Union of India

Vs

Amar Singh

Civil Appeal No. 478 of 1957

(P. B. Gajendragadkar, K. Subba Rao, J. C. Shah JJ)

28.10.1959

JUDGEMENT

SUBBA RAO J. –

This appeal on a certificate granted by the High Court of Judicature for Punjab at Chandigarh is directed against its judgment confirming that of the Subordinate Judge, First class, Delhi, in a suit filed by the respondent against the appellant for the recovery of compensation in respect of non-delivery of goods entrusted by the former to the latter for transit to New Delhi.

On August 15, 1947, India was constituted into two Dominions, India and Pakistan; and soon thereafter civil disturbances broke out in both the Dominions. The respondent and other, who were in government employment at Quetta, found themselves caught in the disturbances and took refuge with their household effects in a government camp. The respondent collected the goods of himself and of sixteen other officers, and on September 4, 1947 booked them at Quetta Railway Station to New Delhi by a passenger train as per parcel way bill No. 317909. Under the said bill the respondent was both the consignor and consignee. The N.W. Railway (hereinafter called the Receiving Railway) ends at the Pakistan frontier and the E.P. Railway (hereinafter called the Forwarding Railway) begins from the point where the other line ends; and the first railway station at the frontier inside the Indian territory is Khem Karan. The wagon containing the goods of the respondent and others, which was duly sealed and labelled indicating its destination as New Delhi, reached Khem Karan from Kasur, Pakistan, before November 1, 1947, and the said wagon was intact and the entries in the "inward summary" tallied with the entries on the labels. Thereafter it travelled on its onward march to Amritsar and reached that place on November 1, 1947. There also the wagon was found to be intact and the label showed that it was bound to New Delhi from Quetta. On November 2, 1947, it reached Ludhiana and remained there between November 2, 1947, and January 14, 1948; and the "vehicle summary" showed that the wagon had a label showing that it was going from Lahore to some unknown destination. It is said that the said wagon arrived in the unloading shed at New Delhi on February 13, 1948, and it was unloaded on February 20, 1948; but no immediate information of the said fact was given to the respondent. Indeed, when the respondent made an anxious enquiry by his letter dated February 23, 1948, the Chief Administrative Officer informed him that necessary action would be taken and he would be addressed again on the subject. After further correspondence, on June 7, 1949, the Chief Administrative Officer wrote to the respondent to make arrangements to take delivery of packages lying at New Delhi Station, but when the respondent went there to take delivery of the goods he was told that the goods were not traceable. On July 24, 1948, the respondent was asked to contact one Mr. Krishan Lal, Assistant Claims Inspector, and take delivery of the goods. Only a few articles, fifteen in number and weighing about 6 1/2 maunds, were offered to him subject to the condition of payment of Rs. 1,067-

8-0 on account of freight, and the respondent refused to take delivery of them. After further correspondence, the respondent made a claim against the Forwarding Railway in a sum of Rs. 162,123 with interest as compensation for the non-delivery of the goods entrusted to the said Railway, and, as the demand was not complied with, he filed a suit against the Dominion of India in the Court of the Senior Sub-ordinate Judge, Delhi, for recovery of the said amount.

The defendant raised various pleas, both technical and substantive to non-suit the plaintiff. The learned Subordinate Judge raised as many as 15 issues on the pleadings and held that the suit was within time, that the notice issued compiled with the provisions of the relevant statutes, that the respondent had locus standi to file the suit and that the respondent had made out his claim only to the extent of Rs. 80,000; in the result, the suit was decreed for a sum of Rs. 80,000 with proportionate costs.

The appellant carried the matter on appeal to the High Court of Punjab, which practically accepted all the findings arrived at by the learned subordinate Judge and dismissed the appeal.

