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**(1990) 04 MP CK 0004**  
**In the Madhya Pradesh High Court**

Union of India (UOI)

APPELLANT

Vs

Milapchand Mohanlal

RESPONDENT

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**Date of Decision :** 10-04-1990

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 80  
Railways Act, 1989 — Section 77

**Citation :** (1990) 2 ACC 309

**Hon'ble Judges :** R.K. Varma, J

**Bench :** Single Bench

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## Judgement

R.K. Varma, J.—This is a first appeal filed by the Union of India representing the concerned Railway against the Judgment and decree dated 27.7.77 passed in Civil Suit No. 40-B of 1972 (new No. 31.-B of 1972) by IVth Additional District Judge, Indore, whereby the claim of the respondent plaintiff for the price of loss of consignment of goods amounting to Rs. 9,528.63 ps. has been decreed.

2. The facts giving rise to this appeal, briefly stated, are as follows:

3. On 28.10.1971, the consignee defendant No. 6 M/s Rao Brothers, General Cloth Merchant, Katihar Manihari (pumiya) Bihar, placed an order with the plaintiff firm at Indore for purchase of terrycot suiting and shirting worth Rs. 9,528.63 ps. The consignee asked the plaintiff to send the consignment by goods train and to send the railway receipt (public way Bill) in the name of the plaintiff through Bank so that he might take delivery of goods at destination after making the payment of the Bank Accordingly, on 28.10.1971, the plaintiff despatched the consignment to Manihari as per Railway Receipt No. 24174 (Ex. P/3) and sent the bill (Ex. P/2) and a Hundi in the name of the Bank of Baroda.

4. It is the plaintiffs case that the consignment did not reach Manihari and the Bank of Baroda returned the Hundi and the bill to the plaintiff. On 12.1.1972 the plaintiff firm sent a man to Manihari to collect consignment but he was informed by the S union Master at Manihari that the consignment has not reached Manihari. The Station Master, Indore, however, claimed that the consignment was

despatched the same day on which the consignment was delivered to Railway Administration for carriage, A notice u/s 77 of the Railways Act and another notice u/s 80 of the C.P.C. were served on the concerned railway administrations, defendants No. 1 to 5 but the defendants neither accounted for the consignment nor paid the amount claimed by the plaintiff. The plaintiff, therefore, filed the instant suit for recovery of the price of goods as aforesaid with interest and notice charges.

5. The plaintiff alleged non-delivery of consignment on account of negligence, misfeasance, non-feasance and malfeasance of the defendant Nos.1 to 5. The defendant railway administration denied the allegations of the plaintiff and pleaded in written-statement filed on 30.4.1973 that-when the consignment was booked, it was not mentioned in the Forwarding Note that it contained terrycot suiting and shirting.

6. Subsequently, by amendment in the written-statement made on 10.8.1976, the defendant-railway administration pleaded that the consignment delivered by the plaintiff to the railway administration for carriage had reached at Manihari on 2.12.1971 and it was delivered to the nominee consignee-defendant No. 6. The railway-administration relied on a Railway receipt (parcel way Bill) Ex. D/1 and doubted the genuineness of the Railway Receipt Ex. P/3, produced by the plaintiff.

7. After trial of the suit, the teamed Trial Court has found that the defendant-Railway Administration did not deliver the consignment of goods to the plaintiff due to negligence, misfeasance, non-feasance and malfeasance. It has held that the R.R. relied upon by the plaintiff was genuine. It has also held that the defendants-railway administration did not deliver the goods to the alleged nominee, defendant No. 6 as alleged by the defendant-railway administration. Accordingly, the learned lower Court has decreed the plaintiff's suit claim for the loss on account of non-delivery of the consignment.

8. Being aggrieved by the judgment and decree passed by the learned Lower Court, the defendant-railway administration has filed this appeal.

9. The learned Counsel for the appellants has submitted that Section 77-B of the Indian Railways Act is applicable to the instant case which absolves the Railway Administration from its responsibility as a carrier of articles of special value mentioned in the second Schedule for the loss, destruction, damage or deterioration of the parcel of goods if it exceeds five hundred rupees unless that person sending or delivering the parcel or package to the administration caused its value and contents to be declared in writing at the time of the delivery of the parcel or the package for carriage by railway and if so required by the Railway Administration, paid or engaged to pay in writing a percentage on the value so declared by way of compensation for the increased risk. It is also pointed out that the item (g) in Schedule II mentions Terylene, Terrycot, terry wool etc. and nylon and their fabrics. The said item (g) has been inserted in Schedule II by Gazette Notification dated 9.1.1971 and the date of delivery of parcel of goods in

suit to the Railway Administration is 28.10.1971. As such, Section 77 became applicable in respect of suit-consignment which contained terrycot fabrics of the Value exceeding rupees five hundred.

