

(1996) 09 PAT CK 0064

In the Patna High Court

Case No : Appeal from Original Order No. 322 of 1995

Union of India (UOI)

APPELLANT

Vs

Gopal Jee

RESPONDENT

Date of Decision : 12-09-1996

Acts Referred:

Evidence Act, 1872 — Section 114

Railway Claims Tribunal Act, 1987 — Section 23

Citation : (1997) 1 BLJR 324 : (1996) 2 PLJR 812

Hon'ble Judges : Ravi Nandan Sahay, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ravi Nandan Sahay, J.—This is an appeal u/s 23 of the Railway Claims Tribunal Act, 1987 against the decision of the Patna Bench of the Railway Claims Tribunal dated 28.7.1995, whereby the claim brought by the consignor-respondent was partly allowed and the appellant has been directed to pay Rs. 39, 240/- with 10% interest and cost assessed at Rs. 3, 200/-.

2. The consignor had claimed Rs. 82, 013/- on account of short/non-delivery of 3 bundles of readymade garments out of 8 bundles booked on 14.11.1989 on luggage ticket No. 106087 from Howrah to Chapra, due to negligence of Railway administration.

3. The respondent's claim was resisted by the appellant on a pleading that the appellant was protected by Section 77B of the Indian Railways Act, 1890 and hence the claim of the consignor was not maintainable.

4. Section 73 of the Act lays down the general responsibility of the railway administration as a carrier of goods for the loss, destruction, damage, deterioration or non-delivery in transit. This is specifically made subject to other provisions in the Act. Section 77B of the Act whittles down the general responsibility of the Railway administration as a carrier with respect of articles of

specific value, see Union of India (UOI) Vs. Kailash Chand Jain and Company, . To attract Section 77B or in other words to confer immunity on Railway in respect of liability for loss etc., the following must co-exist namely (a) the articles delivered to Railway for carriage must answer any of the items in second schedule, (b) the articles are contained in a parcel or packet or when it answers Sub-section (4) of Section 77-B, may not be contained in a parcel or packet (c) value of such article in the parcel or packet exceeds Rs. 500/-, then the Railway Administration shall not be liable for any loss, destruction, determination, damage of the parcel unless the value is declared by the consignor and if so required by the Railway paid or engaged to pay in writing a percentage on the value so declared by way of compensation for the increased risk, Counsel for the appellant submitted that the Railway Administration is not liable for non-delivery since the condition laid down in Clause (c) above is not satisfied.

5. Section 77-B of the Act reads as follows:

77B. Further provision with respect to the responsibility of a railway administration as a carrier of articles of special value,- (1) Notwithstanding anything contained in the provisions of this chapter, when any articles mentioned in the Second Schedule are contained in any parcel or package delivered to a railway administration to be carried by railway and the value of such articles in the parcel or package exceeds five hundred rupees, the Railway administration shall not be responsible for the loss, destruction, damage or deterioration of the parcel or package, unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared in writing or declared them in writing at the time of the delivery of the parcel or the package for carriage by Railway and if so required by the administration, paid or engaged to pay in writing a percentage on the value so declared by way of compensation for the increased risk.

(2) When any parcel or package of which the value has been declared under Sub-section (1) has been lost, destroyed or damaged or has deteriorated the compensation recoverable in respect of such loss, destruction, damage or deterioration shall not exceed the value so declared.

(3) A Railway administration may make it a condition of carrying a parcel or package declared to contain any article mentioned in the Second Schedule that a Railway servant authorised in this behalf has been satisfied by examination or otherwise that the parcel or package actually contains the articles declared to be therein.

(4) The Central Government may, by notification in the Official Gazette, direct that any article mentioned in the Second Schedule may, without being contained in any parcel or package, be delivered to a Railway administration to be carried, by railway and upon the issue of such notification, the provision of this, section shall apply in relation to such article, as they apply in relation to any article mentioned in the Second Schedule and contained in any parcel or package.

6. In *Suraj Nath Prosad Kedarnath Vs. Union of India (UOI)*, , in which claim was related to prior to 1961 amendment, a Division Bench of the Calcutta High Court held that in case of non-delivery of the consignment, the railway administration is bound to make a disclose showing how the goods or the consignment was dealt with at different stages as the same is within the special knowledge of the railway administration and in case of failure to make such a disclosure, an adverse inference can be made against them u/s 114(g) of the Evidence Act. It further held that in such cases the Railway administration, cannot rely upon the provisions of the risk note which prima facie exempt it from liability unless evidence has been adduced which satisfied the court that loss, in fact, has occurred.

7. In *Union of India (UOI) Vs. Kailash Chand Jain and Company*, , learned Single Judge of the Allahabad High Court relying on *Governor General in Council Vs. Musaddi Lal*, , held that the Railway Administration was entitled to the benefit of Section 77B and absolved of liability, as the plaintiff neither paid nor engaged to pay the required percentage on the value declared of the goods by way of compensation for the increased risk. However, the case was in respect of non-delivery of silver bars.

8. In *Union of India and Another Vs. Jetmall Sukanraj*, , taking contrary view and distinguishing the decision of the Supreme Court in *Governor General in Council Vs. Musaddi Lal*, , a learned single judge of the Madras High Court came to the conclusion that after the amendment of Railways Act, by Central Act 39 of 1961, non-delivery has been made an independent cause of action, distinct and different from the cause of action based upon the loss of the goods. Non-delivery may be consequence of loss or destruction or it may be a consequence of other cause. Therefore, when the legislature has used the five expressions, namely, loss, destruction, determination, damage and non-delivery separately, each one of expression must be given an appropriate meaning so as to give full effect to the intention of the Legislature. Madras High Court held that Section 77B of the Railways Act cannot afford any protection to the railway administration against the claim for compensation in absence of any cogent proof on behalf of the Railways that consignment have been lost or destroyed, which is not true because non-delivery must be result of loss or destruction."

9. The Claims Tribunal referred the decision of the Gujarat High Court in *Union of India v. K. Mansuhram & Sons* (1979) 20 Guj 333, which followed the decision of the Madras High Court in *Union of India v. Jetmall Sukanraj* (supra).

10. The tribunal, therefore, rightly held that Section 77B of the Act is not applicable in case of non-delivery and hence the Railway is liable for compensation for non-delivery. The Railway, however, was exonerated for partial shortage in 5 bales.

11. In the result, for the reasons stated above, this appeal must be dismissed and is accordingly dismissed. There shall be no order as to costs.