In this Court the appellant questions the correctness of the said decree. Learned Counsel for the appellant raised before us the following points : (1) there was no privity of contract between the respondent and the Forwarding Railway, and if he had any claim it was only against the Receiving Railway; (2) the suit was barred by limitation both under Art. 30 and Art. 31 of the Indian Limitation Act and it was not saved by any acknowledgment or acknowledgments of the claim made with s. 19 of the Limitation Act; and (3) the notice given by the respondent under s. 77 of the Indian Railway Act, 1890, did not comply with the provisions of the said section inasmuch as the claim for compensation made thereunder was not preferred within six months from the date of the delivery of the goods for carriage by the Railway.

The third point may be taken up first and disposed of shortly. Before the learned Subordinate Judge it was conceded by the learned Counsel for the defendant that the notice, Ex. P-32 fully satisfied the requirements of s. 77 of the Indian Railway Act, and on that concession it was held that a valid notice under s. 77 of the said Act had been given by the respondent. In the High Court no attempt was made to question the factum of this concession; nor was it questioned by the appellant in its application for special leave. As the question was a mixed one of fact and law, we would not be justified to allow the appellant at this very late stage to reopen the closed matter. We, therefore reject this contention.

The learned Counsel, for the appellant elaborates his first point thus : The Receiving Railway, be argument proceeds entered into an agreement with the respondent to carry the goods for consideration to their destination i.e. New Delhi, and in carrying out the terms of the contract it might have employed the agency of the Forwarding Railway, but the consign by the benefit was not in any way concerned with it and if loss was caused to him by the default or negligence of the Receiving Railway, he could only look to it for compensation and he had no cause of action against the Forwarding Railway.

This argument is not a new one but one raised before and the Courts offered different solutions based on the peculiar facts of each case. The decided cases were based upon one or other of the following principles : (i) the Receiving Railway is the agent of the Forwarding Railway; (ii) both the Railways constitute a partnership and each acts as the agent of the others; (iii) the Receiving Railway is the agent of the consignor in entrusting the goods to the Forwarding Railway : an instructive and exhaustive discussion on the said three principles in their application to varying

situations is found in Kulu Ram Maigraj v. The Madras Railway Company (I.L.R. 3 Mad. 240), G.I.P. Railway Co. v. Radhakisan Khushaldas (I.L.R. 5 Bom. 371), and Bristol and Exeter Railway v. Collins (VII H.L.C. 194); (iv) the Receiving Railway, which is the bailee of the goods, is authorized by the consignor to appoint the Forwarding Railways a sub-bailee, and, after such appointment, direct relationship of bailment is constituted between the consignor and the sub-bailee; and (v) in the case of through booked traffic the consignor of the goods is given an option under s. 80 of the Indian Railway Act to recover compensation either from the Railway Administration to which the goods are delivered or from the Railway Administration in whose jurisdiction the loss, injury, destruction or deterioration occurs. Some of the aforesaid principles cannot obviously be applied to the present case. The statutory liability under s. 80 of the Indian Railway Act cannot be invoked, as that section applies only to a case of through booked traffic involving two or more Railway Administration in India; whereas in the present case the Receiving Railway is situated in Pakistan and the Forwarding Railway in the Indian territory. India and Pakistan are two independent sovereign powers, and by the doctrine of lex loci contractus, s. 80 cannot apply beyond the territories of India; nor can the respondent rely upon the first two principles. There is no allegation, much less proof, that there was any treaty arrangement between these two states governing the rights inter se in the matter of through booked traffic.

This process of elimination leads us to the consideration of the applicability of principles (iii) and (iv) to the facts of the present case. The problem presented can only be solved by involving the correct principle of law to mould the relief on the basis of the facts found.

We shall first consider the scope of the fourth principle and its applicability to the facts of this case. Section 72 of the Indian Railway Act says that the responsibility of a railway administration for the loss destruction or deterioration of animals or goods delivered to the administration to be carried by railway shall, subject to the other provisions of the Act, be that of a bailee under s. 151, 152 and 161 of the Indian Contract Act, 1872. Section 148 of the Indian Contract Act defines "bailment" thus :

> "A 'bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them."

