
(1964) 01 AHC CK 0024

In the Allahabad High Court

Case No : Second Appeal No's. 1355 of 1953 and 1538 of 1954

Union of India (UOI)

APPELLANT

Vs

Ramji Lal and Others

RESPONDENT

Date of Decision : 24-01-1964

Acts Referred:

Post Office Act, 1898 — Section 30, 6
Railways Act, 1890 — Section 72, 75

Citation : AIR 1965 All 184

Hon'ble Judges : S.N. Katju, J

Bench : Single Bench

Advocate : S.B.L. Gaur, for the Respondent

Final Decision : Allowed

Judgement

S.N. Katju, J.—These are two connected appeals which arise out of a suit filed by the plaintiff Ramji Lal against the first two defendants viz. Dominion of India through the Secretary, Central Government (Post and Telegraph Department), New Delhi and the Dominion of India through the General Manager, E. I. R. Calcutta, and the third defendant Firm Ananda and Co.

2. It was alleged that the plaintiff had sent ten harmoniums worth Rs. 950/- for defendant No. 3 from Aligarh to Howrah per P. W. B. No. 024768 on 15-2-1949 (weight 3 Mds. 20 Seers--10 cases, Railway freight to pay Rs. 34/15/-). The railway receipt was endorsed by the plaintiff in favour of defendant No. 3 and was despatched by a V. P. Letter for Rs. 950/- addressed to the third defendant on 18-2-1949. The said V. P. Letter was not delivered to the third defendant in the normal course but was tampered with and was cut open and the railway receipt was taken out from it, and, subsequently, the envelope was given back to the plaintiff in a damaged condition by open delivery on 13-6-1949 without the aforesaid railway receipt. The plaintiff was subsequently informed by the railway administration that the consignment in question was received at Howrah on 18-2-1949 and was delivered to the third defendant on 23-2-1949. The

defendant No. 3, however, denied taking delivery of the aforesaid consignment, and it was admitted by the second defendant that the consignment was taken by one Jumerati. The plaintiff prayed for recovery of Rs. 950/- together with interest etc. on account of the loss of the aforesaid harmoniums sent by him to defendant No. 3.

3. Defendant No. 3 contended that It was not at all liable and that the delivery of the consignment was never taken by it.

4. The first two defendants pleaded the bar of Section 80 of the C. P. C, It was contended by the first defendant that the V. P. Cover did not contain any railway receipt nor was it removed by or in collusion with the employees of the postal department; that Section 6 of the Indian Post Office Act barred the suit; and that, therefore, the plaintiff was not entitled to any relief. Defendant No. 2 contended that the plaintiff had no right to sue after the railway receipt had been endorsed in favour of defendant No. 3; that the defendant's servants were not guilty of negligence or misconduct; that the goods had been delivered to the consignee and that the suit was barred by Section 77 of the Indian Railways Act. It was further contended that the consignor had declared Rs. 120/- to be the value of the goods in the railway receipt and his claim for Rs. 1026/8/- was not maintainable,

5. The trial court found that the plaintiff was not entitled to any relief as against the third defendant, and the suit against it was dismissed. It decreed the suit for recovery of Rs. 1,026/8/- with future and pendente lite interest at the rate of 3% per annum simple as against the first and second defendants.

6. The decree of the trial court was affirmed by the lower appellate court. The court below held that the railway receipt had been consigned to "self". The plaintiff had made an endorsement thereon in favour of the third defendant. Since the latter could not take delivery of the goods, the plaintiff continued to remain the owner of the consignment and, as such, he was entitled to institute the suit in appeal. It further held that notices u/s 80 C. P. C. had been served on the first and second defendants. The court below repelled the contention of the first defendant that the suit was barred by Section 6 of the Indian Post Office Act. The facts found by the court below are that the plaintiff had sent the railway receipt under a V. P. Letter which was duly registered. It did not reach the addressee and was received back by the plaintiff who took an open delivery thereof with the railway receipt missing from it. It was found by the court below that the envelope contained the railway receipt when it was despatched and therefore, it could not be said that the envelope did not contain the aforesaid railway receipt.

7. The question, however, is whether under these circumstances the first defendant was protected by the provisions of Section 6 of the Indian Post Office Act. A postal article may be divided under the following categories:

1. A postal article sent by ordinary post

2. A postal article sent after registration at the post office.
3. A postal article sent after being insured; and
4. A postal article which is a value payable postal article.

