BOMBAY HIGH COURT

Martab Ali

Vs.

Union of India

O.C.J. Suit No. 1320 of 1950

(Desai, J.)

19.02.1953

JUDGMENT

Desai, J.

1. The plaintiff sues to recover from the defendant a sum of Rs. 80,291-11-0 as compensation for loss occasioned to him by non-delivery of certain bales of cloth consigned to Gujranwalla station by the plaintiff's agents in Bombay and delivered to the B.B. and C. I. Railway. The defendant is the successor-in-title of the Governor-General in Council and the B.B. and C.L Railway has now-vested in the defendant as its owner and administrator.

2. It is the plaintiff's case that Messrs. Murlidhar Monanlal, the plaintiffs agents in Bombay, purchased and consigned on his behalf 85 bales of cloth for delivery to themselves at Gujranwalla station in the Punjab. According to the plaintiff a railway receipt bearing No. B-49 485979 dated August 4, 1947, was issued by the railway company in favor of the plaintiff's agents and the consignment was booked at railway risk except in respect of 5 out of the 85 bales. The goods did not reach their destination as about the middle of August 1947 there were serious disturbances and riots in the Punjab. Correspondence ensued, in the course of which the Chief Commercial Manager of the North Western Railway, Lahore, stated that the wagon No. 34,773 in which these bales of cloth were loaded was looted near Mour on 23 August, 1947, and that the loss was caused by circumstances beyond the control of the railway administration. Ultimately the plaintiff filed this, suit on 20, September, 1950, after giving the requisite notice to the defendant under Section 80, Civil Procedure Code In para. 7 of the plaint the plaintiff based his cause of action on loss suffered by him by reason of wrongful detention and/or non-delivery of the bales and in the alternative on wrongful conversion of the bales. He also pleaded that loss was caused to him as a result of the misconduct of the servants and officers of the railway administration. In para. 9 of the plaint it is stated that no notice-under Section 77, Railways Act was necessary as that section did not apply to the facts of the case and that the claim of the

plaintiff was not affected by the absence of any such notice.

3. By the written statement the defendant has contended that the plaintiff was not entitled to any relief as he had failed to give any notice to the railway administration as required under Section 77, Railways Act. The defendant has also pleaded, the bar of limitation. It is further pleaded that 80 out of the 85 bales were consigned under risk-note "Form Z" and the remaining 5 bales were consigned under risk-note "Form A". It is denied, that there was any misconduct of any servant or officer of the railway administration as alleged by the plaintiff. The defendant has also denied that the non-delivery of the goods or loss of the said consignment was caused by the railway administration as alleged by the plaintiff.

4. When the suit reached hearing before me yesterday Mr. Madon, learned counsel on behalf of the defendant, applied for an adjournment of the suit on the ground that the defendant wanted to examine a number of witnesses on commission. This was a very belated application. The goods were consigned as early as August 1947 and the suit was filed in 1950. The application for commission made in February 1953 could not be entertained unless a very strong case in support of the application was made put and the reason for the delay was satisfactorily explained. The affidavit made on behalf of the defendant in support of this application did not make out any such case. I, therefore, rejected the application. The application for adjournment was only on the ground that witnesses had to be examined on commission and for no other reasons.

5. The plaintiff examined Hector B. Gomes, the constituted attorney of Murlidhar Mohanlal, the plaintiff's agents in Bombay. Gomes produced the railway receipt and the invoice relating to the goods. He further stated that the goods were not delivered to the plaintiff at the destination. The plaintiff also examined Devraj Khanna, a munim of Murlidhar Mohanlal, who deposed to the blank endorsement made at the back of the railway receipt. According to the witness this endorsement was made in evidence of the fact that full payment of the price of the goods had been made to Murlidhar Mohanlal by the plaintiff. In his cross-examination the witness admitted that the forwarding note which was tendered in evidence mentioned that the bulk of the goods were booked "ORZ", meaning "at owners risk in Form "Z". He admitted the signature of this note of the mukadam employed by Murlidhar Mohanlal. The risk note in "Form Z" has not been tendered in evidence before me but the forwarding note refers to the same, and it is not seriously argued before me that the bulk of the goods were sent otherwise than under risk note "Z". Although in the plaint it is stated that the goods were sent at railway risk the plaintiff did mot make any attempt to show that it was so.

6. On the evidence, both oral and documentary, there is no doubt that these goods were consigned from Bombay on or about 4 August, 1947, under the risk-notes "Z" and "A" as alleged by the defendant. There is also no doubt that the goods were never delivered at the destination, and that after making inquiries the railway administration gave intimation to the plaintiff that the goods had been loaded in wagon No. 34,773, which wagon was looted near Mour on or about 23

August, 1947. Mr. H.V. Shah, learned counsel for the plaintiff, has relied on a letter dated 11 March, 1948, which is part of exh. C. By that letter the station-master of Firozepur, informed the plaintiff's agent in Bombay that the wagon No. 34,773 loaded ex-Carnac Bunder arrived at Firozepur station on 3 September, 1947, and was despatched to Lahore and that it was loaded when it was despatched.
Mr. Shah has argued that it would appear from this letter that the goods could not have been looted at Mour, which was a station before Firozepur. There may be some substance in this contention. It does not, however, make much difference because there has been in fact no evidence led before me by the defendant to show that the particular railway wagon was looted at Mour as alleged by the defendant.