G. W. Patson in the book "Bailment in the Common Law" says, at p. 42, thus :

> "If a bailee of a res sub-bails it by authority, then according to the intention of the parties, the third person may become the immediate bailee of the owner, or he may become a sub-bailee of the original bailee."

At p. 44 the learned author illustrates the principle by giving as an example a carrier of goods entrusting them to a note carrier for part of the journey. One of the illustrations give in by Byles J. in Bristol And Exeter Railway v. Collins (VII H.L.C. 194, 212) is rather instructive and it visualises a situation which may be approximated to the present one and it is as follows :

> "The carrier receiving the goods may, therefore, for the convenience of the public or his customers, adopt a third species of contract. He may say "We do not choose to under take responsibilities for negligence and accidents beyond our limits of carriage, where we have no means of preventing such negligence or accident; and we will not, therefore, undertake the carriage of your goods from A to B., but we will be carriers as far as our line extends, or our vehicles go, and we will be carriers no further; but

> to protect you against the inconvenience and trouble to which you might be exposed if we only under took carry to the end of our line of carriage, we will undertake to forward the goods by the next carriers, and on so doing our liability shall cease, and our character of carriers shall be at an end; and for the purpose of so forwarding and of saving the trouble of two payments, we will take the whole fare, or you may pay as one charge at the end; but if we receive it will receive it only as your agents for the purpose of ultimately paying the next carriers."

We may add to the illustration the further fact that the Forwarding Railway is in India, a foreign country in relation to the country in which the Receiving Railway is situate.

Relying upon the said passages, an argument is advanced to the effect that the consignor i.e.., the respondent authorised his bailee, namely, the Receiving Railway, to entrust the goods to the Forwarding Railway during their transit through India to their destination and the facts disclosed in the case sustain in the said plea. There is no document executed between the respondent and the Receiving Railway where under the Receiving Railway was expressly authorised to create the Forwarding Railway the immediate bailee of the owner of the goods. Ex. P-50, the railway receipt dated September 4, 1947, does not expressly confer any such power. But the facts found in the case irresistibly lead to that conclusion. There was no treaty between the two countries in the matter of through traffic; at any rate, none has been placed before us. What we find is only that the Receiving Railway received the goods of the respondent and delivered the wagon containing the said goods to the care of the Forwarding Railway, and the latter took over charge of the wagon, carried it to New Delhi and offered to deliver the goods not lost to the respondent on payment of the railway freight. In the absence of any contract between the two Governments of the Railways, the legal basis on which the conduct of the respondent and the Railways can be sustained is that of the respondent delivered the goods to the Receiving Railway with an authority to create the Forwarding Railway as his immediate bailee from the point the wagon was put on its rails.

The same result could be achieved by approaching the case from the different perspective. Section 194 of the Indian Contract Act says :

> "Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him."

The principle embodied in this section is clearly stated the Thesiger L.J. In De Buasche v. Alt ((1878) L.R. 8Ch. D. 286, 310) at p. 310 thus :

> "But the exigencies of business do from time to time render necessary the carrying out of the instructions of a principals by a person other than the agent originally instructed for the purpose, and where that is the case, the reason of the thing requires that the rule should be relaxed, so as, on the one hand to enable the agent to appoint what has been termed "a sub-agent" or "substitute"; and, on the other hand, to constitute, in the interests and for the protection of the principal, a direct privity of contract between him and such substitute."

The aforesaid facts clearly indicate that the respondent appointed the Receiving Railways as his agent to carry his goods on the railway to a place in India with whom Pakistan had no treaty

arrangement in the matter of through booked traffic. In that situation the authority in the agent must necessarily be implied to appoint the Forwarding Railway to act for the consignor during that part of the journey of the goods by the Indian Railway; and, if so, by force of the said section, the Forwarding Railway would be an agent of the consignor.

