

ANDHRA PRADESH HIGH COURT

Union of India

Vs.

Mitayagiri Pullappa

Civil Revn. Petri. No. 1240 of 1955

(K. Subba Rao, C.J. and Srinivasachari, J.)

20.06.1955. 24.12.1957

JUDGMENT

Srinivasachari, J.

1. This revision has come before a Bench on a reference made by one of us (the Chief Justice) in view of the conflict of decisions on the interpretation of the provisions of Section 77. of the Indian Railways Act, Act 9 of 1890.

2. This revision arises out of a suit filed by the respondent against the Union of India owning the Southern Railway for the recovery of a sum of Rs. 52-1-0 on account of the price of 3 sarees which were missing at the time of the delivery of the goods consigned to the plaintiff at Nandyal by a cloth merchant at Trichinopally.

3. The plaintiff's allegation was that 46 sarees were consigned by the merchant at Trichinopally and the consignment, when it was delivered, contained only 43 sarees. The claim was for compensation for shortage of delivery. The defendant Railway inter alia contended that as the plaintiff failed to give the notice as required by Section 77 of the Indian Railways Act, within six months of the delivery of the goods to the Railway he was not entitled to any compensation. Section 77 of the Indian Railways Act reads as follows :

"A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by Railway or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the Railway administration within six months from the date of the delivery of the animals or goods for carriage by railway."

4. In the case under consideration the goods were dispatched on 27-4-1954. The consignment reached Nandyal on 15-5-1954. Notice was sent by the Plaintiff to the General Manager of the Railway on 11th November, 1954.

5. The Munsif held that the plaintiff had complied with the requirements of Section 77 of the Railways Act, as his notice issued on 11th November, 1954 was within six months of the date of the receipt of the goods at Nandyal. He, therefore, rejected the plea of the Railway and decreed the suit. Hence this revision before this Court by the Railway.

6. The language of the section is clear and admits of no doubt that the notice contemplated under this section should be given within six months from the date of the delivery of the goods for carriage by Railways and not within six months from the date of the delivery to the consignee, for there may not be any delivery at all; the goods might have been lost in transit. Entrustment of the goods is a known date, while it could not be said so of the delivery of goods to the consignee. The object of a notice to the Railway is that the Railway authorities should be apprised of the loss or damage promptly in order to enable them to enquire and investigate into the matter quickly before it becomes too late to get any clue with regard to the loss or damage. The Munsif was, therefore, clearly wrong in computing the period of six months from the date when the goods were actually delivered to the plaintiff at Nandyal. The notice not being within six months of the date of the handing over to the Railway of the goods for despatch the suit is liable to be dismissed but it is contended that in a case of this kind where there has been 'short delivery' no notice is required before claiming compensation. The argument is that the word 'loss' occurring in Section 77 of the Act implies a complete loss of the goods and not a case where a portion of the goods is not traceable. The word 'loss' in its general sense means deprivation, damage or detriment. In regard to this question as to what is meant by 'loss' and in what cases a notice under Section 77 of the Railways Act is obligatory there has been a diversity of views. Different interpretations have been put upon the word 'loss' occurring in Section 77 of the Act.

7. The first, case that might be referred to is the case of *Secretary of State v. (Firm) Jiwan*¹, Interpreting the words 'loss, destruction or deterioration' in Section 152, Contract Act and the word 'loss' in Section 72 of the Railways Act, which refers to the risk note form executed by a consignor, the word 'loss' was interpreted to mean loss by the bailee. In that case it was loss occasioned by deterioration and not a loss caused by reason of abstraction of some of the goods. It has to be observed that a restricted interpretation was put upon the word 'loss' in some of the cases. Those cases proceed upon the reasoning that notice is required only in the case of a claim for compensation for loss, destruction or deterioration of goods, but where the allegation of the claimant is that there has been a non-delivery or misdelivery no notice is contemplated under Section 77 of the Railways Act. In *Secretary of State v. Firm Daulatram Makkanlal*², this view was taken.

8. In so far as the Madras High Court is concerned, the first decision on this point to which reference may be made is the case of *M. and S. M. Railway v. Haridoss Banmali Doss*³, which was an appeal against the judgment of Kumaraswamy Sastri, J. on the Original Side. The learned Judge held that Section 77 of the Railways Act could not apply to a case where the Railway with their eyes open delivered the goods to a wrong person. On appeal the Division Bench did not agree with the learned Judge. While Chief Justice Wallis was of the opinion that no

¹ ILR 45 All 380 : AIR 1923 All 426

³ ILR 41 Mad 871

² 1937 All LJ 794 : AIR 1937 All 632

distinction should be drawn between cases in which goods have been delivered to the wrong person and cases in which they were delivered to a person other than the consignee and that in both cases notice under Section 77 was necessary, the other learned Judge, Spencer, J. opined

that notice was necessary where goods are not forthcoming either from deliberate acts or acts of negligence.

