
(1988) 01 OHC CK 0014
In the Orissa High Court

Union of India (UOI)

APPELLANT

Vs

Khetwat Oil Mills and Another

RESPONDENT

Date of Decision : 20-01-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Partnership Act, 1932 — Section 69

Citation : (1989) 2 ACC 473 : (1989) ACJ 458

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

Bench : Single Bench

Judgement

K.P. Mohapatra, J.—This appeal is directed against the judgment of learned Subordinate Judge, Baripada, passing a decree in favour of respondent No. 1 for a sum of Rs. 17,260.10 claimed as compensation for shortage of good in transit with the appellant.

2. The case of respondent No. 1 (plaintiff) is that it is a registered partnership firm having its oil mill at Baripada. It purchased 160 bags of mustard seeds, each bag weighing 85 kg., from Ambelal Madhab Das and Co. of Raja Bazar, Unjha, in Gujarat at the rate of Rs. 254/- per quintal inclusive of taxes and incidental charges as per beejuck dated 15-9-1973 (Exh. 1), the total price being Rs. 34,091/-. The plaintiff's agent delivered the aforesaid 160 bags to the Western Railway (respondent No. 2) at Unjha Railway Station for transport on rail to Baripada Railway Station within the jurisdiction of the South Eastern Railway (respondent No. 1). The goods were booked under invoice No. 27 and railway receipt No. 351708 dated 15-9-1973 at the railway risk rate, the consignor and the consignee of the consignment being the plaintiff's vendor Ambelal Madhab-Das and Co. The goods were loaded being duly packed in gunny bags and were kept within the wagon properly secured with dunnage under the supervision of the plaintiff's agent and the employees of the Western Railway posted at Unjha Railway Station. The plaintiff's vendor endorsed the railway receipt in the name of the former and sent the same through the State Bank of India, which was released by the plaintiff on full payment of the price of the consignment. On

7-11-1973 at the time of taking delivery of the consignment, it was found that out of 160 bags of mustard seeds, only 90 bags were available inside the wagon, the rest 70 bags missing. Out of the 90 bags, a few were torn and loose and a part of the contents missing or otherwise damaged. Therefore, the plaintiff was forced to take short delivery of the consignment, the shortage being estimated at 60 quintals and 34 kg. of mustard seeds. A shortage certificate (Exh. 3) was granted by the employee of the South Eastern Railway at Baripada Railway Station. It is averred that the shortage occurred on account of the negligence of the Railways in dealing with the consignment while on transit, as a result of which the plaintiff sustained loss. In order to recover compensation, notices u/s 78-B of the Indian Railways Act (Exhs. 4 and 4/a) (hereinafter referred to as "the Act") and u/s 80 CPC (Exhs. 7 and 7/a) were served on the Chief Commercial Superintendent (claims) and the General Manager of the South Eastern and Western Railways which were duly received and acknowledged by them. As the claim was not settled, the plaintiff claimed the price of, the goods lost in transit, price of the gunny bags and the proportionate railway freight, all amounting to Rs. 17,320.10, as per the statement in Schedule "B" of the plaint.

3. The suit was contested and written statement was filed by the- South Eastern Railway (defendant No. 1-appellant). It was stated that the suit was hit by Section 69(2) of the Indian Partnership Act. The plaintiff had no title in the goods. Whatever goods were loaded by the sender were delivered to the plaintiff and so the South Eastern Railway was not responsible for any loss. Statutory notices u/s 78-B of the Act and Section 80, CPC were nor served on the railway. The claim was also exaggerated.

4. The learned Subordinate Judge held that the suit was not hit by Section 69(2) of the Indian Partnership Act, the plaintiff had title in the goods, there was proper service of statutory notices u/s 78-B of the Act and Section 80, CPC and the plaintiff was entitled to compensation. Accordingly, excluding the claim of Rs. 60/- representing the price of 20 gunny bags, he passed a decree for the balance amount of Rs. 17,260.10 with proportionate costs and future interest.

5. Mr. Pal, learned Counsel appearing for the appellant, raised the following contentions:

- (1) Respondent No. 1 had no title in the goods;
- (2) Negligence on the part of the Railways had not been established;
- (3) Notices u/s 78-B of the Act and Section 80, CPC were not served on the South Eastern Railway; and
- (4) Money value of the loss sustained by respondent No. 1 was not established.