10. The learned Counsel for the appellants has relied upon a decision of this Court in Union of India v. Nichaldas 1969 J.L.J. 772 and Anr. decision of the Allahabad High Court in Union of India (UOI) Vs. Kailash Chand Jain and Company, and urged that the Railway Administration is protected u/s 77-B of the Act and is absolved from liability. But in those cases plaintiff did not specify in the forwarding note whether the engaged or did not engage to pay the additional percentage charge to cover the increased risk despite the fact that the Railway Administration does positively require him to indicate this option in the prescribed form. But in the instant case, there is no case pleaded or proved of any such option being given in any prescribed form. The above-mentioned cases are, therefore, distinguishable on facts from the instant case and as such, are not applicable in the circumstances of the present case.

11. In reply, the learned Counsel for the respondent-plaintiff has submitted that the endorsement on the Railway Receipt (parcel Way Bill) (Ex. P/3) which was given to the plaintiff consignor on delivery of the consignment to the Railway Administration for carriage, mentions the contents of consignment being Terrycot suiting and shirting and also mentions the number of the Bill Ex.P/2, pertaining to the contents of the consignment as No. 1248.

12. The plaintiff's witness Mohanlal (pw-1), partner of the plaintiff's firm has stated that the Bill No. 1248 has been endorsed on the railway receipt (Ex.p/s) and in his cross-examination he further stated that the Railway Receipt was prepared on the basis of the bill. Learned counsel for the respondent-plaintiff has, therefore, submitted that the Bill (Ex. P/2) showing the bill number and the price of the Terrycot suiting and shirting contained in the parcel of consignment, being Rs. 9, 528.63 Ps. was obviously shown to the Railway Administration, on the basis of which the Railway receipt was prepared. As such, it cannot be said that while delivering the parcel or consignment to the Railway Administration for carriage, the person delivering it had not caused its valued and contents to be declared in writing. It is not the case of the Railway Administration that the plaintiff was required to pay or promise to pay in writing any extra amount to cover the increased risk on account of the fact that the contents of the consignment were Tericot fabrics included in Schedule-II of the Act. In the circumstances, it has been submitted on behalf of the plaintiff-respondent that the Railway Administration is not absolved u/s 77B of the Act of its responsibility as a carrier of article of special value mentioned in the IIInd Schedule for the loss of suit consignment.

13. The learned lower Court has believed the plaintiffs witness Mohanlal (Pw-1) and the plaintiffs documents Ex. P/2 and P/3 aforesaid and has held that the plaintiff firm booked one consignment of Tericot suiting and shirting as per Bill No. 1248, mentioned in Railway receipt No. 24174 (Ex. P/3) and in my opinion

rightly so.

14. The learned Counsel for the appellant defendants has submitted that the original forwarding note which has been filed by the plaintiff for delivering the consignment for carriage did not mention the value of goods but the defendant has neither filed the original nor the carbon copy of the original forwarding note Ex.P/30 is said to be a true-copy separately prepared. But its authenticity becomes doubtful since it neither bears the signatures of the consignor or his agent nor it is the carbon copy of the original which should have been available on the records of the Railway Administration. As has been noticed above, the endorsement on the railway receipt itself clearly shows that the bill, pertaining to the contents of the consignment was before the booking clerk, who apparently made endorsement about the contents being Tericot suiting and shirting and the Bill No. as 1248 on the basis of Bill (Ex.P/2). Production of the bill (Ex P/2) before the booking clerk amount to a declaration in writing of the value and contents of the parcel of consignment for carriage in the absence of production and proof of the relevant forwarding note by the Railway Administration showing a contrary position.

15. Learned counsel for the appellants has further submitted that Ex. P/3 is not the genuine Railway receipt pertaining to the consignment and that true Railway receipt is Ex. D/1 filed by the appellants- defendant which shows that delivery of the disputed consignment has been effected. The defendant's witness Jagdish Prasad Garg (DW-1) has stated that the person who prepared Ex. P/3 and Ex. D/1 was on leave and that he did not trace out the original of Ex. D/1 on which the defendant placed reliance. In the circumstances, the learned Lower Court has rightly held that the Railway Administration failed to prove that the consignment was related to Ex. D/1 and not to Ex. P/3.

16. In view of the discussion aforesaid, I find no merit in this appeal which is liable to be dismissed.

17. In the result, this appeal fails and is hereby dismissed with costs. Counsel's fee Rs. 250/-if certified.