
(2000) 09 PAT CK 0033
In the Patna High Court
Case No : M.A. No. 14 of 2000

Union of India (UOI)

APPELLANT

Vs

Bhala Brothers

RESPONDENT

Date of Decision : 04-09-2000

Acts Referred:

Railways Act, 1989 — Section 106

Citation : (2000) 3 BLJR 2223 : (2000) 4 PLJR 809

Hon'ble Judges : S.K. Chattopadhyaya, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Chattopadhyaya, J.—Heard the learned Counsel for the parties on the limitation petition.

2. For the reasons stated therein, the delay in filing the appeal is condoned and the limitation petition stands disposed of.

3. Heard the learned Counsel for the parties on the merit of appeal and with their consent this appeal is being disposed of at the stage of hearing under Order XLI Rule 11 of the CPC itself.

4. Facts of the case lies in a narrow compass. The respondent claimant filed an application before Railway Claims Tribunal, Patna for payment of compensation of Rs. 10,000/- and an odd on the ground that there was short delivery of total 157 bags from two consignments of iodised salt. It is not in dispute that those two consignments were booked on the railway on 20th February, 1996 at Bania to be delivered at Tatisilwai in the District of Ranchi, After getting delivery of the said consignments the claimant sent notice on 2.8.96 and 3.8.96 respectively under certificate of posting. With these facts the claimant preferred the claim. The railway authorities contested the claim on the ground that the claim of the respondent was barred u/s 106 of the Indian Railways Act, 1989 inasmuch as no notice was served on the administration within six months from the date of said

booking.

5. Mr. Bose, appearing on behalf of the appellant, submits that the railway administration did not dispute the fact that the claimant sent his notices on 2.8.96 and 3.8.96 under Certificate of Posting but it was asserted before the Tribunal that those notices were not received by them within the statutory period of six months. According to the Administration, it received the notices on 13th November, 1996, i.e., much beyond the period of limitation. Mr. Bose urged that as because the administration did not produce the original notice with its envelope before the Tribunal, the Tribunal held that the notice was duly served on the railway administration within six months. His contention is that in a summary way the tribunal could not have disposed of the claim petition filed by the appellant without there being any evidence on behalf of the claimant.

6. Learned Counsel for the respondent submits that the onus was upon the respondent to prove that it received notice on 13.11.96 and not within six months from the date of booking.

7. In my opinion, the argument of the learned Counsel for the respondent is devoid of merit. He wants to shift the onus of proving of fact on the railway administration. There is no dispute that the claimant did his notice on 2.8.96 and 3.9.96 under Certificate of Posting and to that effect he also filed the receipt of the Post Office before the Tribunal. But as held by the Apex Court in the case of Gadakh Yashwantrao Kankarrao Vs. E.V. alias Balasaheb Vikhe Patil and Others, that certificate of posting is easy to procure and much reliance cannot be placed on the same as it does not inspire confidence. In this case it was duty of the claimant to prove beyond all reasonable doubt that the railway administration did receive his notice within six months from 20.2.96, i.e., the date of booking of the consignments.

8. Learned Counsel for the respondent fairly agrees that this was not done in the present case.

9. In the facts and circumstances, I am of the opinion that the Tribunal should be directed to rehear the matter after directing the parties to. produce their evidence in this regard.

10. In the result, this appeal is allowed. The impugned order dated 24.8.99 is set aside the matter is remanded to the Railway Claims Tribunal to decide the matter in accordance with law and in the light of the observation made above. As it is a claim of 1996, the tribunal is well advised to dispose of the matter as expeditiously as possible.