore, no reason to hold that the plaintiff cannot take advantage of Section 10 of the General Clauses Act. In this view, the notice must be deemed to be sent within the prescribed period.

10. This brings us to the second contention that Section 77 of the Indian Railways Act requires not only that the notice should be sent within the prescribed period but it should also be served on the Railway Administration within that period. It is no doubt true that this view was taken in *Secretary of State Vs. Firm Imperial Metal Works*, , and is also supported by *Deorao v. G. I. P. Ry. Co.*, 8 Nag LR 34 (D) and AIR 1927 276 (Nagpur) , of this Court. A contrary view has, however, been taken in *Ram Gopal Marwari and Others Vs. Bengal and North-Western Railway Co.*, , with which we are in respectful agreement,

If it is held that Section 77 of the Indian Railways Act should be interpreted to mean that the notice must be served on the Railway Administration within the statutory period of six months, it would not be giving to the consignee full use of

the statutory period of six months. Section 77 of the Indian Railways Act only means that the claim should be preferred within that period and not that it should also reach the Railway Administration before its expiry. As held in *Ram Gopal v. B and N. W. Ry. Co.*, (F) (supra), the interpretation that is canvassed for would lead to the curtailment of the period of six months in case where the consignee lives at a long place from the office of the Railway Administration. This interpretation would conflict with the statutory provision and cannot, therefore, be accepted.

11. This brings us to the question whether the notices addressed to the General Traffic Manager satisfy the requirements of the Indian Railways Act, There is no doubt that there was no officer called General Traffic Manager at that time. This however, cannot vitiate the notices, for, that must be understood from the expression is the Chief Traffic Manager in whose office the notices "were received and dealt with by the Superintendent of Claims. If the Chief Traffic Manager could be deemed to be the person to whom the letter could be addressed, there would be no objection to the validity of the notices.

12. There has been great divergence of judicial opinion on the question whether a notice to any authority other than the Manager can be held to be valid. That such a notice would be invalid was held in *Cawnpore Cotton Mills Co. Ltd. Vs. Great Indian Peninsula Railway*, ; *G.I.P. Railway Company Vs. Chandulal Sheopratap*, ; *Union of India v. Union of India (UOI) Vs. Indumati Saha*, , and also by this Court in *Deorao v. G. I. P. Ry. Co.*, (D) (supra) and *Mannalal v. Secretary of State*, (E) (supra). However, as observed by Niyogi J. (as he then was), in *Govindlal v. Governor-General in Council*, ILR 1947 Nag 369: (AIR 1948 Nag 17) (J), the trend of judicial decision has turned against the too literal interpretation of the terms of Sections 77 and 140 of the Indian Railways Act.

In a Full Bench decision of the Madras High Court in *A. Mahadeva Ayyar Vs. The South Indian Railway Co.*, , it was held that the notice of claim may be served upon the Manager or upon any officer deputed by him or the Company to receive it. This view was followed in *Devi Ditta Mal v. Secy. of State*, ILR 7 Lah 238: (AIR 1926 Lah 253) (FB) (L). Similar view has been held in *Governor-General in Council Vs. Gouri Shanker Mills Ltd.*, . A recent decision of the Calcutta High Court in *Union of India (UOI) Vs. Gujrat Tobacco Co. and Others*, , has even gone to the extent of holding that a notice served upon an authority which deals with the claims is a good notice u/s 77 of the Railways Act.

Their Lordships have, in this case, held that the matter should be dealt with from a practical point of view and have distinguished a notice u/s 77 of the Indian Railways Act from the statutory notice u/s 80, C. P. C., which makes the service of notice a condition precedent to the institution at the suit. It is not necessary for purposes of this appeal to decide whether such an extreme view is permissible under the Act, for even on the limited view held by the Full Bench decisions of the Madras, Lahore and Patna High Courts which was also the view of late Sen J. in *Singhai Babulal v. Governor-General in Council*, C. R. No. 305 of

1946, D/- 31-7-1947 (Nag) (O), the notices in this case would be found to have been served on an officer who was authorised by either the Manager or the Railway Administration to receive the notice of claims.

