Lakshmi Bangle Stores

Vs

Union of India and Others

Civil Appeal No. 517 of 1976

(Kuldip Singh, K. Ramaswamy JJ)

06.12.1990

JUDGMENT

KULDIP SINGH, J. -

1. Messrs Lakshmi Bangle Stores instituted a suit for damages against the Eastern Railway and the South-Eastern Railway though Union of India. The trial court dismissed the suit. On appeal a Division Bench of the High Court set aside the findings of the trial court on merits but dismissed the appeal on the ground that the suit was barred by limitation. This appeal via special leave petition is against the judgment of the High Court.

2. We may state the necessary facts. The appellant booked a rail wagon for consignment of bangles from Ferozabad to Srikakulam on June 3, 1964. He declared the value of the consigned goods as Rs. 25,000. The wagon loaded with the glass bangles met with an accident at Ganguti Railway Station on June 22, 1964 and was damaged. Thereafter, the bangle cases were transferred to another wagon by the railway authorities. The consignment reached Srikakulam on July 25, 1964 and an open assessment delivery of the goods was made to the appellant on September 4, 1964. The appellant found that more than half of the bangles were damaged. According to the appellant the actual value of the bangles was Rs. 56,837.04 and the value of the undamaged stock delivered back to him was Rs. 27,752.87. The appellant thus claimed damages to the tune of Rs. 32,869.87. The respondents contested the claim of the appellant. It was pleaded that the appellant having declared the value of the entire consignment as Rs. 25,000 he could not claim damages by enhancing the value to Rs. 56,837.04. It was also stated that in view of the provisions of Section 77-B of the Indian Railways Act the appellant was not entitled to the damages. It was further pleaded that the suit having been filed beyond the period of 3 years from the date of accident, when loss to the property occurred, the same was barred by limitation under Article 10 of the Limitation Act.

3. The trial court in its judgment dated February 7, 1970 came to the following conclusions :

> (1) The accident which occurred on June 20, 1964 was due to the negligence and carelessness of the railway servants and was not providential.
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> (2) The damaged bangles were delivered to the appellant-plaintiff on September 4, 1964, when the extent of loss to the goods, was known. Counting the period of limitation from September 4, 1964, the suit was within limitation.
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> (3) Section 77-B of the Indian Railways Act was not attracted to the facts of the case.

(4) The appellant-plaintiff having declared the value of the goods at Rs. 25,000 he was estopped from contending that the said value was more than that amount.

4. In view of the above findings, the appellant having received back from the railway undamaged goods of the value of Rs. 27,754.87, which value was more than the declared value, his suit was dismissed by the trial court.

5. The High Court approved the findings of the trial court to the effect that the accident was due to the negligence of the railway servants and that Section 77-B of the Indian Railways Act was applicable. The High Court, however, reversed the findings of the trial court on the point of limitation and also on valuation. The High Court came to the conclusion that the appellant was entitled to claim the value of the consigned goods as Rs. 56,837.04 and the declaration regarding value at the time of booking the consignment was of on consequence. The High Court finally dismissed the appeal on the ground that the suit was barred by limitation.

6. Mr. A. Subba Rao, learned counsel appearing for the appellant has contended that the High Court has erred in counting the period of limitation from the date of accident. According to him the consignor would not know for certain, till the open delivery of the goods was made to him, as to whether the goods were damaged in the accident and to what extent. He, therefore, contends that the counting point for the limitation purpose has to be September 4, 1964 when the damaged goods were delivered to the appellant. We do not wish to examine the argument because we are of the view that the High Court was not justified in relieving the railway administration of its burden to establish that the damage to the goods occurred beyond three years from the date of the suit. This Court in Union of India v. Amar Singh ((1960) 2 SCR 75 : AIR 1960 SC 233) held as under (SCR p. 88)

> "The question now is, when does the period of limitation under Article 30 start to run against the claimant ? The third column against Article 30 mentions 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." (Article 30 under the old Act is Article 10 under the new Act and period of limitation is 3 years.)

7. Again in Jetmull Bhojraj v. Darjeeling Himalayan Railway Co. Ltd. ((1963) 2 SCR 832 : AIR 1962 SC 1879) this Court reiterated the legal position as under : (SCR p. 848)

> "According to column 3 the starting point would be the date of the loss or injury to the goods. Now when goods are consigned by a consignor he would not be in a position to know the precise date on which the loss or injury has occurred. In Union of India v. Amar Singh ((1960) 2 SCR 75 : AIR 1960 SC 233) this Court has held that the burden would be on the railway administration who want to non-suit 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."