9. Horwill, J. had to deal with this matter in *Governor General of India in Council v. Krishna Shenoy*⁴. It would appear that in that case one of the three Railways who had to carry the goods viz.; the M. and S. M. Railway was not able to satisfactorily establish that they had passed on the goods to the next Railway viz.; the B. N. Railway for being carried to Visakhapatnam. The case proceeded on the basis that the goods were in the custody of the M. and S. M. Railway. Under those circumstances the learned Judge held that Section 77 would not apply to a case of non-delivery when the consignee was not in a position to know what had happened to the goods and that therefore a suit brought for recovery of compensation could not be dismissed for want of a notice under Section 77 of the Railways Act. In this respect the learned Judge purported to follow a decision of the Calcutta High Court of Lort-Williams, J. in *Shamsul Huq v. Secretary of State*⁵. In this case the learned Judge of the Calcutta High Court drew a distinction between loss occasioned by destruction or deterioration and loss occurring on account of detention or conversion. In the latter case, according to the learned Judge, no notice was essential. This view of the learned Judge does not appear to have been followed by the Judges of the Calcutta High Court in later decisions for. in *Darjeeling Himalayan Rly. Co. v. Jetmul Bhojraj*⁶, a Bench consisting of Mookerjee and Milter, JJ. clearly laid down that loss included loss by the carrier as also loss of the owner whether for misdelivery or for non-delivery.

10. The matter came up for consideration again in *Ardhanai Chettiar and Co. v. Union of India*,⁷ before Krishnaswamy Naidu, J. wherein learned Judge held that the word 'loss' should be given a liberal interpretation so as to include cases of non-delivery. The learned Judge however said that the word 'loss' in Section 77 would exclude those classes of cases where there was a wilful withholding of the goods by the Railway Company.

11. The trend of decisions of all the Courts in India and the weight of authority is in favor of the view that there is no warrant for giving a restricted interpretation to the word 'loss' in Section 77 of the Act. Loss would include loss to the owner on account of nondelivery or mis-delivery as well. We have already adverted to the decisions of the Allahabad and the Calcutta High Courts. The Bombay High Court also took the same view as would be apparent from the decisions of that High Court in *G. I. P. Rly. v. Ramchandra Jagannath*⁸, and *Martab Ali v. Union of India*⁹,

12. The Patna High Court has expressed the view that a case of non-delivery or misdelivery could not be regarded as coming within the meaning of 'loss' so as to attract Section 77 of the Act. " *The East Indian Rly. Co. v. Kalicharan Rampershad*¹⁰, In the case of Dominion of

⁴1950-2 Mad LJ 506

⁶ AIR 1956 Cal 390

⁸ ILR 43 Bom 386

⁵ ILR 57 Cal 1286

⁷1956-2 Mad LJ 6

⁹ AIR 1954 Bom 297

¹⁰ AIR 1922 Pat 106

*India v. Hazarilal*¹¹, a Full Bench of the same High Court held that Section 77 of the Railways Act would apply to a case where the plaintiff sues for compensation on the allegation that the goods were lost in transit and that such a suit was liable to be dismissed if no prior notice was given. But on account of the settled practice in the Patna High Court to treat cases of non-delivery as not covered by the word 'loss' in Section 77, the Judges expressed that they were constrained to adopt the same view.

13. The word 'loss' has been interpreted in various English Decisions, to mean loss by the carrier and not simply loss to the owner. Those decisions were given in cases under the Carriers Act : of 1830; but it has to be observed that in Section 72 (3) of the Indian Railways Act it is stated 'nothing in the common law of English or in the Carriers Act of 1865 regarding the responsibility of common carriers with respect to the carriage of animals or goods, shall affect the responsibility as in this section defined of a Railway Administration. Under those circumstances the word 'loss' cannot bear a restricted meaning assigned to it in English cases. The Acts are not in pari materia as observed in ILR 41 Mad 871 . The word 'loss' has to be interpreted in the context in which it occurs.

14. The words are 'compensation for loss..... They have to be given their plain and natural meaning. The words imply that the claimant would be entitled to compensation for the loss sustained by him whether such loss is occasioned by non-delivery on account of the tortuous conduct of the Railway or its servants or by conversion of the goods or by the goods being lost in transit. The right to claim compensation from the Railway arises whether the cause of action is founded on contract or on tort. On a true construction of Section 77 loss means loss to the owner by whatever means. There is no warrant for making a distinction between a claim for compensation on account of loss of goods by a Railway Company and a claim for compensation on the ground of non-delivery or misdelivery.

15. We allow this revision and set aside the Judgment of the lower Court. The plaintiff's suit is dismissed for want of notice under Section 77 of the Railways Act. The petitioner will have his costs both here and in the lower Court.

Revision allowed.

¹¹ AIR 1949 Pat 410