
(1960) 08 MP CK 0019

In the Madhya Pradesh High Court

Case No : Civil Revision No. 16 of 1960

Union of India (UOI)

APPELLANT

Vs

Haji Latif Abdulla

RESPONDENT

Date of Decision : 24-08-1960

Acts Referred:

Limitation Act, 1908 — Article 30
Railways Act, 1890 — Section 72

Citation : AIR 1961 MP 190 : (1960) ILR (MP) 904 : (1961) JLJ 566 : (1961) 6 MPLJ 179

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

Bench : Single Bench

Advocate : J.N. Sinha, for the Appellant; Y.S. Dharmadhikari, 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 10-11-1959, passed by Shri G.P. Tiwari, Second Additional District Judge, Raipur, empowered u/s 9 of the M.P. Courts Act, 1958, in Small Cause Suit No. 35 of 1959.

The non-applicant was a consignee of 500 yards of hessian cloth and 25 maunds of sutli. The goods were delivered to him in a damaged condition. The Station Superintendent assessed the damage at 25 per cent regarding the hessian cloth and at 15 per cent in respect of the Sutli. The delivery was effected on 23-6-1956.

The defence of the applicant was that the plaintiff had failed to prove the quantum of damages. Secondly it was contended that the suit filed on 17-2-1959 was barred by time under Article 30 of Schedule II of the Indian Limitation Act.

The learned Small Cause Judge held that the quantum of damages had been proved by the plaintiff. As regards the question of limitation, the learned Judge

held that time would be extended due to the letter of the Railway administration dated 21-11-1958.

The learned counsel for the applicant urged that the plaintiff had failed to prove the quantum of damages. It was pointed out that the provisional assessment made by the Station Superintendent at 25 per cent regarding the hessian cloth and 15 per cent regarding the Sutli could not be final. It was, therefore, necessary for the plaintiff to prove as to what loss actually he suffered. In the absence of such a proof, the plaintiff was not entitled to any damages.

So far as the assessment made by the Railway authorities is concerned, the Railway administration would be bound by the same it being an action of its agent. Therefore, it cannot be subsequently contended by the Railway administration that the damage to the goods remained unproved. So far as the damage to the goods is concerned, the assessment of the Railway authorities would be binding on the Railway administration, although it may not be final.

But, a plaintiff-consignee or a plaintiff-consignor would, all the same, be required to prove the extent of loss, so as to entitle him to damages. Whether a plaintiff has, in fact, proved the extent of the loss, so as to entitle him to any particular quantum of damages would be a question of fact to be decided with reference to the evidence on record. As such it would be a finding of fact, unless the basis adopted by the trial Judge be found to be wrong. I am of opinion that the learned Judge cannot be said to have acted erroneously or illegally in having adopted any wrong basis.

The hessian cloth and the Sutli were appropriated by the plaintiff to its own use. Therefore, the plaintiff could claim damages on the basis of the percentage of the damage to the goods. Had the plaintiff sold the cloth and Sutli to some third person, in that case alone, the plaintiff would be required to prove as to what price was fetched. But, the plaintiff in the present case, not having sold the cloth, was not required to prove what price was fetched. Therefore, the basis adopted by the learned Small Cause Judge cannot be said to be erroneous or illegal.

However, on the question of limitation, I am unable to agree with the learned trial Judge that limitation was extended because of the letter of the Railway administration dated 21-11-1958. The said letter was written by the Chief Commercial Superintendent. It is marked as Ex. P-5. The contents of the letter are as follows:--

"In this case one of my Inspectors was deputed to find out the particulars of despatch of the damaged stuff and to verify the actual loss sustained by you on account of damage but as you have failed to prove the disposal of the damaged stuff and the actual loss sustained in this case by production of necessary documentary evidence to the said Inspector it may be inferred that actually you have not suffered any monetary loss in this transaction.

In the circumstances, I regret, I cannot entertain any claim for compensation."

The said letter does not amount to any acknowledgment within the meaning of Section 19 of the Limitation Act. On the other hand, the Railway administration disowned its liability under the said letter. Therefore, the said letter could, in no case, extend limitation, either u/s 19 of the Limitation Act, or under any other provision. The case where a Railway administration is unable to give a final reply as to the location of the consignment would, clearly, be distinguishable. In those cases a consignee might be able to say that limitation against him would start when the Railway administration is in a position to state that the consignment is either lost or destroyed. But, such; is not the present case.

7a. The present case would, clearly, be governed by Article 30 of the Limitation Act, which is as follows:--

"Against a carrier for One When the loss or compensation for losing year, injury occurs." or injuring goods.

The learned counsel for the applicant urged that under Article 30 of the Limitation Act, the suit was barred by time upon any view taken of the said Article. While, on the other hand, the learned counsel for the non-applicant contended that the suit was within time, as the defendant had failed to prove as to when the injury to goods occurred.