If no such agency can be implied, in our view, a tract agreement between the Receiving Railway and the Forwarding Railway to carry the respondent's goods to their destination may be implied from the facts found and the conduct of all the parties concerned. If the Receiving Railway was not an agent of the Forwarding Railway, and if there was no arrangement between the two Governments, the position in law would be that the foreign railway administration, having regard to the exigencies of the situation obtaining during those critical days, brought the wagon containing the goods of the respondent and left it with the Forwarding Railway, and the latter consciously took over the responsibility of the bailee, carried the wagon to New Delhi and offered to deliver the goods to the respondent. The respondent also accepted that relationship and sought to make the Forwarding Railway responsible for the loss as his bailee. On these facts and also on the basis of the course of conduct of the parties, we have no difficulty in implying a contract of bailment between the respondent and the Forwarding Railway.

We may also state that s. 71 of the Indian Contract Act permits the recognition of a contract of bailment implied by law under circumstances which are of lesser significance than those present in this case. The said section reads :

> "A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee."

If a finder of goods, therefore, accepts the responsibility of the goods, he is placed vis-a-vis the owner of the goods in the same position as a bailee. It if be held That the Railway Administration in Pakistan for reasons of policy or otherwise left the wagon containing the goods within the borders of India and that the Forwarding Railway Administration took them into their custody, it cannot be denied that their responsibility in regard to the said goods would be that of a bailee. It is true there is an essential distinction between a contract established from the conduct of the parties and a quasi-contract implied by law; the former, though not one expressed in words, is implied from the conduct and particular facts and the latter is only implied by law, a statutory fiction recognized by law. The fiction cannot be enlarged by analogy or otherwise. As we have held that the Receiving Railway was authorized by the respondent to engage the Forwarding Railway as his agent or as his bailee, this section need not be invoked. But we would have had no difficulty to rely upon it if the Forwarding Railway was equated to a finder of goods within the meaning of the section.

If so, the next, question that arises is what is the extent of the liability of the appellant in respect of the goods of the respondent entrusted to it for transit to New Delhi. We have held that, in the circumstances of the present case, the application of the provisions of s. 80 of the Indian Railway Act is excluded. If so, the liability of the Forwarding Railway is governed by s. 72 of the said Act. Under that section the responsibility of a railway administration for the loss, destruction or deterioration of animals of goods delivered to the administration to be carried by railway shall, subject to the other provisions of the Act, be that of a bailee under ss. 151, 152 and 161 of the Indian Contract Act, 1872. Under s. 151 of the Indian Contract Act, the bailee is bound to take such care of the goods bailed to him as a man of ordinary prudence would under similar circumstances take of his own goods of the same bulk, quality, and value of the goods bailed; and under s. 152 thereof, in the absence of any special contract, he is not responsible for the loss destruction or

