
(1963) 09 RAJ CK 0003
In the Rajasthan High Court
Case No : Civil Revision No. 97 of 1961

Union of India (UOI)

APPELLANT

Vs

Firm Ramdas Amritlal Pali

RESPONDENT

Date of Decision : 13-09-1963

Acts Referred:

Railways Act, 1890 — Section 77

Citation : AIR 1965 Raj 127 : (1963) RLW 598

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

Bench : Single Bench

Advocate : Lakhpatraj, for the Appellant; M.M. Singhvi and Gopaldas, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Beri, J.—This revision application is directed against the judgment of the District Judge, Pali, who passed a decree against the Union of India for a sum of Rs. 364/4/- on account of shortage in the goods delivered by the Railways to the consignee.

2. On 17th June, 1955, under Railway Receipt No. Q. 71726, 1197 steel angles and 540 steel squares were booked from Jamshedpur by the Tata Iron and Steel Company Ltd. to Marwar Pali, the consignee being the Firm of Ramdas Amrit Lal. When open delivery was taken by the consignee at Marwar Pali it was discovered that the consignment was short by 28 steel angles weighing 23 maunds and 32 seers. A shortage certificate was obtained from the railway official concerned at Marwar Pali. Notices dated 21-12-55 u/s 77 of the Indian Railways Act were sent claiming compensation for short delivery. The Eastern, Northern and Western Railways over which the consignment travelled did not settle the claim and the consignee firm, therefore, instituted a suit against the Union of India for the recovery of the sum of Rs. 562/2/- before the Civil Judge, Pali, alleging that the short delivery was due to the misconduct on the part of the Railway Administrations. The learned Civil Judge held that the plaintiff failed to prove that

the wagon was loaded with 1197 steel angles and 540 steel squares weighing 1008 maunds and 20 seers. The loading was done by the sender inside its own works and the Railway had clearly safeguarded its position by saying that the wagon was "said to contain" the goods described by the sender. The Civil Judge further found that the Railways were not proved to be guilty of any misconduct or negligence and, therefore, the plaintiff firm was not entitled to any decree. Dissatisfied with the judgment and decree of the Civil Judge, the plaintiff-firm preferred an appeal, before the District Judge, Pali.

The learned District Judge found that the plaintiff-firm was able to establish that there was a shortage of goods at the time of its delivery at Marwar Pali, the value whereof was Rs. 364/4/-. He rejected the claim of the plaintiff-firm on items relating to interest, sales-tax, etc. on the two objections which were raised on behalf of the Railways that no notice u/s 77 was served within time on the Railways and that the notice served u/s 80 was not proper, the learned District Judge held, following the authority of this Court in *Jhabar Mal v. The Union of India*, ILR (1954) Raj 662 that no notice u/s 77 was necessary in the circumstances of this case. He further held that the notice served u/s 80 of the CPC was proper and accordingly decreed the plaintiff's case for the sum of Rs. 364/4/- with costs. It is against this judgment and decree that the Union of India has come up in revision.

3. The learned counsel for the petitioner urges that the controversy concerning the interpretation of the word "loss" in Section 77 between the various High Courts in India has now been resolved by an authoritative pronouncement of their lordships of the Supreme Court in *Governor General in Council Vs. Musaddi Lal*, and the case of *Jhabar Mal*, ILR (1954) Raj 662 is no longer good law. The learned counsel for the non-petitioner does not contest this proposition. The Supreme Court has laid down that,--

"Section 77 of the Railways Act is enacted with a view to enable the railway administration to make enquiries and if possible to recover the goods and to deliver them to the consignee and to prevent stale claims. It imposes a restriction on the enforcement of liability declared by Section 72. The liability declared by Section 72 is for loss, destruction or deterioration. Failure to deliver is the consequence of loss or, destruction of goods; it does not furnish a cause of action on which a suit may lie against the railway administration, distinct from a cause of action for loss or destruction. By the use of the expression, "loss, destruction or deterioration", what is contemplated is loss or destruction or deterioration of the goods and the consequent loss to the owner thereof. If because of negligence or inadvertence or even wrongful act on the part of the employees of the railway administration goods entrusted for carriage are lost, destroyed or deteriorated, the railway administration is guilty of failing to take the degree of care which is prescribed by Section 72 of the Railways Act".

Refusing to project the considerations arising from the provisions of Article 30 or 31 of the Limitation Act upon the constructions to be put on Sections 72 and 77

of the Railways Act, their Lordships agreed with the view taken in *M. and S. M. Rly. Co. Ltd. v. Haridoss Banmalidoss*, AIR 1919 Mad 140 and held that the view taken in *Jaisram Ramrekha Das Vs. G.I.P. Roy and Another*, is erroneous. The word "loss" in Section 77 of the Indian Railways Act thus received a wider connotation including cases where the goods, were not forthcoming and therefore service of a notice in such cases has been held to be equally obligatory. The view in the present case taken by the District Judge that no notice was necessary u/s 77 of the Railways Act is clearly untenable and must be reversed. A notice as required by Section 77 of the Indian Railways Act was necessary in the present case despite the fact that it was a case of short-delivery.

