
(1962) 08 AP CK 0012

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No's. 910, 1104 and 1137 of 1959

Union of India (UOI)

APPELLANT

Vs

B. Basavayya

RESPONDENT

Date of Decision : 24-08-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Evidence Act, 1872 — Section 114
Limitation Act, 1908 — Article 30, 31
Railways Act, 1890 — Section 74D

Citation : AIR 1963 AP 344

Hon'ble Judges : Gopal Rao Ekbote, J

Bench : Single Bench

Advocate : S.P. Srivastava, for the Appellant; C. Mallikarjuna Rao, for the Respondent

Final Decision : Dismissed

Judgement

Gopal Rao Ekbote, J.—These three revision petitions are filed by the defendant against whom the District Munsif Vijayavada, has decreed three suits for compensation for non-delivery of the property.

2. The necessary facts for the disposal of these revision petitions are that in all the three suits the plaintiffs stated to have sent a definite number of bags of dry chillies from Ithwari to Kondapalli. All these bags were consigned in one wagon, and as the entire consignment was not delivered to the plaintiffs, they obtained open delivery on 13th May, 1955. It was found that some bags were not delivered, while others were delivered in damaged condition. On the date when such open delivery was given both the parties assessed damages and signed a joint memo. The plaintiffs therefore filed these three suits for compensation of the property which was not delivered to them.

3. The defence of the Central Railway in all these three cases is that the wagon in which these bags containing chillies were being transmitted on owners' risk

caught fire at an intermediate station, Mazri on 25th March 1955. They denied the allegations that the goods were loaded in a defective wagon and that there was any negligence on the part of any railway employee. The Railways therefore denied the liability, to pay any compensation for non-delivery.

4. The District Munsif, Vijayavada, tried all these three suits together and after recording evidence decreed the suits.

5. In these revision petitions two questions are pressed on me. Firstly it is argued that the trial Court has erred in drawing inference against the Railway u/s 74D of the Indian Railways Act as it is not applicable to the present case; and secondly it is submitted that all the three suits are time barred.

6. In regard to the first contention it is not denied that the delivery which was given to the plaintiffs on 13th May 1955 was of a nature that while few bags were not delivered, the rest were delivered in a damaged condition. The plaintiffs have based their suits on non-delivery of the goods. It is contended before me that Section 74-D is not applicable to these cases. The necessary portion of Section 74-D is as follows:

"74-D. Notwithstanding anything contained in Section 74-C.....

(a) Where the whole of a consignment of goods or the whole of any package forming part of a consignment carried at owner's risk rate is not delivered to the consignee and such non-delivery is not proved by the railway administration to have been due to any accident to the train or to fire, or,

(b) Where, in respect of any consignment of goods or of any package which had been so covered or protected that the covering or protection was not readily removable by hand, it is pointed out to the railway administration on or before delivery that any part of such consignment or package had been pilfered in transit the railway administration shall be bound to disclose to the consignor how the consignment or package was dealt with throughout the time it was in its possession or control, but if negligence or misconduct on the part of the railway administration or of any of its servants cannot be fairly inferred from such disclosure, the burden of proving such negligence or misconduct shall lie on the consignor."

7. Mr. Shrivastava, the learned Advocate for the petitioner, submits that the cases in question are of short delivery and not cases of non-delivery. Section 74-D according to him is applicable only when the whole of the consignment of goods is not delivered and is not applicable, where a part of its alone is delivered. Where Mr. Shrivastava is making a mistake is that he is ignoring the other portion of the section where it is said that the whole or any package forming part of A consignment is not delivered. Admittedly in all these three cases a number of bags containing chillies were given in the custody of the Railway. When it is admitted that some of the bags were not delivered at all, to that extent at least there can be no question that these cases fall within Section

74-D(a). In fact in some of the cases cited before me this distinction that when out of a total number of bags a few were delivered and others have not been delivered, was made and Section 74-D(A) was considered to be applicable.

In *Haji Azam v. Bombay and Persia Steam Navigation Co.* ILR 26 Bom 562 where the plaintiff had delivered 200 cases of oil to the defendants for carriage from Bombay to Jeddah and 35 cases of the oil were short-delivered to the defendants, it was decided that this short delivery amounts to non-delivery. In *Union of India (UOI) and Another Vs. Munagala Krishnayya and Another, , Umamaheswaram, J.* on facts that the plaintiffs have filed a suit for compensation for short delivery of a consignment of chilly bags found that "under Section 74-D of the Indian Railways Act the primary question to be determined in such cases is whether negligence or misconduct on the part of the railway administration or of any of its servants is inferable from the evidence adduced by the railway administration. If such negligence or misconduct is not inferable, the burden of proving such negligence or misconduct shifts to the consignor." It is clear from that case also that although it was a case of short delivery the learned Judge applied Section 74-D to that case. In *Rameswarlal Sreenarain Vs. Union of India (UOI)*, where out of 15 bales of staple fibre yarn only two bales were delivered, a Bench of the Calcutta High Court applied the provisions of Section 74-D. The contention, therefore, that Section 74-D is not applicable to these cases is not sound, and the trial Court in my judgment has not committed any error in applying the provisions of Section 74-D.

