
(1968) 11 MAD CK 0050

In the Madras High Court

Case No : Appeal No's. 38 (Tr.) 401 of 1962

Union of India (UOI)

APPELLANT

Vs

Seyadu Beedi Co. and Another

RESPONDENT

Date of Decision : 12-11-1968

Acts Referred:

Limitation Act, 1908 — Article 30, 19

Citation : AIR 1970 Mad 108

Hon'ble Judges : R. Sadasivam, J;K. Srinivasan, J

Bench : Division Bench

Advocate : K.C. Jacob, S.K.L. Ratan and R. Vendantham, for the Appellant; R. Gopalaswami Iyengar, T.R. Mani, S.M. Amjad Naina and S.M. Abdul Khadar, for the Respondent

Final Decision : Allowed

Judgement

Sadasivam, J.—The Union of India owning the Southern Railway, represented by the General Manager, Madras, has preferred these appeals against the common judgment in O. S. Nos. 5 of 1959 and 56 of 1960, on the file of the Subordinate Judge's Court, Tirunelveli, decreeing the claim for damages made by the plaintiff (in each of the suits). It is an undisputed fact that the respondent in each of the appeals consigned beedi parcels with the appellant-railway on 17th September, 1957 for being transported to Colombo and that the goods were drenched by water and damaged on 17th September, 1957, the very day on which they were loaded on the ship "S. S. Irwin" belonging to the appellant-railway. The learned Subordinate Judge Tirunelveli, negatived the pleas put forward by the appellant and decreed? the suits for damages.

2. Sri S. K. L. Ratan appearing for the appellant in these appeals argued the appeals mainly on the question of limitation and also to some extent on the question whether there was negligence and misconduct on the part of the railway to make them liable for damages.

3. On the merits of the case, we see no sufficient ground to differ from the finding of the trial Court. The goods of the respondents were loaded in No. 3 hatch in the ship and the loading was completed at 12-10 P. M. on 17th September, 1957 and the hatch was battened down. When the hatch was again opened to load other goods at about 2-45 P. M., it was found that the hold was flooded with sea water. The evidence of D. W. 8, Rama Rao, Marine Superintendent, Southern Railways, and the report Exhibit B-2 made by him show that there was no leak in ship and that in his opinion it appeared to be a case of planned sabotage. The ship was guarded by the employees of the appellant-railway and so the only reasonable inference is that the damage should have been caused either by the wilful acts of the appellant's employees, or by others on account of the negligence of the appellant's employees. We agree with the findings of the learned Subordinate Judge that the damage to the goods of the plaintiff in each of the suits was due to the misconduct on the part of the servants of the railway.

4, There is no dispute about the fact that Article 30 of the Limitation Act of 1908 applies to the facts of this case and it provides one year period of limitation for a suit against a carrier for compensation for losing or injuring goods and the time from which the period begins to run is "when the loss or injury occurs". In Union of India (UOI) Vs. Amar Singh, it has been held that the burden is upon the defendant-railway 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 and that the proposition is self-evident and no citation is called for. In construing Articles 30 and 31 of the Limitation Act, the Supreme Court has observed in Bootamal Vs. Union of India (UOI), , that ordinarily the words of a statute have to be given their strict grammatical meaning and equitable considerations are out of place, particularly in provisions of law limiting the period of limitation for filing suits or legal proceedings. Article 30 of the Limitation Act, as already pointed out, mentions that the time begins to run from the date when the loss or injury occurs. The actual loss or injury to the goods may occur on one date and the carrier may come to know of it only on a later date and the interval between the two dates may be more than one year. It would not be reasonable to construe the time from which the limitation commences to run under Article 30 of the Limitation Act of 1908 as the actual date of the loss or injury, and it is on account of this fact, the Courts rely on the date on which the carrier of the goods after coming to know of the loss or injury to the goods conveys the information to the consignor as the starting point for limitation. It is common knowledge that when a person loses an article, he may not be aware of the loss immediately, but only at some later date when he needs that article and searches for it and finds it missing. In Union of India Vs. B.L.N. Sitaramiah and Others, , a Bench of this Court has held that under Article 30 of the Limitation Act of 1908, limitation will begin to run only from the date on which the consignee was informed of the injury to the goods.