4. The learned counsel for the petitioner urged that the notice in the instant case is dated 21st December, 1955, whereas the consignment was admittedly delivered for carriage on 17th June, 1955. Thus the notice is invalid having been sent after more than six months from the date of the delivery of the consignment to the Railways for carriage. The learned counsel for the non-petitioner endeavoured to contest this proposition on the basis of a decision in *Amarchand Pannalal v. Union of India*, AIR 1955 Assam 221. Section 77 of the Indian Railways Act prior to the amendment of 1961 read as under:--

"A person shall not be entitled to a refund of an 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 or 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. "

The clause which requires consideration is "within six months from the date of the delivery of the animals or goods for carriage by railway". It has been subjected to examination in a number of cases by the High Courts in India. In *Badri Prasad Vs. G.I.P. Railway* certain goods were pilfered in the course of transit and a suit was instituted. The question which arose for consideration was the point of time from which the period of six months was to be computed. Dalai, J. held,

"the time of. six months does not commence from the date of delivery of the damaged parcel by the company to the consignor but from the time of delivery of goods to the company by the consignor for carriage."

In *East Indian Railway Company Vs. Bhimraj Srilal*, a cotton bale which was consigned for carriage was not delivered at all to the consignor. The bale was consigned on 9th July, 1920. The notice was sent on 20th January, 1921. The notice was held to be bad calculating the period of six months from the date the goods were entrusted to the railway for carriage. In *Governor-General in Council v. Sarbeswar Das* AIR 1949 Cal. 420, 11 seers of catechu and 8 seers of Kesadana were delivered short. The learned Judge held that the claim in writing must be preferred within six months from the date of the delivery of animals or

goods for carriage to the railway and not within six months from the date the railway delivers the consignment. In *Union of India v. Meghraj Agarwalla*, AIR 1958 Cal 434 the learned Judges held that--"the notice in this case having been served more than six months after the date of the booking the requirement of Section 77 has not been satisfied." The plaintiff was debarred from getting any compensation for the loss. In *Union of India v. Sha Vastimull Harakchand*, AIR 1959 Mys. 138 bales of cloth were despatched on 14th February, 1955, and the delivery was given on 17th March, 1955. A notice admitted to be delivered on railway was dated 15th September, 1955. It was obviously later than six months from the date of booking and the learned Judge upheld the contention of the railway that the suit must fail on account of the absence of a notice within six months.

In *Union of India v. Mitayagiri Pullappa*, AIR 1958 AP 475 the learned Judges observed that the notice contemplated u/s 77 should be given within six months from the date of delivery of the goods for carriage by railway and not within six months from the date of the delivery to the consignee, for there may not be any delivery at all; the goods might have been lost in transit. In *Managing Agents (Martin and Co.) Vs. Seth Deokinandan and Another*, the consignment was delivered for carriage on 7th September, 1947 and the notice of claim u/s 77 was dated 4th May, 1948, fee claim for compensation was held to be untenable. In the Assam case, AIR 1955 Ass 221, however, the learned Chief Justice observed,

"I have my own doubts as to whether this period of six months should be calculated from the date on which the goods were delivered to the consignee or his representative or from the date on which the goods were originally consigned to the Railway.

The words "for carriage by railway" may be read as qualifying the term "goods" only, and not the date of delivery of the goods. It seems to me more reasonable to hold that the period of limitation should be counted from the day when the goods were to be delivered or delivered to the consignee or his representative, and not from the date when the goods were originally consigned."

5. One of the objects which Section 77 of the Railways Act aims to attain is to enable the railway administration to investigate with promptitude the cases where consignors or consignees complain loss, destruction or deterioration of goods entrusted to the Railway for transport and to discourage and debar delayed claims made for compensation by such consignors and consignees. The period of six months is adequate enough to stimulate a sense of enquiry in the mind of any reasonable person when the goods consigned by or to him have not been delivered and the interested person is required by law to notify to the Railway the claim for compensation which he makes on account of loss, destruction or deterioration whether actual or apprehended. Chapter VII of the Railways Act as it stood at the material time relates to responsibility of Railway administration as carriers. In this Chapter there is frequent use of the words "delivered to the railway administration" for instance, "animal or goods delivered

to the administration" (Cf. S. 72) "delivered to the railway administration" (Cf. S. 73) "delivered to a railway administration for carriage by railway" (Cf. S. 75) "goods delivered to railway administration" (Cf. S. 70) and so on have been employed. The Concept of delivery to railway consistently connotes "handing over" to railway for carriage and not by railway to consignee. It is reasonable to presume that the identical expression has been used in the interest of precision and to convey the same meaning.

With profound respect, I am unable to agree with the interpretation suggested in the Assam case AIR 1955 Assam 221. Another reason which has been advanced in the Assam case AIR 1955 Assam 221 is that the consignee will only come to acquire knowledge of the extent of loss, destruction or deterioration on the receipt of the consignment. This line of reasoning altogether excludes the cases of complete non-delivery. What would happen in those cases where the goods have not been delivered at all ? As I have already observed the end which the legislature Intended to achieve was to institute prompt enquiry in regard to the grievance of the consignor or consignee and to exclude state demands concerning the claims against Railways. The legislature in its wisdom thought that a period of six months is ample enough to cover such claims in practically all variety of cases, I am in respectful agreement with the number, of decisions to which I have already referred and I hold that In the present case the notice is dated 4 days much too late with regard to the claim in question. In this view of the matter, the claim of the plaintiff-firm has to be rejected for want of a valid notice sent within the required time u/s 77 of the Indian Railways Act, as It stood prior to its amendment in 1961.

6. The law as enunciated by this Court in *Dominion of India v. Matoli Ram*, ILR (1952) Raj 386 and ILR (1954) Raj 662 persuaded the plaintiff bona fide to pursue his case despite belated notice u/s 77. In this view of the matter, I order that costs in this case shall be easy throughout.