

(1962) 02 MP CK 0011

In the Madhya Pradesh High Court

Case No : Civil Revision No. 533 of 1961

Union of India (UOI)

APPELLANT

Vs

Haji Jiwakhan

RESPONDENT

Date of Decision : 02-02-1962

Acts Referred:

Railways Act, 1890 — Section 77

Citation : AIR 1962 MP 374 : (1962) JLJ 1125 : (1962) 7 MPLJ 732 : (1962) MPLJ 193

Hon'ble Judges : P.K. Tare, J

Bench : Single Bench

Advocate : P.R. Padhye, for the Appellant; J.V. Jakatdar, for the Respondent

Final Decision : Allowed

Judgement

P.K. Tare, J.

This revision u/s 25 of the Provincial Small Cause Courts Act is by the defendant against the decree, dated, 20-9-1961, passed by Shri P. B. Thakre, Additional District Judge, East Nimar, Khandwa, empowered (under Section 9 of the M. P. Civil Courts Act, 1958, in Small Cause Suit No. 167 of 1961.

The respondent was a consignee of a consignment booked from Wadi on 18-3-1960. The station of destination was Khandwa. The goods reached Khandwa on 24-3-1960 when a consignment consisting of stones was delivered to the respondent in a damaged condition.

The respondent filed the present suit claiming Rs. 370.17 nP. as damages for the loss caused on account of the alleged negligence on the part of the Railway Administration. In the plaint it was alleged that a notice u/s 77 of the Railways Act had been served on the Railway Administration. However, the date of the notice was not mentioned. Further on, it was also mentioned that a copy of the notice, dated 25-10-1960 was being filed along with the plaint.

On behalf of the petitioner, it was contended that the alleged notice u/s 77 of the Railways Act was beyond the period of 6 months and, therefore, it could not be a valid notice. It was also denied that there was any damage to the consignment on account of the negligence or misconduct of the Railway Administration.

The learned Small Cause Judge, relying on the observations made by me in *Union of India v. Ramnarayan*, Civil Revn. No. 290 of 1957 D/- 22-9-1958: 1958 MPLJ Notes 167 held that in view of the assessment of damages by the Station Master actual notice to the Railway Administration should be inferred.

5a. At the outset I might observe that the learned Small Cause Judge has totally misunderstood the observations made by me in the said case. I did not lay down that the mere fact about the assessment of damages by any authority would constitute notice u/s 77 of the Railways Act. In that case it was the plaintiff's allegation that he had served a notice on the General Manager. That fact was, however, denied by the Railway Administration. In that case the assessment of damage had been made subsequent to the alleged delivery of notice. Therefore, the question arose as to how the assessment of damages was made, although the Railway Administration had no notice at all. It was with reference to a rule of evidence. In fact, what I held was that the facts constituted a valid notice, as required by Section 77 of the Railways Act. The learned Judge of the Small Cause Court appears to have laboured under that misapprehension in another case, which was recently decided by my brother Shrivastava J., namely: *Union of India v. Haji JivaKhan*, Civil Revn. No. 498 of 1961 D/- 24-1-1962 (MP). My brother Shrivastava J. explained the observations made by me in Civil Revn. No. 290 of 1957 D/- 22-9-1958: 1958 MPLJ 167 (supra) can do no better than to reproduce the observations of my brother Shrivastava J.:--

"In view of the fact that the claim was made to an officer who was authorised by the General Manager to entertain such claims, it was held that the requirements of Section 77 were complied with. The decision is not an authority for the question that an oral notice would be sufficient; it only lays down that a notice in writing given within the prescribed period to an officer who has been authorised by the General Manager to deal with the claims is enough."

A notice u/s 77 of the Railways Act is mandatory, as laid down by Their Lordships of the Supreme Court in *Governor General in Council Vs. Musaddi Lal*, . As such, the view of a Division Bench of this Court in *Union of India (UOI) and Others Vs. Gendlal Nathuram and Others*, laying down that a notice is not necessary in a case of non-delivery is no longer good law. A notice will be necessary in all cases whether it be a case of deterioration, loss or non-delivery.

However, the question arises in the present case whether the alleged notice u/s 77 of the Railways Act was a valid notice. In this connection, it is to be noted that the respondent vaguely alleged that he had served a notice u/s 77 of the Railways Act. But, what he purported to file with the plaint was a subsequent notice, dated, 25-10-1960, which he had issued u/s 80 of the Civil Procedure

Code. The alleged notice u/s 77 of the Railways Act, or its copy was not at all filed.

It was for that reason that the petitioner in its defence contended that the notice produced in Court was not within the period of 6 months, as required by Section 77 of "the Railways Act. However, the learned counsel for the respondent has produced a copy of the notice, dated, 21-9-1960 purporting to be u/s 80 of the CPC and Section 77 of the Railways Act and has also prayed for permission to amend the plaint in order to refer to the said notice specifically.

In my opinion, the question relating to an amendment of the plaint, as also relating to production of additional evidence does not at all arise in the view that I propose to take. The consignment was delivered to the Railway Administration for carriage on 18-3-1960. It was delivered to the consignee at Khandwa on 24-3-1960. Section 77 of the Railways Act requires a notice of claim being preferred within a period of 6 months. The said Section is as follows:--

"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 determination 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 learned counsel for the respondent invited attention to the observations of a Division Bench of the Assam High Court in *Amarchand Pannalal v. Union of India* AIR 1955 Ass 221 where Sarjoo Prosad C. J. and Ram Labhaya J. expressed the opinion that the phrase "for carriage by railway" in Section 77 of the Railways Act qualify the phrase "animals or goods" and do not qualify the word "delivery" in the said section. There is a contrary view in various cases.