8. No evidence whatsoever was produced by the respondent railway administration to show that the damage to the goods occurred more than 3 years before the suit was instituted. There is on finding in this respect by any of the court below. The High Court decided the issue against the appellant in the following words :

> "In the present case, the plaintiff deposed that after taking open delivery he made enquiries and came to known that the damage was due to the collision and to the transhipment. Knowing when the collision and transhipment had taken place the plaintiff was himself to blame if he did not file the suit within the prescribed period of limitation."
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> "In the case before us, the very case of the plaintiff was that the goods were damaged on the date of collision and the date of transhipment. The railway administration was thus relieved of the burden of establishing when the damage was caused. The suit was filed beyond the period prescribed by Article 10 of the Limitation Act read with Section 15 of the Limitation Act."

9. We do not agree with the High Court. The date of accident was mentioned in the plaint to narrate a fact. It was also averred that the plaintiff came to know about the damage on September 4, 1964 when he received open delivery of the goods. The knowledge of the accident may have given rise to an assumption that the goods were damaged in the accident but the burden of proving that the damage occurred 3 years beyond the date of suit has to be discharged by the railway. There is no material on the record to show that the respondents have done so. The High Court was not justified in relieving the railway administration of its burden. We, therefore, set aside the findings of the High Court on this issue.

10. Since we have decided the limitation issue against the railways it has become necessary to deal with the argument of Mr. R.B. Datar, learned senior advocate appearing for the respondents, on the other issue. He has contended that the High Court wrongly set aside the finding of the trial court on the issue of valuation of the goods. According to him, the appellant cannot be permitted to go back from the valuation of the goods which he declared at the time of booking the consignment. The appellant having declared the value of the consigned goods to be Rs. 25,000, he cannot now claim Rs. 56,837.04 for the same.

11. The question for our consideration is whether the railway administration is liable to pay the appellant compensation in excess of the valuation which was declared by him at the time of booking the goods, though he was under no legal obligation to make such a declaration.

12. Mr. Datar seeks support from Chunilal v. Governor General in Council (AIR 1949 Mad 754 : (1949) 1 MLJ 538). Mack, J. who delivered the judgment observed as under : (AIR p. 755, para 3)

> "An interesting point for determination is whether if plaintiff, though under no legal obligation to value the contents of the box, does so of his own accord, the railway company is legally liable to pay him compensation in excess of his own valuation.... I am of the opinion that where a consignor takes it upon himself specifically to value a box and its contents consigned by rail, it is not open to him to claim from the railway company anything in excess of that valuation and to contend that the box contained more valuable things, an averment, which the railway company may have great difficult in refuting."

13. Chunilal case (AIR 1949 Mad 754 : (1949) 1 MLJ 538) was notice by the High Court but the High Court disagreed with the view taken by Mack, J. in the following words :

> "The learned Judge did not state the principal on which he was basing his conclusion.

> If it was his view that the consignor was estopped from claiming more than the value mentioned in the declaration we do not see how there can be any estoppel unless the railway administration had done something in furtherance of the representation contained in the declaration. The learned Judge referred to the difficulty of the railway administration in refuting a claim about the actual value of the goods. That is only a matter of evidence and proof and we would think that the consignor would be under a greater difficulty in proving that the actual value of the goods was higher than that which he himself had voluntarily declared. We, therefore, hold that the valuation mentioned in the forwarding note does not bind the plaintiff."

14. We have given our thoughtful consideration to the point in issue. We are of the view that the appellant should not be permitted to change the value of the consigned goods at his convenience and to his advantage. The bill produced by the appellant before the trial court to substantiate the value of the goods must be in existence at the time of booking the consignment. There is no explanation whatsoever as to why he declared Rs. 25,000 as the value of the goods at the time of booking against his claim of Rs. 56,837.04 at the trial. We see no equity in the stand of the appellant. The rule of 'fair play in action' demands that the appellant be pinned down to the valuation of the consigned goods declared by him voluntarily. We approve the view expressed by Mack, J. in Chunilal case (AIR 1949 Mad 754 : (1949) 1 MLJ 538). We set aside the findings of the High Court in this respect and restore that of the trial court.

15. In spite of zig-zag findings on the issues, the net result for the appellant remains the same. The appeal is dismissed with no order as to costs.

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