deterioration of the thing bailed, if he has taken such amount of care of it as described in s. 151. In other words, the liability under these sections is one for negligence only in the absence of a special contract Generally goods are consigned under a risk note under which the Railway Company is absolved of all liability or its liabilities modified. No such risk note is forthcoming in the present case. The question, therefore, reduced itself to an enquiry whether, on the facts, the Forwarding Railway observed the standard of diligence required of an average prudent men. The facts found by the High Court as well as by the Subordinate Judge leave no room to doubt that the Forwarding Railway was guilty of negligence in handling the goods entrusted to its care. The wagon reached Khem Karan intact. D.W. 4 deposed that he received from the guard of the train that brought the wagon to the station the inward summary and that on checking the train with the aid of that summary he found that the wagon was intact according to the summary. He also found the seals and labels of the wagon intact and that the 'inward summary' tailed with the entries on the labels. It may, therefore, be taken that when the forwarding Railway took over charge of the goods they were intact. The evidence of P.W. 1, Thakar Das, establishes that even at Amritsar the wagon was intact. But, thereafter in its onward march towards New Delhi it does not appear on the evidence that the necessary care was bestowed by the railway authorities in respect of the said wagon. The said wagon remained in the yard of Ludhiana Station between November 2, 1947, and January 14, 1948, and also it appears from the evidence that when it reached that place the label showed that its destination was unknown. What happened during these months is shrouded in mystery. It is said that said wagon arrived at New Delhi on February 13, 1948, and that the Goods Clerk, Ram Chander, unloaded the goods in the presence of the head watchman, Ramji Lal and head constable, Niranjan Singh, when it was discovered that only 15 packages were in the wagon and the rest were lost. The Goods Clerk, Ram Chander (D.W. 4), the head watchman, Ramji Lal (D.W. 7), the Assistant Train Clerk, Krishan Lal (D.W. 8) and the head constable, Niranjan Singh (D.W. 16), speak to the said facts, but curiously no contemporaneous relevant record disclosing the said facts was filed in the present case. We cannot act upon the oral evidence of these interested witnesses in the absence of such record. No information was given to the respondent about the arrival at New Delhi of the said wagon. Only on June 7, 1948, i.e., nearly four months after the alleged arrival of the wagon, the respondent received a letter from the Chief Administrative Officer asking him to effect delivery of the packages laying New Delhi Station; but to his surprise, when the respondent went to take delivery no goods were to be found there. Only on August 18, 1948 the appellant offered to the respondent a negligible part of the goods in a damaged condition subject to the payment of the railway freight, and the respondent refuse to take delivery of the same. From the said facts it is not possible to hold that the railway administration bestowed such care on the goods as is expected of an average prudent man. We, therefore, hold that the Forwarding Railway was guilty of negligence.

Then remains the question of limitation. The relevant articles are arts. 30 and 31 of the Indian Limitation Act. They read :

#---------- Description of suit Period Time from which of period begins limitation. to run.----------30 Against a carrier for compensation for One year When the loss or losing or injuring injury occurs. goods.31 Against a carrier for compensation for non-delivery of One year When the goods or delay in delivering ought to be goods. delivered.---------- ##

Article 30 applies to a suit by a person claiming compensation against the railway for its losing or injuring his goods; and art. 31 for compensation for non-delivery or delay in delivering the goods.

The learned Counsel for the appellant argued that art. 30 would apply to the suit claim, whereas the learned Counsel for the respondent contended that art. 31 would be more appropriate to the suit claim. We shall assume that art. 30 governed the suit claim and proceed to consider the question on that basis.

The question now is, when does the period of limitation under art. 30 start to run against the claimant ? The third column against art. 30 mentioned that the said claim should be made within one year from the date when the loss or injury occurs. The burden is upon the defendant 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. The proposition is self-evident and no citation is called for.

Has the defendant, therefore, on whom the burden rests to prove that the less occurred beyond the prescribed period, established that fact in this case ? The suit was filed on August 4, 1949. In the plaint the plaintiff has stated that loss to the goods has taken place on the defendant-railway, and, therefore, delivery has not been effected though in the written, statement there was a vague denial of this fact the evidence already noticed by us established beyond any reasonable doubt that the goods were lost by the Forwarding Railway when the were in its custody. But there is no clear evidence adduced by the defendant to prove when the goods were lost. It is argued that the goods must have been lost by the said Railway at the latest on February 20, 1948, when the goods are alleged to have been unloaded from the wagon at the New Delhi Station; but we have already discussed the relevant evidence on the question and we have held that the defendant did not place before the Court any contemporaneous record to prove when the goods were taken out of the wagon. Indeed, the learned Sub-ordinate Judge in a considered judgment held that it had not been established by the Forwarding Railway that the goods were lost beyond the period of limitation. The correctness of this finding was not canvassed in the High Court, and for the reasons already mentioned, on this material produced, there was every justification for the findings. If so, it follows that the suit was well within time. In this view it is not necessary to express our opinion on the question another there was a subsequent acknowledgment of the appellant's liability within the meaning of art. 19 of the Indian Limitation Act.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

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