5. The learned Advocates for the respondents urged that in cases where the

consignor takes open delivery of the goods after ascertaining the extent of damage to the same, the period of limitation will commence to run only from the date of such open delivery. In *Union of India Vs. B.L.N. Sitaramiah and Others*, , the consignee took open delivery of the goods on 21st September, 1950 and even if that date was taken as the starting point for limitation, the suit was barred by limitation and it was in that context it was observed that limitation would, in any event start running from 21st September, 1950. We have already referred to the decision in that case that time will start to run only from the date on which the consignee became aware of the injury to the goods. In *M. Sultan Pillai and Sons, a registered partnership firm Vs. The Union of India (UOI) and Others*, , it has been held that in a suit for damage to goods against a carrier, the proper Article of the Limitation Act applicable is Article 30 and time will run from the date on which the consignee becomes aware of the damage and that the date of repudiation of the claim by the carrier cannot be the starting point of limitation in such cases. It is clear from the facts of that case that the plaintiff therein had come to know in a general way even prior to his taking open delivery on 6th December, 1956 that the tobacco consigned in that case had been wetted and damaged. It was held in that decision that limitation began to run only from 6th December, 1956 as

"the exact nature of the injury and quantum thereof on which alone he could have claimed damages was known to him only when the goods were examined after opening each bag and ascertaining its condition."

6. It depends on the facts and circumstances of each case as to when the plaintiff suing a carrier for compensation for losing or injuring the goods really comes to know of the loss or injury to his goods. Thus the above decision could be distinguished on the facts of that case. If, however, the decision purports to lay down that it is only when the plaintiff comes to know the nature of the injury and the extent of the same, irrespective of prior knowledge that his goods were injured, the period of limitation would commence, it would be opposed to the plain wording of Article 30 of the Limitation Act and the decision of the Supreme Court in *Jetmull Bhojraj Vs. The Darjeeling Himalayan Railway Co. Ltd. and Others*, . It is clear from this decision that according to column (3) of Article 30 of the Limitation Act, the starting point of limitation would be the date of the loss or injury to the goods, though after the goods were consigned by the consignor he would not be in a position to know the precise date on which the loss or injury has occurred and that the burden would be on the railway administration who want to nonsuit the plaintiff on the ground of limitation to establish that the loss or injury occurred more than one year before the institution of the suit.

We have already referred to the decision in *Union of India Vs. B.L.N. Sitaramiah and Others*, , where it has been held that the time will start to run from the date on which the consignee became aware of the injury to the goods. The decision in *East Indian Railway and Others Vs. Gopilal Sharma*, , that the time does not run from the date of plaintiffs knowledge and that it begins to run from the date

when the injury was actually caused and that the burden of proving when the injury was caused rests upon the carrier has been cited with approval in that decision. Thus even in a case falling under Article 49 of the Limitation Act for compensation for injury to property, the period of limitation commences from the date when the property is injured. The period of limitation could not be put to a later date when the extent of the injury is ascertained, or the quantum of actual damages is assessed. If [he Legislature intended to fix the date of the assessment of the actual damages as the starting point of limitation, it would have specifically expressed it in unambiguous terms. We have already referred to the decision in *Bootamal Vs. Union of India (UOI)*, where it has been pointed out that the words of a statute have to be given their strict grammatical meaning and equitable considerations are out of place, particularly in provisions of law limiting the period of limitation for filing suits or taking legal proceedings.

7. We shall first deal with the claim of the plaintiff in O. S. No. 5 of 1959 on the file of the Sub Court, Tirunelveli. Exhibits A-14 to A-17 show that the assessment of damages to the plaintiffs goods was made on 13th November, 1957. Even if this is taken as the starting point of limitation, and two months' time required to be given to the defendant in giving notice u/s 80, CPC is excluded, the suit should have been filed on 13th January, 1959. But the suit was actually filed on 30th January, 1959. The suit is, therefore, clearly barred by limitation. But the learned Subordinate Judge accepted the plea of the plaintiff that there was an acknowledgment of liability by the railway in Exhibit A-32, which is as follows:--

"While acknowledging receipt of your notice referred to above on behalf of your clients Messrs. Seyadu Beedi Company, Sindu Poondurai, Tirunelveli, I have to state, that the Railway is having the matter thoroughly investigated and that the cause of damage by water is being enquired, and it is hoped your clients will be advised definitely on the finalisation of the claim shortly.