On behalf of the non-applicant, reliance was placed on a Division Bench case of this Court in *Dominion of India v. S.G. Ahmad* ILR (1954) Nag 46: (AIR 1954 Nag 115). That was a case of non-delivery, governed by Article 31 of the Limitation Act, wherein the learned Judges constituting the Division Bench held that the limitation under the said Article did not start, until the Railway administration was able to say finally that the goods could not be delivered. If the Railway administration kept on saying that the matter was under consideration or under enquiry, limitation would not start against a consignee. The said case is clearly distinguishable, as it relates to the starting point of limitation under Article 31 of the "Indian Limitation Act.

Further, attention was invited to a case of the Patna High Court, consisting of *Courtney-Terrell, C. J. and Fazl Ali J. in Bengal and North Western Ry. Co. Ltd. Vs. Kameshwar Singh Bahadur*, wherein, the learned Judges held that in a case, where the defendant wants to take advantage of Article 30 of the Limitation Act, it would be for the defendant to prove as to when the injury or loss to the goods occurred. The said Article, according to the learned Judges, refers to injury or loss to the goods and not to the consignee. However, in that particular case it was held that the Article applicable was Article 31 of the Limitation Act.

Further, the learned counsel for the non-applicant, inviting attention to the observations of BOSE J. (as he then was) in AIR 1947 224 (Nagpur), urged that as the continuous negligence of the Railway administration was apparent, it would amount to a continuing wrong within the meaning of Section 23 of the Limitation Act and as such the limitation would start from the date when the continuing wrong finally ceased.

It is true that in case an action of the Railway administration amounts to a continuing wrong, a consignee " could sue when the wrong finally ceases and as observed by Bose J., all causes of action till then could be combined into one suit. But, the present case, in my opinion, is not one of a continuing wrong. In that case the consignor had booked two consignments one after the other. The same were alleged to lie in the open under the rains. The consignor gave notice to the Railway administration to protect the consignments from the rains.

The Railway administration continued to keep the consignments in the open, so as to be damaged by rains. It was under those circumstances that Bose J. held that the action of the Railway administration was a continuing wrong, When the consignor found that the Railway administration was not taking any steps, he removed the goods and sued the Railway administration for the damage caused on account of the continuing wrong. I am in respectful agreement with the learned Judge, but the said case is distinguishable on facts.

The learned counsel for the non-applicant further invited attention to the observations of their Lordships of the Supreme Court in Union of India (UOI) Vs. Amar Singh, , wherein their Lordships laid down that the starting point of limitation under Article 30 of the Limitation Act would be from the date, when the loss or injury occurs. Therefore, the burden would be upon the defendant, who seeks to non-suit the plaintiff on the ground of limitation, to establish that the loss occurred beyond one year from the date of the suit.

On the authority of the said dictum laid down by their Lordships of the Supreme Court, the learned counsel for the non-applicant urged that the limitation against the consignee could not start, as the Railway administration had failed to prove the exact time of injury to the goods. It is true that limitation will not start against the consignor or consignee, unless the Railway administration proves the date of the injury of the loss.

But, even taking it to be the last date, namely, the same date as the date of delivery, the limitation would certainly start from the date of the delivery, even assuming that the injury or loss might have occurred on that date. The consignor or consignee would not be able to claim extension of time beyond the date of actual delivery. Therefore, even if the Railway administration does not prove the actual date of injury or loss, the utmost that a consignor or consignee can do is to compute the period of one year from the date of actual delivery and nothing more.

A Division Bench of the Andhra Pradesh High Court in Firm of Sivdutt Rai Gulab Rai Vs. The Union of India (UOI), , held that where delivery was effected, but the goods were delivered in a damaged condition of; were delivered in a lesser quantity, the case being one of loss or injury to the goods would clearly be governed by Article 30 of the Indian Limitation Act, which was equivalent to Article 25 of the Hyderabad Limitation Act. The learned Judges opined that no other Article of the Limitation Act would be applicable to such a case,

Thus there would be no doubt that the goods having been delivered to the non-applicant on 23-6-1956 in a damaged condition, the only Article applicable to the present case would be Article 30. Under the said. Article, the starting point of limitation, even, according to any view, would be the date of delivery, when the injury to the goods might be assumed to have occurred. Even in that case the non-applicant had no justification to wait till 17-2-1959.

As already observed by me, the letter, dated, 21-11-1958 could not extend limitation in favour of the non-applicant under any provision of law. It is, therefore, clear that the suit of the non-applicant was barred by time. The learned Small Cause Judge acted illegally in holding the suit to be within time on the basis of the letter, dated, 21-11-1958 sent by the Chief Commercial Superintendent. Therefore, the decree passed by the Court below cannot be sustained.

As a result, the revision succeeds and is allowed. The decree of the Small Cause Court is set aside and the plaintiff non-applicant's claim is dismissed with costs in both the courts. Counsel's fee in this Court Rs. 50/-, if certified.