8. Mr. Shrivastava relying on *Nanda Kishore Chiranjilal and Another Vs. Union of India (UOI)*, says that Section 74-D ought not to be applied to these cases. From the facts of that case it is clear that that case was not a case of non-delivery, but a case of damages during transit. The learned Judge therefore applied Section 74-C and not Section 74D. It is also observed by the learned Judge therein that

"Section 74-D is applicable to cases of non-delivery. If it is a case of non-delivery, the railway administration is bound to disclose to the consignor how the consignment or package was dealt with throughout the time it was in the possession of the Railway authorities."

This case therefore, is of not much avail to Mr. Shrivastava.

When Section 74-D is applicable to these cases, we have only to see whether defendant has disclosed in entirety how the consignment or package was dealt with throughout the time it was in its possession or control and whether from the material which now is disclosed negligence or misconduct on the part of the railway administration or of any of its servants can be fairly inferred. It is not denied that the railway authority which had constituted a special committee to enquire into the reasons of fire has submitted a report. This report was not filed in the Court below. Although this report is not a contemporaneous document, it has its own importance inasmuch as it ought to disclose the real reason for the fire. The lower Court therefore has not erred in drawing adverse inference from

this fact against the railways. u/s 114 (g) of the Evidence Act such an inference can be drawn.

Relying on *The Union of India (UOI) Vs. Raigarh Jute Mills Ltd.*, Mr. Shrivastava contended that the Railways need not in all cases prove the actual origin of the fire and when no cause of the origin of the fire is established, it is a case of one honest party, the consignor, trying to sue another honest party, the Railway no liability in such a case should be fastened on the Railways. In support of his contention he also relied on *Union of India v. Madras Handloom Weavers' Provincial Co-operative Society* AIR 1958 Mad 179. It is true that if adverse inference from the disclosures could not have been drawn, the responsibility of the damages caused to the goods could not be allowed to rest on the shoulders of the Railways and this principle would have been applied. But that is not unfortunately the case here.

9. Even otherwise from the evidence adduced by the Railways and from the material disclosed, the lower Court in my view has correctly inferred that the wagon caught fire on account of negligence or misconduct of the railway administration or its employees. It is not disputed that the wagon had not caught fire till it arrived at Mazri, and it is only at Mazri Station that it caught fire. The plaintiffs had specifically alleged that as the Janta Express crossed Mazri Station, at that time it released fire sparks which went into the wagon, as there were holes on the top of the wagon and cracks in the wagon, and so the goods caught fire. The wagon contained not only dry chillies but other material wrapped in dry hay. On the evidence adduced by the Railway the lower Court came to the conclusion that it is not established that the wagon did not have holes on the top or cracks in it. The conclusion drawn by the lower Court therefore is that it is only after the Janata Express left that smoke appeared from the wagon. The inescapable conclusion was that when the wagon was stationery and caught fire after the Janata Express left, it must have been due to some external sparks getting in and setting the grass and the chillies on fire. No other explanation has been given by the Railways. The only evidence which they attempted to adduce is that they are not in a position to give any reason for the fire.

It is true in every case to ask the Railways to prove the cause of fire is to ask an impossible thing. But in this case there is, in my opinion, enough material on record to draw a fair inference that the fire accident must have been caused due to external factors getting in at Mazri Station and this is due to the negligence or misconduct of the railway administration inasmuch as no particular care was taken to plug the holes and to stop the external sparks getting into the wagon.

10. Mr. Shrivastava relying on *Union of India v. Firm of Messrs Parikh Shankarlal Jethalal* AIR 1956 Nag 255, argues that the law does not cast any burden on the railway administration to establish positively how fire occurred and prove absence of negligence on their part, but that a duty is cast on the administration to lay all the materials concerned with the occurrence before the Court.