An article sent by ordinary post would be transmitted if it is duly stamped. An article duly registered would only imply that the sender would be able to prove and show that the article had been sent by him to the addressee, and if it is made "acknowledgment due", he would get a receipt of the delivery of the same to the addressee. An article sent by value, payable post is registered in the same way as any other postal article is registered, and in addition it involves the duty of the postal authority to realise the amount due from the addressee and after realising it to pay it to the sender. The liability of the postal department is restricted to the payment of the amount realised by it from the addressee to the sender. If it does not pay the said amount to the sender after due realisation from the addressee, it would be liable to pay it to the sender. It is only in a postal article, which is insured, that the postal authority undertakes upon itself the liability to compensate against the "loss or damage in course of transmission by post" (Section 30 of the Indian Post Office Act). Section 33 of the Act makes it clear that the Central Government shall be liable to pay compensation subject to such conditions and restrictions as the Central Government may, by rules, prescribe. It shall be liable to pay compensation, not exceeding the amount for which a postal article has been insured, to the sender thereof for the loss of the postal article or its contents, or for any damage caused to it in course of transmission by post. The proviso to the section says that the compensation so payable shall in no case exceed the value of the article lost or the amount of the damage caused.

8. Section 6 of the Act runs thus:

"The Government shall not incur any liability by reason of the loss, misdelivery or delay of, or damage to, any postal article in course of transmission by post, except in so far as such liability may in express terms be undertaken by the Central Government as hereinafter provided; and no officer of the Post Office shall incur any liability by reason of any such loss, misdelivery, delay or damage, unless he has caused the same fraudulently or by his wilful act or default"

Its provisions can be divided into two parts. The first part deals with the liability of the Government and the Section expressly says that it shall not be liable except in so far as such liability is undertaken by the Central Government. The second part protects an officer of the Post Office and says that he shall not incur any liability by reason of any loss, misdelivery, delay of or damage to any postal article in course of transmission, unless he has caused the same fraudulently or by his wilful act or default. It will follow that while the Government is expressly protected from liability, an officer of the Post Office can be made liable provided he comes within the ambit of the rule laid down by the section.

9. The court below in course of its findings observed as follows:

"Neither the envelope was torn at the time it was delivered for transmission, nor did the plaintiff keep the R. R. himself as there was no sense in his doing so, nor did the plaintiff or his man take the delivery of the consignment. The envelope all along remained in the custody of the postal authorities during the course of its transit, it was handed over to the plaintiff in a cut condition and the R. R. missing therefrom. Surely it is wilful act or default on the part of the postal employees and Section 6 of Post Office Act does not come to its rescue from the liability".

10. The court below has apparently misconstrued the provisions of Section 6 of the Act. If the plaintiff wanted to fasten the liability on any particular officer of the postal department, he could have done so if it was established that the loss of the railway receipt had been caused by that particular officer or had been caused by his wilful act or default. The plaintiff did not seek to fasten the liability on any particular officer of the post office. On the contrary, he has sued the Dominion of India through the Secretary, Central Government (Post and Telegraph Department), New Delhi. It is thus obvious that liability is sought to be fastened on the Central Government but the question is expressly covered by the first part of the provisions of Section 6 of the Act. In a case, where any article is lost in transmission by post, the Central-Government can only be made liable if the aforesaid article is duly insured u/s 30 of the Act. If it is not insured, then the Central Government cannot be made liable. Learned counsel for the plaintiff relied on the case of Union of India (UOI) Vs. Firm Ram Gopal Hukum Chand and Others, . In the aforesaid case, my learned brother Dhavan discussed the scope of Section 8 of the Indian Post Office Act and expressed the following view.

"If the post office does not disclose facts which are within its exclusive knowledge, the court will presume that there was no loss, damage, misdelivery or delay in delivery, and the post office would not be entitled to the protection of Section 6".

I respectfully disagree with the aforesaid view expressed by my learned brother. The first part of Section 6 of the Act deals with the loss of a postal article in course of transmission by post and expressly says that the Government shall not incur any liability by reason of any such loss except in so far as such liability may in express terms be undertaken by the Central Government. It is immaterial whether the loss was properly explained by the department or it could not be so explained. An article is lost by the post office if it is not traceable in its office or its papers do not account for it. How that loss has occurred is entirely a different consideration. It might be due to the negligence of an officer of the post office or it might have disappeared due to other reasons. If the loss is not properly explained, there can be no presumption that the missing article has been misappropriated by someone within the department. My learned brother Dhavan, J. observed as follows:

In my opinion the disappearance of a postal article raises no presumption that it

has been lost within the Meaning of Section 6, The Court shall not presume, in defiance of grim reality, that the conditions in the post office and the standard of integrity of its officials is so perfect, that the disappearance of an article can only mean that it must have been lost by accident. In the absence of further evidence, the Court will hold that it is just as likely as not that the missing article has been misappropriated by someone within the department".

