

CALCUTTA HIGH COURT

Shamsul Huq

Vs.

Secy. of State

(Lort-Williams, J.)

16.01.1930

JUDGMENT

Lort-Williams, J.

1. On the second day of July 1927 the petitioner dispatched to himself as consignee three bundles of goat skins from Chatra railway station to Howrah over the B.T. Railway. On 12th July he went to Howrah goods shed, paid the railway freight and demanded the goods. The railway officials refused to hand them over on the ground that one of the bundles appeared to be different from the one dispatched, and was 30 seers short in weight. The petitioner pressed them for delivery under short receipt to avoid loss and depreciation in market value, but this was refused.

2. On 26th September the petitioner's pleader Satya wrote to the Commercial Chief Manager, Howrah, setting out the above facts, drawing attention to the falling market and to the fact that the skins were getting damaged and worthless in the goods office, and demanding the price.

3. To this letter the Chief Commercial Manager replied sending a copy of his office letter dated 2nd August which had been written to the petitioner's pleader Provash Chandra Biswas in which it was stated that the consignment had been made over to the Government Railway Police, Howrah, under orders of the Sub-Divisional Officer, Rampurhat, and asking the petitioner to Communicate with the Sub-Divisional Officer.

4. On 7th May 1928 the petitioner's pleader S.R. Banerjee wrote a letter to the Agent, E.I. Railway, Calcutta, again setting out the facts, saying further that it was no part of his client's business to communicate with the Sub-Divisional Officer and again demanding the price.

5. To which he received a reply from the Manager stating that the consignment had been made over to the Government Railway Police, Howrah, under orders of the Sub-Divisional Officer, Rampurhat, and since forwarded to Rampurhat under his orders where he could prove his claim to the goods and take-delivery, further stating that the railway could admit no liability inasmuch as they merely carried out the orders of the Sub-Divisional Officer.

6. Subsequently the petitioner received a letter dated 22nd August 1928 saying that the consignment would be available for delivery at Howrah goods office within a day or two.

7. The petitioner went to take delivery but found that the skins were so deteriorated that they were only fit to be thrown away, and very naturally he declined to take delivery.

8. On 28th November 1928 he filed a suit in the Small Cause Court against the Secretary of State claiming the price of the goods as compensation for the refusal to deliver. The defendant; pleaded absence of notice under Section 77, Railways Act and on 28th May 1929 the Judge declined to take evidence and summarily dismissed the suit on this plea.

9. On 4th June 1929 the petitioner applied for a new trial and this application was dismissed by the Full Bench on 18th July. Thereupon the petitioner moved this Court under Section 115, Civil Procedure Code, to set aside the orders of 28th May and 18th July and ordered the suit to be reheard on the merits.

10. The defendant did not appear to show cause, and the rule was made absolute. Subsequently the defendant asked for a review which was granted.

11. I confess that I do not know whether I am the most astonished by the course taken by the railway authorities or by those who advise the Secretary of State, or by the learned Judges of the Small Cause Court. The railway authorities not only broke their contract of carriage and committed the tort of detinue, but were guilty of conversion of the petitioner's goods.

12. The goods belonged to the petitioner and when he had paid the freight, and demanded them he was entitled to have them handed over to him immediately. The railway authorities had no right either to hand them over to the police or to refuse to give them to the petitioner. The orders of the police are no excuse for the torts which they have committed.

13. The fact that some of the goods were missing made no difference. The railway authorities should have handed over the goods to the petitioner on short receipt, as requested and left him to take whatever action he thought fit with regard to the missing skins.

14. Every step taken by the railway officials was as improper and as illegal as it could be. But far from being apologetic for their irregular and high handed behavior, they have sought to escape from their just liabilities by raising the plea that they have not received the notice of claim, required by Section 77, Railways Act and this plea has been accepted by a Judge, and a Full Bench of the Small Cause Court.

15. In the first place the notice given was ample to fulfill the requirements of the section. The letter of the 26th September 1927 was addressed to the Commercial Chief Manager, Howrah.

The section requires the claim to be preferred in writing to the railway administration. Railway administration is defined by the Act to mean the Manager of the railway in the case of a railway administered by the Government such as the E.I. Railway and Section 140 provides that any notice required to be served on a railway administration may be served in the case of a railway administered by the Government, on the Manager, and in the case of a railway administered by a railway company on the Agent. The word "may" has been held to mean "must" but with these decisions I do not agree.

16. On the E.I. Railway there is, not any official called the "Manager." The Chief Official is called the "Agent." But there is an official called the Chief Commercial Manager.

17. I have no doubt, even upon the facts now before me that in the circumstances of this case the petitioner's was a sufficient notice within the meaning of the Act. But the Small Cause Court refused to take any evidence on that point or on any other. It may well be that the Chief Commercial Manager is the person appointed by the E.I. Railway to receive notice of claims, or that the notice was communicated by him to the Agent. And it may well be argued that where in the case of a railway administered by Government, there does not happen to be an official called the "Manager" a notice sent to the Chief Commercial Manager will be sufficient.

18. Apart from these considerations, I am of opinion that there is clear evidence in the letters to which I have referred, of waiver of any such requirement by the railway administration. And if this were not enough the railway administration by such letters led the petitioner to believe that no further or other notice was necessary or required. These matters have not even been considered by the Judges of the Small Cause Court.

19. However, all these considerations are really irrelevant, because, in my opinion no notice was required and Section 77 has no application to the facts of this case.

20. The section refers only to loss, destruction, or deterioration of goods. It has nothing whatever to do with either detention or conversion, of which the petitioner complains, and for which he claims compensation. This distinction has been appreciated clearly by Richardson and Ghose, JJ., in *Assam Bengal By. Co. Ltd. v. Radhica Mohan Nath*¹ The main damage herein arises owing to the detention and conversion of the petitioner's goods. The bulk of the goods were not lost, they were lying in Howrah goods shed when the petitioner demanded them.

21. It is true that the petitioner may have a claim also for the loss of part of the consignment for which notice would be necessary but that is not his chief complaint, and even so, as I have shown already, such notice has been given.

22. I repeat that I am surprised at the attitude adopted by those who have advised the Secretary of State that great disservice is done to the Government by involving them in conduct such as has

been disclosed in this case.

23. It is admitted that the petitioner has a just claim. He delivered his goods to the railway administration for carriage. He paid the freight. It is not suggested that he has been at fault in any way. His goods have been rendered worthless owing to the conduct of the railway officials acting as they suggest, under the orders of the police. The object of Section 77 is to prevent stale and possibly dishonest claims for loss, when owing to delay

¹ A.I.R. 1923 Cal. 397

it might be impossible to trace the transaction or check the allegations made, and when the evidence necessary to rebut a dishonest claim might no longer be available. It is intended as a weapon of defense against fraud not as a means to enable the railway authorities to deprive their customers of their just dues.

24. Owing to what the railway administration and the Government must now realize, was a series of blunders, and illegal acts on the part of their own officers, the petitioner has lost both his goods, and his money. The loss is admitted.

25. In these circumstances I should have thought that the most urgent desire of those in authority would have been to make amends and not to shelter themselves behind technical pleas in. their endeavor to escape from liability.

26. The order I make is that the orders of the Small Cause Court be Set aside and that the suit be reheard on the merits and that the costs of this application be paid by the defendant to the plaintiff.

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