
(1964) 01 PAT CK 0011
In the Patna High Court
Case No : Civil Revision No. 537 of 1961

Union of India(UOI)

APPELLANT

Vs

Mohammad Yattam Abdul Sattar

RESPONDENT

Date of Decision : 08-01-1964

Acts Referred:

Railways Act, 1890 — Section 72, 80

Citation : AIR 1964 Patna 486

Hon'ble Judges : U.N. Sinha, J;S.P. Singh, J

Bench : Division Bench

Advocate : P.K. Bose, for the Appellant; S. Mustati, for the Respondent

Final Decision : Allowed

Judgement

1. This application has been filed by the Union of India as owner of the Eastern Railway. It is directed against a decree, passed on remand, by the learned Additional Subordinate Judge on the 17th of February, 1961, in Money Appeal No. 48/26 of 1959.

2. This application arises under the following circumstances: Money Suit No. 547/11 of the 1958/59 in the Court of the Munsif 1st Court, Sasaram, was instituted by the plaintiff, claiming Rs. 966.61 nP. according to Schedule B of the plaint. The suit was instituted against the Union of India through the General Manager, Eastern Railway, Calcutta, and the General Manager, Northern Railway, New Delhi. A joint or severable decree was prayed for as against these two Railways. It appears that, subsequently, the name of the General Manager, Northern Railway, New Delhi, defendant No. 2, was expunged from the record by order dated the 13th of August, 1958. We are, therefore, concerned, now, with a suit filed by the plaintiff against the Union of India through the General Manager, Eastern Railway. It was alleged in the plaint that one bale of goods was booked at Kanpur Central Railway Station on the 2nd of February, 1958, to be carried and delivered at Sasaram. Dire to wilful negligence and misconduct on the part of the Railway administration and their staff concerned, the consignment was not

delivered until the institution of the suit. It was alleged that due to this non-delivery of the consignment, the plaintiff had suffered a loss to the extent of Rs. 966.61 nP. Other assertions in the plaint are not necessary to be repeated at this stage.

3. A written statement was filed, in due course, by the Union of India as owner of the Eastern Railway, stating, amongst others, that the defendant denied liability for the alleged loss of goods, as the same had been caused, under circumstances beyond control of the Railway administration. It was also asserted that the defendant had taken as much care as was necessary for a bailee for the goods in question.

(4) Upon the allegations of the parties, the following issues were framed by the learned trial Judge, namely :-

1. Is the suit maintainable?
2. Are the alleged notices u/s 77 I.R. Act and 80, C. P. C. legal and valid and have they been served validly?
3. Is the Eastern Railway Administration liable?
4. Can the plaintiff sue?
5. To what relief is the plaintiff entitled?

Then, on contest, the suit was decided against the plaintiff and it was dismissed. It was held that the suit against the Eastern Railway alone, without impleading the Northern Railway, could not be maintained, for the reasons given by the learned trial judge. This judgment and decree were affirmed on appeal, and the plaintiff came up to this Court in Civil Revision No. 583 of 1950. This Civil Revision application was decided on the 20th of August, 1960, and the decree of the court of appeal below was set aside and the case was remanded to the appellate court for determination of the questions mentioned in the judgment of this Court. This Court held that it must be determined whether the case involved non-delivery or loss, before any final decision could be given. After remand, the court of appeal below has decreed the plaintiff's suit, having held that the plaintiff's case was a case of non-delivery, and that a case of loss, as contended for by the defendant, had not been proved.

5. Learned counsel for the defendant-petitioner has contended that non-delivery of the Roods to the plaintiff at Sasaram could not furnish a cause of action on which the present suit could have succeeded against the Eastern Railway. It is contended that under old Section 80 of the Indian Railways Act, which applied to the instant, case, the plaintiff should have alleged and proved that a loss, if the plaintiff bases his case on loss, had taken place on the Eastern Railway. Reliance is placed by learned counsel on the case of Governor General in Council Vs. Musaddi Lal, . It appears to us, upon a consideration of old Sections 72 and 80 of the Indian Railways Act, that the plaintiff's suit against the Eastern Railway

should not have been decreed on the ground of non-delivery alone, at Sasaram. The goods had been delivered to the Northern Railway administration at Kanpur, to be carried by railway, and u/s 80 of the Act, the plaintiff could sue the Eastern Railway administration, on an allegation of loss on the Eastern Railway, and he could successfully obtain a decree against the Eastern Railway by proof of such loss. We are now not referring to the expressions "injury" and "destruction", mentioned in Sections 72 and 80 of the old Act, on the ground that, presumably the plaintiff's case was one of loss of the goods delivered at Kanpur. Apparently, sufficient attention was not paid by the parties, at the stage at which the suit was heard by the trial Court, and it is only at this stage that light has been thrown in the matter.

The decision of the Supreme Court, mentioned above, states in paragraph 5 that failure to deliver is the consequence of loss or destruction of goods; it does not furnish the cause of action on which a suit may lie, distinct from a cause of action for loss or destruction. From the plaint filed by the plaintiff it appears that the cause of action was based on loss of the goods, although it was not so specifically stated in the plaint. It was only mentioned that by non-delivery the plaintiff had suffered loss to the extent of Rs. 966.61 nP. But that the plaintiff had based his cause of action on loss was understood by the defendant, as from paragraph 6 of the written statement it appears that defence was taken that "the alleged loss of the goods" had been caused under circumstances beyond control of the Railway administration. Apparently, at previous stages, sufficient attention was not focussed upon Section 80 of the old Railways Act for the purpose of making the Eastern Railway administration liable, it appears to be a fit case, therefore, where the suit should be remitted to the trial Court for re-consideration. If necessary, the plaintiff will be permitted to amend his plaint by making out the specific case that he wishes to make against the Eastern Railway administration. If necessary, the defendant should also be permitted to file a supplementary written statement controverting any new fact alleged by the plaintiff in his pleading. It appears to be a fit case, also, where the parties should be allowed reasonable opportunity to adduce fresh evidence for the purpose of determining the points that arise under the issues framed by the Court. If necessary, the issues may also be recast for the decision of the real points in controversy. The plaintiff will now have to prove, to the satisfaction of the trial court, as to the basis on which he can successfully obtain a decree against the Eastern Railway administration.

6. This application is, therefore, allowed, the judgment and decree of the court below are set aside and the suit is remitted to the trial Court with the directions mentioned above. Costs will abide the result.