If, however, in the meanwhile, your clients take the matter to Court, please note and notify them that they will be held liable for all costs the Railway incur in such a proceeding."

Admittedly, there is no express acknowledgment of liability in this communication sent by the railway to the plaintiff. Sri R. Gopala-swami Iyengar appearing for the respondent-plaintiff urged that on a reading of the plaintiffs Advocate's notice Exhibit A-29 along with this letter Exhibit A-32, it will be clear that there is an implied acknowledgment of liability. The railway has merely acknowledged the receipt of the notice Exhibit A-29 sent by the plaintiff. The fact that the Chief Commercial Superintendent of the Southern Railway has mentioned in Exhibit A-32 that the claim of the plaintiff was under investigation and that he will be advised definitely on the finalisation of the claim cannot be construed as even an implied admission of liability. The further statement in Exhibit A-32 calling upon the plaintiff to abstain from rushing to Court and threatening him that he would be held liable for costs if he did so could not also be considered as an implied acknowledgment of liability, on the ground that the plaintiff was invited to desist

from suit on promise of settlement. It is not possible to spell out an admission of liability by even a liberal construction of the letter. Exhibit A-32. The claim of the plaintiff in O. S. No. 5 of 1959, on the file of the Sub-Court, Tirunelveli, is clearly barred by limitation.

8. The plaintiff in O. S. No. 56 of 1960, Sub-Court Tirunelveli, took open delivery of the goods on 10th December, 1957. If he had no prior knowledge of the injury to his goods, he could certainly rely on the date of Exhibit A-64 as the starting point for limitation and the suit would be within time as found by the lower Court. But the Chief Commercial Superintendent has given intimation to the plaintiff in O. S. No. 58 of 1960, on the file of the Sub-Court, Tirunelveli, of the injury to the goods even by his letter Exhibit A-63, dated 9th October, 1957, which the plaintiff had received on 13th October, 1957, as mentioned in paragraph 5 of the plaint. Hence the period of limitation would commence to run from 13th October, 1957, and the suit should have been filed on or before 13th December, 1958. But the suit was actually filed on 17th December, 1958, after a delay of four days. The certificate of damages and shortages marked as Exhibit A-64 can hardly be construed as an express or implied acknowledgment of liability to pay compensation or damages to the plaintiff. The certificate Exhibit A-64 is only with regard to the assessment of damages to the plaintiff's goods and it has nothing to do with the liability of the Southern Railway to the Plaintiff. The claim of the plaintiff in O. S. No. 56 of 1960, on the file of the Sub-Court, Tirunelveli, is also barred by limitation.

9. Sri K. Gopalaswamy Iyengar appearing for the respondent in Appeal No. 38 of 1962 urged that, in any event, he would be entitled to recover Rs. 4800 mentioned in paragraph 11 of the plaint from the Southern Railway. The said amount represents the duty paid by the plaintiff to the Central Excise and the plaintiff would be entitled to get a refund of the same if the goods had been exported outside India. In his notice Exhibit A-37, the plaintiff in O. S. No. 5 of 1959, on the file of the Sub-Court, Tirunelveli, has claimed the total damages of Rs. 38,455-16, as falling under two heads mentioned in paragraphs 8 and 9 of the said notice. The plaint in this case is in conformity with the notice and paragraph 12 of the plaint refers to the total damages of Rs. 38,455-16 as falling under the two heads mentioned in the two prior paragraphs. The claim against the Southern Railway for the entire compensation claimed in the suit is one falling under Article 30 of the Limitation Act. We, therefore, fail to see how the claim for compensation for the loss of duty paid by the plaintiff in respect of which he could have got refund, if the goods had been exported outside India, would stand independent of the compensation for injury to the goods.

10. For the foregoing reasons, the decree and judgment in both the suits, O. S. No. 5 of 1959 and O. S. No. 56 of 1960, on the file of the Sub-Court, Tirunelveli, are set aside and the suits are dismissed on the ground that they are barred by limitation. But, in view of the fact that the appellant-railway succeeds only on the question of limitation, we direct the parties in each of the appeals to bear their

respective costs in both the Courts.