7. The case does not, however, turn so much on facts as on certain legal contentions urged on behalf of the defendant. One of the principal contentions urged on behalf of the defendant is that the claim made by the plaintiff in suit was not notified by the plaintiff to the railway administration as required by Section 77, Railways Act. That section is as under :

> "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."

Now, before I deal with the legal arguments advanced before me I may observe that although it was admitted by the plaintiff in the plaint that he had not given notice under Section 77 Mr. H.V. Shah, learned counsel for the plaintiff, relied on certain letters (exh. D) and argued that in fact such a notice was given by the plaintiff to the railway administration. One of those letters is dated 26 November, 1947, and is addressed by the Chief Commercial Manager, Lahore, to the Chief Traffic Manager, B.B. and C.I. Railway, and others. It states that some claim dated 10 October, 1947, was made to him. There is nothing in this letter which by any stretch of imagination can be called a notice under Section 77 as required by that section read with Section 140, Railways Act. Mr. H.V. Shah also in this connection relied on another letter and a copy of a third letter which also form part of exh. D. The letter, dated 15 December, 1947, addressed by the Liaison Officer, (Textiles) Pakistan to the Chief Traffic Manager, B.B. and C.I. Railway, Bombay, states that along with that letter was enclosed a copy of a letter received from one Sayad A.M. Wazir Ali in connection with dispatch of cloth to the Province of West Punjab. The letter further states that the copy-letter is self explanatory. The copy so enclosed is of a letter purporting to be signed by Sayad A. M. Wazir Ali and is addressed to the Liaison Officer of the Government of Pakistan. This letter only states that 85 bales of cotton piece goods were booked from Bombay under the railway receipt in suit and that till the date of the letter vis., 11 December, 1947, nothing had been known about the consignment. The letter proceeds to request the railway administration to locate the consignment. I fail to see how these two letters even read together can amount to a notice as

required under Section 77, Railways Act. All that is relied on is a copy of a letter which is enclosed with the letter of the Liaison Officer of 15 December, 1947. Besides the letters cannot be said to have been addressed to the proper authority. Again, what is fatal to the argument is that in none of these letters there is any demand for compensation. A notification of a claim under Section 77 must of necessity contain a demand for compensation. The exact amount of compensation claimed need not be mentioned, but even so the letter must contain a demand for compensation and this cannot be said about these two letters. I am aware that notice of claim should not be construed with extreme strictness. At the same time there must be a substantial compliance with the provisions of the Act and this the plaintiff has not done. I must, therefore, proceed to consider the question of notice on the footing that in fact no notice at all of the claim was given by the plaintiff to the railway administration.

8. It was next argued by learned counsel for the plaintiff that the plaintiff had based his cause of action not merely on contract but also on tort, viz., wrongful detention and conversion. The argument was that in so far as the claim was founded on tort, Section 77 could not be pleaded as a bar to the suit as that section had nothing what ever to do with either detention or conversion ; and in support of the argument reliance was placed on some reported decisions of other High Courts.

9. Now, under Section 77, Railways Act it is a 'sine qua non' that the plaintiff should notify to the railway administration his claim for compensation in writing within six months from the date of the delivery of the goods for carriage. I must, in the first instance, read this section in its ordinary plain sense. There appears to me nothing to modify, nothing to alter, nothing to qualify the language which the section contains. That being so the rule of literal construction must be applied and the section must be construed in the ordinary and natural meaning of the words and sentences used therein. On a plain reading of the section it clearly shows that it is incumbent on the consignor to notify to the railway administration his claim for compensation for loss, destruction or deterioration in respect of goods delivered for carriage within six months from the date of the delivery of the goods. The language used is, though in the negative form, express and explicit and the requirement of notification of the claim is mandatory. There being nothing in this section or any other cognate section of the Railways Act to qualify, alter or modify the ordinary meaning of 'the word "loss" as used here, the word must, in my opinion, include loss arising from whatever cause. A number of decisions were cited at the bar. The only decision of the Bombay High Court to which my attention was drawn was in a case which fell under Section 75 of the Act. I shall later on in my judgment have to refer to that decision. All the other decisions which were cited or mentioned were of other High Courts. Those decisions show considerable diversity of judicial opinion not only among the various High Courts but also among judgments of the same Court on the meaning of the word "loss" as used in Section 77 and I do not feel bound to tread again the weary road of examining those cases. In some of those decisions the view has been expressed that the word "loss" in Section 77 does not include "loss occasioned by non-delivery".