The contrary view was taken in *East Indian Railway Company Vs. Bhimraj Srilal*, , although the said case was over-ruled subsequently by a full Bench of the same High Court in *Governor-General in Council Vs. Gouri Shanker Mills Ltd.*, . The same view was taken by Sinha J. (as he then was) in *Badridas Firm of Purulia Vs. Governor-General for India in Council*, . The Calcutta High Court also adopted that view in *Governor-General in Council v. Sarbeswar Das* AIR 1949 Cal 420. Later on, a Single Bench of the Mysore High Court in *Union of India v. Sha Vastimull Harakchand* AIR 1959 Mys 13 had an occasion to consider this question when the learned Judge dissented from the view of the Division Bench of the Assam High Court.

It is true that the interpretation put by the different High Courts on Section 77 of the Railways Act might lead to an anomalous position in some cases, as was observed by the Division Bench of the Assam High Court in AIR 1955 Ass 21 (supra). But, the wording of Section 77 is very clear and I am in agreement with the view that the phrase "for carriage by Railway" cannot refer to animals or goods, but has necessarily to be correlated to the word "delivery". The other

interpretation suggested by the Assam High Court would not be a correct rule of interpretation. It would amount to judicial" legislation, which would not be warranted on account of the fact that there is no ambiguity in the section itself, This matter came up for consideration before a Division Bench of this Court consisting of V. R. Sen J. and Bhutt J. (as he then was) in Union of India (UOI) Vs. Asharfi Devi and Others, . The learned Judges noted the view as expressed in the Assam case and expressed their dissent from that and accepted the contrary view propounded in other cases. So far as I am Concerned, I am bound by the observations of a Division Bench of this Court and under the circumstances it is not possible to accept the suggestion of the learned counsel for the respondent that this case might be referred to a larger Bench for considering the correctness of the said" view.

But, there is another difficulty. Even if the copy of the notice, dated, 21-9-1960 sought to be adduced as additional evidence is admitted on record, from any some of view, the said notice u/s 77 of the Railways Act would be beyond the period of 6 months. I have already negated the contention of the learned counsel for the respondent that the limitation of 6 months should be Computed from the date of delivery of the consignment. As laid down by the Division Bench, the time has to be computed from the date of delivery to the Railway Administration.

However, the learned counsel for the respondent further invited attention to the observations of the Division Bench consisting of V. R. Sen J. and Bhutt J. in Union of India (UOI) Vs. Asharfi Devi and Others, and urged that the notice In the present case was only delayed by three days and u/s 10 of the General Clauses Act, the respondent would be entitled to exclude the days during which he was unable to post the notice, because the post-office was closed. Upon a reference to the comparative almanac of the year 1960, I find that 19-9-1960. was a Monday when the post-office was not closed. It is true that 20-9-1960 was a public holiday. The notice was actually sent on 21-9-1960. Therefore, even according to the principle laid down by the said Division Bench, I am unable to accept the contention of the learned counsel for the respondent that Section 10 of the General Clauses Act can be invoked to bring the notice within limitation-. For the obvious fact that even this notice, dated 21-9-1960 was indisputably beyond the period of 6 months, there is no point in admitting the additional evidence, or In allowing the respondent to amend his plaint.

Further, I might observe that there has been s controversy whether a notice u/s 77 of the .Railways Act issued to an authority, who is held out by the Railway Administration as the competent authority to deal with such claims would be sufficient notice. The cases holding that such notice would not be a sufficient notice are as follows: Deorao v. GIP Ry. Co. 8 Nag LR 34, Cawnpore Cotton Mills Co. Ltd. Vs. Great Indian Peninsula Railway, , G.I.P. Railway Company Vs. Chandulal Sheopratap, and East Indian Railway Company Vs. Bhimraj Srilal, . The contrary View has been taken in some Full Bench cases, namely, A.

Mahadeva Ayyar Vs. The South Indian Railway Co., , Devi Ditta Mal v. Secretary of State, ILR 7 Lab 238: (AIR 1926 Lah 253) and Governor-General in Council Vs. Gouri Shanker Mills Ltd., , The same view has been adopted by Bobde J. in AIR 1944 362 (Nagpur) and by Niyogi J. in AIR 1948 17 (Nagpur) . This question was, however, left open by the Division Bench in Union of India v. Asharfi Devi, 1957 MPLJ 294: ((S) AIR 1957 Madh Pra 114) (supra). In view of the fact that I am holding that the alleged" notice was invalid as it was beyond the period of 6 months as required by Section 77 of the "Railways Act, it is unnecessary for me to try to resolve the controversy.

To conclude, I am of opinion that the decree passed on an incorrect view of the observations made by me in Civil Revn, No. 290 of 1957 D/- 22-9-1958: 1958 MPLJ Notes 167 (supra) cannot be sustained in law. It is with a view to explain my earlier observations which I find might have created a misunderstanding in the minds of some Judges that I have been required to deal with the matter exhaustively. The decree passed by the learned Small Cause Judge cannot, therefore, be sustained in law on the ground that there was no valid notice u/s 77 of the Railways Act. Consequently, the other questions do not arise for consideration.

As a result, this revision succeeds and is allowed with costs. Counsel's fee Rs. 30/-, if certified.