When the consignee successfully shows to the Court that the true inference from the materials is that the carriers' servants have not shown due care, skill and nerve, the Railways must be held responsible for damages. I am therefore satisfied that it is a case of non-delivery falling within the ambit of Section 74-D and that the trial Court was justified in drawing inference from the disclosure made by the Railways and the evidence adduced by it that the fire was due to the negligence or misconduct of the railway administration and its employees and therefore it has rightly held the Railways responsible for compensation. Assuming that Section 74-D is not applicable to the bags which are actually delivered in a damaged condition the only result is that the plaintiffs have to prove u/s 74-C the negligence or misconduct of the railway administration. It will not be incorrect if I find that on the basis of the plaintiffs' evidence taken with the inference which is drawn in connection, with the bags not delivered to the plaintiffs, the Railway administration was negligent. I feel it would not be incorrect to hold that the plaintiffs have discharged their burden of proving negligence and misconduct of the railway administration.

11. In regard to the question of limitation it must be stated that the plaintiffs in their plaints clearly based their suits on non-delivery. The defendant did not dispute that nor raise the question of limitation. It is only in revision for the first time that a plea is taken that all the three suits are time barred.

12. It is contended by Mr. Shrivastava that in the present cases the Railways have given evidence of the date of loss and the place of fire, and that the suits therefore fall within Art. 30 and are clearly time-barred. He relies for that purpose on *Fushraj Thanmull Vs. Union of India (UOI)*, . Article 30 is applicable when a suit is filed against a carrier for compensation for losing or injuring goods and the suit must be filed within one year from the date when the loss or injury occurs, Whereas Article 31 is applicable to a suit against a carrier for compensation for non-delivery of goods or delay in delivering goods, the limitation is that of one year and starts from the date when the goods ought to be delivered. Whereas the Railways want me to apply Article 30 to these cases, it is the case of the plaintiffs that Article 31 is applicable. As stated above, it is a case of non-delivery at least to the extent of the bags, of chillies which are admittedly not delivered. There is therefore no reason why Article 31 should not be applied. While applying Article 31 to these cases it has to be considered as to from what date the limitation starts. The words "when the goods ought to be delivered" have been subject for consideration in various cases. It is found that no inflexible rule exists that time must begin to run from the expiry of the ordinary period of transit. It is clear from the abovesaid words that if any specific date is fixed by the parties under the contract that goods ought to be delivered on that date, it is obvious that limitation starts from that date. In the absence of any date fixed for delivery it is natural that the goods ought to be delivered within reasonable time. What should be the reasonable time depends upon the circumstances and facts of each case.

We are concerned only with two views expressed in this connection. One view is that limitation starts from the date in case of short-deliveries when the railway administration definitely refused to deliver the rest of the goods. The following cases support the view :

M.A.P. Palanichami Nadar Vs. The Governor-General of India in Council, , The Governor-General in Council Vs. Khadi Mandali, , Jainarain Vs. The Governor-General of India, , Oudh and Tirhut Railway Vs. Mrs. Karam Chand Paras Ram, .

13. The other view is that when substantial portion of the goods is delivered, the time begins to run from that date. This view is supported by the following decisions : Darjeeling Himalayan Rly. Co. Ltd. and Others Vs. Jetmull Bhojraj and Another, . Shamburam Agarwala Vs. Union of India (UOI), . Whatever view is made applicable to the facts of these cases the suits are within time obviously because the substantial portion of the goods was delivered to the plaintiffs on 13th May, 1955, and as the suits have been filed on 28th June, 1956, they must be considered to be within time because two months" period will have to be computed as the plaintiffs were required to give notice u/s 80, C. P. C. before the suits are laid against the railway administration. Considered thus, the suits are within time. Even if it is considered that the Railways must be presumed to have refused the goods on 13th May, 1955, even then, as stated above, the plaintiffs" suits are within time.

14. The contention of Mr. Shrivastava however is that assuming that to the extent the bags were not delivered, Article 31 is applicable, but to the rest of the goods which is admittedly delivered to the plaintiffs in a damaged condition Article 30 must be applied and limitation must be considered to have started on 25th March, 1955, the date when fire occurred damaging the goods, I would have given weight to this argument provided this specific plea of limitation, was raised in the lower Court. Where the claim in the suits is for damages for non-delivery of part of the consignment and no objection is taken that the form or cause of action is incorrect or that the claim should have been for the loss or injury, Article 31 is the relevant one which applied to the suit, and must, in my opinion, apply to these cases. The question whether Article 30 should be applied to the part of the case depends on question of facts. No permission can be given to the railway administration at this stage to agitate a question which involves decision on facts. As I have applied Article 31 to the facts of these cases, I do not think that the suits are barred by limitation. In the result these petitions are dismissed with costs.