First Point

6. The consignment was booked with the Western Railway (respondent No. 2) which did not choose to contest the suit and remained ex parte. None of the

employees who might have been present when the goods were loaded was also examined. The appellant also did not examine any witness nor proved any document to show that the consignment was not at all received nor loaded in the wagon at Unjha Railway Station. But on the side of respondent No. 1, PW 1 who was present when the goods were purchased and loaded with proper security in the wagon of Unjha Railway Station was examined. He proved the beejuck (Exh. 1) showing sale of the goods by M/s. Ambelal Madhab Das and Co. of Unjha to respondent No. 1 for the total sum of Rs. 34,091/-, Entry in rokod (Exh. 2) was proved to show that the entire sale price had been paid. Indisputably the goods were booked under invoice No. 27 and railway receipt No. 351708 dated 15-9-1973 and short delivery was given to respondent No. 1 which was the endorsee of the railway receipt at Baripada Railway Station as evident from the certificate of damage and shortage (Exh. 3). On the basis of the aforesaid evidence, the learned trial court arrived at the correct conclusion that respondent No. 1 had title in the goods. The contention of Mr. B. Pal is, therefore, untenable.

Second Point

7. PW 1 stated that the goods were properly packed in gunny bags and were loaded in the wagon by using dunnage. So, the consignment was transported with proper security, but nevertheless there was not only shortage of bags, but also damage obviously during transit. When goods properly packed were loaded at the starting station, but were received short and damaged at the destination station, the only inference that can be drawn is that the shortage and damage were on account of the negligence of the Railways during transit. It is significant to note that neither respondent No. 2 nor the appellant adduced any evidence to prove that proper care and caution of the goods were taken during transit. In the absence of any evidence forthcoming from the Railways, it was not possible on the part of respondent No. 1 to show how the consignment was dealt with in transit. In the facts and circumstances of the case, therefore, it cannot but be concluded that for the shortage and damage of the consignment there was negligence on the part of the Railways. Contention of Mr. Pal to this effect is also untenable. See *Union of India (UOI) and Another Vs. Orissa Textile Mills Ltd. and Another*, . Third Point

8. Exh. 4 is the notice u/s 78-B of the Act sent by registered post to the Chief Commercial Superintendent (claims), South Eastern Railway, which was received by the addressee as would appear from the postal A.D. (Exh. 6/a). Exh. 4/a is the notice u/s 78-B of the Act addressed to the Chief Commercial Superintendent (claims), Western Railway, which was received by the addressee as would appear from the postal A.D. (Exh. 6). Exh. 7 is the notice u/s 80, CPC sent by registered post to the General Manager, South Eastern Railway, which was received by the addressee as would appear from the postal A.D. (Exh. 9/a). Exh. 7/a is the notice u/s 80, CPC addressed to the General Manager, Western Railway, which was received by the addressee as would appear from the postal A.D. (Exh. 9). The Western Railway having remained ex parte did not dispute the legality and validity of the aforesaid notices. The notices were also duly received by the Chief

Commercial Superintendent (claims) and General Manager of the appellant, the South Eastern Railway. Mr. Pal, however, strenuously challenged the legality and validity of (he notice u/s 78-B of the Act on the ground that it was not served on the General Manager of the South Eastern Railway, but was served on the Chief Commercial Superintendent (claims) who was not authorised to receive claim notices. He further pointed out that the defect was not removed by the plaintiff by enclosing a copy of the notice u/s 78-B of the Act, which was notice u/s 80, Civil Procedure Code. Therefore, in the absence of statutory notice, the claim of respondent No. 1 for compensation was not liable to be entertained. Mr. Naidu, learned Counsel appearing for respondent No. 1 on the other hand urged that the Chief Commercial Superintendent (claims) was authorised to receive notice on behalf of the General Manager of the South Eastern Railway and so the claim cannot be defeated for invalidity of the statutory notice.

9. Section 78-B envisages that a person shall not be entitled to compensation for the loss, destruction, damage, deterioration or non delivery of goods delivered to be so carried, unless his claim to the refundor compensation has been preferred in writing by him or on his behalf to the railway administration to which the goods were delivered to be carried by railway or to the railway administration on whose railway the destination station lies or the loss, destruction, damage or deterioration occurred within six months from the date of the delivery of the goods for carriage by railway. In this case the goods were delivered for carriage on 15-9-1973. Notices u/s 78-B of the Act were served on 19-11-1973. The notices were received by respondent No. 2 and the appellant on 23-11-1973 and 22-11-1973 respectively. The notices u/s 80, CPC were also served on the Western Railway and South Eastern Railway on 20-11-1973 and they were received on 24-11-1973 and 22-11-1973 respectively. It is, therefore, apparent that the notices were served and received within six months from the date of the delivery of the goods for carriage. According to Section 3(6) of the Act, "railway administration" in the case of a railway administered by the Government means the manager of the railway and includes the Government. So, "railway administration" would mean the General Manager of the Railways on whom notice u/s 78-B of the Act should be served. Section 140 of the Act, however, provides the manner of service of notice on the railway administration According to it, any notice or other document required or authorised by the Act to be served on a railway administration may be served, in the case of railway administered by the Government, on the Manager or the Chief Commercial Superintendent by forwarding it by post in a prepaid letter addressed to the Manager or the Chief Commercial Superintendent and registered under the Indian Post Office Act. It is thus immensely clear that a notice u/s 78-B can be served either on the General Manager or on the Chief Commercial Superintendent of the Railway concerned. In this case, as already referred to above, the notices u/s 78-B were served on the Chief Commercial Superintendent (claims) and notices u/s 80, CPC were served on the General Manager of both the Railways. Therefore, there is no defect in the statutory