13. In the notice to consignors printed on the railway receipt, Exhibit D-1, and also on the other railway receipt, Exhibit D-5, paragraph 4 is in these terms :

""That all claims against the Railway Company for loss or damage to goods must be made to the clerk in charge of the railway station to which they have been booked before the delivery is taken and that a written statement of the description and contents of the articles missing and of the damage received, must be sent forthwith to the General Traffic Manager, Bombay, or to the District Traffic Superintendent of the district in which the forwarding or receiving station is situated; otherwise the railway company will be freed from responsibility."

Under this paragraph, authority is virtually given to the General Traffic Manager, Bombay (now the Chief Traffic Manager) to receive notice of claims u/s 77 of the Indian Railways Act. On a similar provision, in *G. G. in Council v. G. S. Mills*, (M) (supra), describing the Chief Commercial Manager as the authority to receive the notice, it was held that the notice addressed to him was a proper notice under the Railways Act. Similar facts also existed in *Govindlal v. Governor-General in Council*, (J) (supra), which were held sufficient to uphold the validity of the notice.

The fact that the notices in question were, without demur, received by the Chief Traffic Manager and also dealt with by the Superintendent of Claims in his office indicates a course of conduct on the part of the Railway Administration, from which it can be inferred that due authority was given to the Chief Traffic Manager to receive and deal with the notice of claims through the Superintendent of Claims. Indeed, it would appear from the evidence of the Vinayak Katikar (D. W. 1), who is District Commercial Claims Inspector, that claims u/s 77 of the Indian Railways Act are passed on by the General Manager to the Superintendent of Claims who has his office in the same building. Due authority of this officer to deal with the claims cannot, therefore, be doubted.

Agency may be proved, as held in *Mahadeva Ayyar v. S. I. Ry. Co.* (K) (supra) and *Govindlal v. Governor General in Council*, (J) (supra), either by direct evidence of authority or by a course of conduct justifying the inference of authorisation. The fact that notice was given by the railway administration to the consignors that details of claims must be sent forthwith to the General Traffic Manager, Rom-bay, coupled with the fact that he received and dealt with them in his office through the Superintendent of Claims, to whom they are passed on even if received by the Manager, is sufficient to lead to an inference that he was authorised, either by the Manager or the Railway Administration to receive notices u/s 77 of the Indian Railways Act. In this view, we hold that the notice in respect of both the consignments was valid.

14. The only question that remains is one of the measure of damages. It is no

doubt true, as held in *Dominion of India v. Rupchand Heerachand*, AIR 1953 Nag 169 (P), confirming the view of Bose C. J. (as he then was) in *Dominion of India v. Firm Chhaganlal Premji*, AIR 1951 Nag 357 (2) (Q), that the price of the goods at the place of destination on the date on which they reach the place, would be the measure of damages for the loss suffered by the plaintiff. These were, however, cases in which the plaintiff claimed not only the price of the goods but also the profits which he would have earned by their sale. For such claims indeed the profits have to be determined with reference to the price prevailing at the destination on the date of the receipt of the goods. In the instant case, however, the plaintiff had not claimed any profits on the goods. The price prevailing at Sagar on the date of the arrival of the goods might have been material, if a case was set up that at that rate the value of the goods would have been less than the cost price.

Such a case, however, was not laid. It would also appear from the evidence of Vinayak Katikar (D. W- 1) that the selling price of tobacco at Sagar on the date he inspected the goods ranged between Rs. 150 and Rs. 200 per maund. This rate has also been sanctioned by him in his reports, Exhibits D-11 and D-12. These were also likely to be the rates on the date of the arrival of the goods, which was only shortly before the date of their inspection by the witness. The plaintiff's claim for the cost price of the goods is, therefore, well based.

15. The result is that the appeal fails and is dismissed with costs.