The loss of an article, so far as the post office is concerned, is entirely different from its misappropriation by any of its officer. If it is lost, so far as the department is concerned, it is wholly immaterial whether it has been misappropriated or it has disappeared due to the fraud or wilful act of any officer of the post office or of any other outside agency. The only material consideration for the purposes of Section 6 of the Act, so far as the Central Government is concerned, is whether a particular article" is to be found in the post office. So far as the post office itself is concerned if it is not found in the department, it is lost for the purposes of Section 6 of the Act, and the question as to who was responsible for its loss, becomes wholly immaterial, so far as the liability of the Government is concerned. I, therefore, respectfully disagree with the view expressed by my learned brother that under certain circumstances even if the article is lost, it could be presumed that there was no loss. In the present case, the article was undoubtedly lost, and the plaintiff did not seek relief against any particular officer of the post office. He sought relief against the Central Government, and the latter is undoubtedly protected by the provisions of Section 6 of the Act I would have referred the issue for decision by a larger Bench if the relief prayed for by the plaintiff was only confined against the first defendant, but he has claimed relief against the railway administration also viz. defendant No. 2 and since I am of the opinion, for reasons which I shall now proceed to give, that the second defendant is liable for the loss of the railway receipt and the plaintiff is entitled to a decree against the second defendant, it is not necessary for me to refer the case to a larger Bench.

11. The aforesaid railway receipt never reached the third defendant and was obviously taken away by some other person. The plaintiff only got the empty envelope. The consignment was received at Howrah on 18-2-1949 and on 23-2-1949 it was delivered to one Jumerati who obviously presented the railway receipt and took delivery of the consignment. The trial court observed as follows:

"On the back of the R. R. there is no endorsement by Ananda and Co. in favour of any one and much less in favour of the alleged Jumerati"

The railway receipt which was consigned to "self, bore an endorsement in favour of the third defendant Anand and Co. made by the plaintiff. There is another endorsement on the back of the railway receipt which is as follows:

"Anand and Co."

and below it are some letters which appear as "for self" but are not clearly legible, followed by the word "Prop." The trial court held that the aforesaid

endorsement could not be held to comprise a valid endorsement in favour of Jumerati. The lower appellate court also expressed the view as under:

"In the absence of any endorsement by Anand and Co. in favour of any one on the back of the R. R., this alleged delivery to Jumerati was quite uncalled for and In any cue unauthorised

In the present case no delivery was made against a duly endorsed R. R. The railway could not afford to act arbitrarily in this regard. In any circum stance it should have made the delivery against an indemnity bond".

12. Learned counsel for the second defendant contended that the aforesaid endorsement viz. "Anand and Co." was a sufficient endorsement which could enable Jumerati to take delivery of the consignment from the railway administration, and it was not the duty of the tatter to probe further into the matter when the railway receipt had been presented to it along with the aforesaid endorsement. I agree with the view of the court below that the endorsement was not sufficient to enable the railway administration to give delivery of the consignment to Jumerati. There should have been; a clear endorsement by a person who should have signed on behalf of Anand and Co. authorising Jumerati to take delivery of the consignment. Under these circumstances, I agree with the view of the court below that the second defendant could not escape its liability. It was further contended that Section 75 of the Indian Railways Act exempted the second defendant from any liability for the alleged loss of the consignment, and in any case, since the value of the consignment had been put down at Rs. 120/-, the plaintiff was not entitled to get any amount in excess of Rs. 120/-. The amount mentioned in the railway receipt is Rs. 120/- for "each", and the plaintiff had put down the total value of ten harmoniums at Rs. 950/- in the plaint, and it was further stated therein that the consignment consisted of ten harmoniums. From the allegations in the plaint, it would appear that there were ten separate packages. Particulars of the consignment were given in the first paragraph of the plaint where the expression "10 cases" occurs. No attempt was made by the railway administration to show that all the ten harmoniums were contained in one single parcel, and, in any case, the value of the parcel was not in excess of Rs. 120/-. The plaintiff had made a clear and categorical assertion in his statement that Rs. 120/- was the value of one hamonium, and it had been clearly put down in the railway receipt that each of the harmoniums was valued at Rs. 120/-. Under these circumstances, the second defendant cannot claim any protection u/s 75 of the Indian Railways Act The plaintiff is, therefore, entitled to a decree against the second defendant

13. I, therefore, dismiss S. A No. 1538 of 1954 preferred by the Union of India representing E. I. Rly., now Northern Railway, with costs. Second Appeal No. 1355 of 1953 preferred by the Union of India representing the Postal Department is allowed, but under the circumstances of the case, the parties will bear their own costs in this Court