notices served on the appellant.

10. A few decisions cited at the Bar on this aspect may now be noticed. In a Full Bench decision reported in *Governor General in Council Vs. Gouri Shanker Mills Ltd.*, it was held that the requirement of Section 77 (before amendment and now Section 78-B) read with Section 140 of the Act are satisfied by serving a notice within the prescribed period on the Chief Commercial Manager or any other subordinate officer of a railway company Owned by the Government provided it is established as a fact that the railway company by its course of business or the terms of the contract between the parties has held out a particular official as competent to deal with the claims on receipt of notice to him. In *The Union of India (UOI) Vs. Alliance Assurance Co. Ltd. and Another*, one of the points that arose before the Division Bench was whether notice u/s 77 of the Act (before amendment) on the Chief Commercial Superintendent of the Railway was sufficient notice on the railway administration. After review of a number of decisions it was held that the just claim of a consignor or a consignee of goods should not be defeated because the notice u/s 77 was not sent to the General Manager, but to another person standing very high in the hierarchy of officials in the railway administration who according to the practice of the administration is the proper authority to deal with the claim for shortage, non delivery, etc. and actually deals with it. In reaching the above conclusion support was drawn from *Jetmull Bhojraj Vs. The Darjeeling Himalayan Railway Co. Ltd. and Others*, In *Union of India(UOI) Vs. Hari Nagar Sugar Mills Ltd.*, a Division Bench followed the Full Bench decision (supra) and held that notice u/s 77 of the Act served on the Deputy Chief Commercial Superintendent of the Railway was valid. In *Niranjnlall Agarwalla Vs. Union of India (UOI)*, the views expressed by the Full Bench of the Patna High Court (supra) were approved. In that case notice u/s 77 of the Act was served on the Chief Commercial Manager, claims and Refunds of the Railway and the notice was held to be legal and valid although it had not been served on the General Manager of the Railway. It was observed that he was not a person of such inferior status that it could be said that a claim preferred as regards non-delivery would not be properly investigated or looked into for finding out the truth or falsity of the claim preferred. A contrary view was taken by a learned single Judge in *Ram Padarath Vs. Union of India (UOI) and Others*, to the effect that according to the requirements of Sections 77 and 140 of the Act notice had to be served on the General Manager of the Railway and as notice had been served on the Chief Commercial Superintendent, it was not a valid notice. The decision was, however, rendered for a cause of action that arose prior to amendment of Section 140 of the Act by the Indian Railways (Amendment) Act, 1961 (39 of 1961 with effect from 1-1-1962. In view of the change of law, the decision rendered by the learned single Judge will not throw any light for the present discussion.

11. In view of the decisions referred to above and particularly the provisions of Section 140 of the Act as amended with effect from 1-1-1962 the Chief Commercial Superintendent is the person competent to receive notice u/s 78-B

of the Act and if he received notice it would be deemed that notice had been duly served on the railway administration. The contention of Mr. Pal, therefore, is legally unsustainable.

Fourth Point

12. The plaintiff claimed the price of the goods not delivered as per the shortage certificate (Exh. 3), price of 90 gunny bags at the rate of Rs. 3/- per piece and proportionate railway freight. The learned trial court allowed the price of only 70 gunny bags. The plaintiff is not further entitled to claim proportionate railway freight of Rs. 707.74, because had it not paid railway freight, the goods would not have been transported at all. Therefore, the claim of respondent No. 1 to the extent of Rs. 707.74 has to be deducted.

13. In the result, the appeal is allowed in part. The suit of respondent No. 1 is decreed for Rs. 16,532.36 with proportionate costs throughout and future interest at the rate granted by the trial court. Hearing fee at Rs. 150/-.