
(1969) 04 MAD CK 0031
In the Madras High Court

Union of India (UOI)

APPELLANT

Vs

G. Swaminatha Mudaliar Sons

RESPONDENT

Date of Decision : 28-04-1969

Acts Referred:

Railways Act, 1890 — Section 80

Citation : (1969) 82 LW 647 : (1970) 1 MLJ 272

Hon'ble Judges : K. Srinivasan, J

Bench : Division Bench

Judgement

K. Srinivasan, J.—The respondent filed the suit against the Union of India, represented by the General Manager, North Eastern Railway claiming damages in respect of loss of goods in transit. The goods were consigned at Madurai station to a place on the North Eastern Railway. The suit as would be noticed was laid against the Union of India, through its General Manager, North Eastern Railway. The question whether the suit was maintainable u/s 80 of the Railway's Act, was raised as an issue and it appears to have been contended by the North Eastern Railway that u/s 80 of the Railways Act, the suit was not properly laid. The Court below thought that since in the course of the correspondence the Southern Railway Administration had given some reply to the claimant, the respondent, apparently on behalf of the North Eastern railway, the suit was properly laid against the defendant.

2. In this revision petition, the railway contends that since the Southern Railway is not a party to the suit, the Madurai Court has no jurisdiction to entertain the suit and that is the only question that requires to be examined.

3. It seems to me that the contention of the railway is well-founded. Section 80 of the Railways Act deals with suits for compensation ; such a suit for compensation for loss of the life of, or personal injury to, a passenger or for loss, destruction, damage, deterioration or non-delivery of animals or goods may be instituted in the manner provided for in that section. Broadly stated it is to the effect that the suit may be instituted against the railway where the goods were

delivered for carriage or against the railway administration on whose railway the destination station lies, or against that railway administration on whose railway the loss, injury, destruction or deterioration occurred. It further says that the suit may be instituted in a Court having jurisdiction over the place from which the passenger obtained his pass or purchased his ticket or the animals or goods were delivered for carriage as the case may be or over the place in which the destination lies or the loss, injury, destruction, damage or deterioration occurred. The first part of the section obviously provides that any one of the several administrations over which the goods travelled can be sued, and the second part provides that the Court, having jurisdiction over the place at : which the particular incident happened, such as, where the ticket was purchased, or the goods were delivered or where the damage had occurred, would be the proper Court to entertain the action. In the present case the plaintiff framed his suit so as to make it appear that the North Eastern Railway Administration is the administration that is liable to pay compensation for the damage caused to the goods. It is obvious that the Court at Madurai can have no territorial jurisdiction over the place where, even according to the plaint allegation, the damage to the goods occurred. Learned Counsel appearing for the respondent-plaintiff in the suit urges that since the Union of India owns all the railway administrations including the Southern railway, despite the limited scope of the cause title namely Union of India represented through its General Manager, North-Eastern Railway, the suit can be laid in any Court having jurisdiction over the area where the Southern Railway operates. In support of this argument the decision of Ramco Textiles Vs. Union of India (UOI), , was referred to. The learned Judge who decided the case held that the suit relating to a railway owned and administered by the Central Government lay against the Government irrespective of the identity of the Railway Administration whose default gave rise to the cause of action. The suit in that case was laid at Cannanore against the Union of India as owner of the North Eastern Railway, represented by the General Manager, North Eastern Railway, Gorakhpur, and it was dismissed by the Court in which it was laid on the ground that it had no territorial jurisdiction. Apparently, the Union of India did not enter appearance in the revision petition before the High Court. The matter was virtually decided ex parte though some counsel rendered assistance to the Court as amicus curiae. The learned Judge thought that having regard to Section 79, Civil Procedure Code, since the person sued was the Central Government and the Central Government was properly described as the Union of India, in the plaint, the further words in the cause title describing the Union of India as " the owner of the North Eastern Railway represented by the General Manager, North Eastern Railway" were a mere superfluity which could be ignored. In effect, the learned Judge thought that the suit was against the Union of India simpliciter and that if that be so, the suit could be laid, even at Cannanore. With respect I do not find any considerable discussion as to the scope of Section 80 of the Railways Act. The learned Judge has referred to the decision of this Court in P.R. Narayanaswami Iyer and Others Vs. Union of India, , in support of this view.

4. Turning to the Madras decision, a Bench of this Court held that the requirements of Section 77 would be adequately complied with if the notice under that section was sent to the General Manager of any one of the Government Railways concerned in the route over which through traffic passed. That is to say, even though the actual action might be against another railway which dealt with the goods notice to any one of the railway administrations covering the route might be sufficient compliance with Section 77. This decision to my mind does not appear to lay down the correct law in *Jetmull Bhojraj Vs. The Darjeeling Himalayan Railway Co. Ltd. and Others*, their Lordships of the Supreme Court observed in paragraph 22 of the Report:

Upon the language of Section 77, it would appear that a notice thereunder must be given to every Railway Administration against whom a suit is eventually filed.

5. Clearly no person can give a notice to one Railway Administration and file a suit against a totally different Railway Administration and maintain that there has been sufficient compliance with Section 77 of the Act. In so far as the learned Judge of the Kerala High Court relied upon a Bench decision of this Court in support of the view that he took, it seems to me that the foundation has been destroyed by the decision of the Supreme Court.

6. Section 80 though it uses the expression "may" has to my mind the effect of the mandatory direction. A suitor is permitted by that section to file a suit for compensation against any one of the Railway Administrations (1) which receives the goods in transit (2) which ultimately delivered the goods and (3) the railway during the transit upon which damages to the goods actually occurred. There is no other category of railway administration which can broadly be sued. If it is the intention of the Act that because the Union of India owns all the railways a suit can be laid against the Union of India without anything more, Section 80 would for the most part be rendered nugatory. It is in order not only to assist any suitor for compensation but also afford protection to the railways that this section has been enacted. It is clear therefore that a plaintiff must sue one or more of the particular Railway Administrations in an action u/s 80 and cannot broadly file a suit against the Union of India.

7. This view has also been taken by the Calcutta High Court in *Jagannath Chetran v. Union of India* AIR 1966 Cal. 540, and also by the Allahabad High Court in *Prahlad Rai and Sons Vs. Union of India* (UOI), .

8. If therefore the suit was against the North Eastern Railway represented by the Union of India it is obvious it will be in terms of Section 80 of the Railways Act; and it should be instituted at the place where the Court has jurisdiction over that railway.

9. The question of jurisdiction u/s 20 of the CPC would also be in conformity with it. I am satisfied therefore that the contention of the petitioner that the Madurai Court has no jurisdiction is sound.

10. Learned Counsel appearing for the respondent urges that he should be permitted to take back the plaint and present it in the proper Court. The judgment and decree of the lower Court are set aside and the plaintiff will be permitted to take the plaint back and deal with it in such manner as may be open to him. There will be no order as to costs in this petition.