In some other decisions the view has been taken that the section does not apply to cases of wrongful detention or conversion. A contrary view is expressed in some other decisions. Some of these cases proceed on the footing that a strict construction must be put on the section and a narrow meaning should be given to the word "loss". On the other hand, there are cases where it has been stated that a very comprehensive view must be taken of the matter and the word "loss" must be widely interpreted.

10. The question has been before Courts for over 50 years. But in the absence of any direct authority on the construction of the word "loss" in Section 77 binding on me and in the midst of the conflicting decisions of other Courts I venture to think that the proper course for me would be to examine the language of the section itself and thereafter to see if there is any other provision of the Act throwing light on the meaning attributed by the Legislature to the word "loss" in the Act or any other canon of construction which must govern the present case.

11. Now, it is said that a strict construction must be put on a section which restricts the ordinary right of a contracting party to proceed with his claim and confers a privilege on the railway administration. At the same time it cannot be overlooked that the section is intended to give protection against a mischief, viz., stale claims against the railway administration. Though not intended to deprive the customers of the railway of their just dues it is at the same time intended as a weapon of defense against fraud and to, protect railways against litigation. These diverse considerations, though they may and indeed do arise, would still have to be dealt with by applying the fundamental canons of construction, and as I have stated before the plain and ordinary meaning of the word "loss" in the section to my mind is that it must include loss from whatever cause. Grammatical and ordinary sense of the word can only be modified if it leads to some absurdity or inconsistency or repugnance in the context and it is not suggested that the ordinary meaning, if it were applied, would result in any inconsistency, absurdity or repugnance. In my opinion the meaning of the words "loss" and "compensation for the loss, destruction or deterioration of .....goods" used in Section 77 is quite plain and the words admit of only one meaning. 'Absoluta sententia expositore non indiget'. In such a case the plain language, as pointed out in the leading cases on the subject, best declares without more the intention of the law-giver and is decisive of it and the Court will neither add to nor subtract from what the Legislature has laid down. In such a case the Court will certainly not put a meaning on the plain words of the section which is different from the grammatical and obvious meaning, for that would be to make laws. The words "compensation for loss...." cannot, in my opinion, be said to be wide in the abstract; nor can they be said to be more or less elastic. It is no doubt a well-known canon of construction that all words, if they be general and not express and precise, are to be restricted to the fitness of the particular subject-matter. But I do not at all see how it can be said that the subject-matter with reference to which these words are used require that when goods are delivered to a carrier as such and any question of compensation for no delivery arises, the loss contemplated should be taken as excluding loss caused by any tortious conduct of the carrier

or his servants and officers. Besides I do not think that the words under consideration require or admit of any restriction to suit the subject-matter. I have, therefore, to interpret the section as I find it without putting any gloss upon the words used in it or without reading into it something which is in fact not there.

12. I am fortified in the view I am inclined to take of the construction of Section 77 of the Act when I turn to other cognate sections which are to be found in Chapter 7 of the Railways Act. That Chapter deals with the responsibilities of the railway administration as carriers and contains a series of sections in most of which the words "loss, destruction or deterioration of goods delivered to the administration to be carried by railway" occur. Section 72 which is the first section in that chapter lays down the measure of general responsibility of the railway administration as carrier of animals and goods. Section 73 contains similar words and contains a provision restricting the amount of the liability of the railway as a carrier of animals. Section 75 contains similar words and contains a provision restricting the pecuniary liability of the railway as a carrier of articles of special value. It is not necessary to refer to all the other sections in Chap. 7 where the same words occur. Section 80 also contains similar words. That section 'inter alia' deals with the liability of the railway administration in respect of loss, destruction or deterioration of goods booked through over the railways of two or more railway administrations.
It enables the consignor to sue any of these railway administrations for compensation in respect of loss that may have occurred while the goods were on the railway of any administration other than the one on whose railway the goods were originally booked. This section obviously applies and has been held to apply to all kinds of loss, and under this section whether the cause of action is founded in contract or in tort makes no difference. I do not see any particular reason why the word "loss" should have a more restricted meaning in Section 77 than in Section 80 of the Act. The construction, therefore, of these words in one section must serve as a useful guide for their interpretation in another section.

13. I shall now turn to a decision of a Division Bench of our own High Court, - *'Balaram Harichand v. S. M. Rly. Co. Ltd*[1]*.'.* where these words which are also used in Section 75 came up for interpretation. It is true that the matter had come up before the High Court on a reference made by the Small Causes Court at Bombay for the opinion of the High Court and the judgment only contains the findings recorded by the High Court. Even so, the decision was that the words "loss, destruction or deterioration" in Section 75 included loss caused by the criminal misappropriation of the goods by a servant of the railway administration in charge of the same. This was clearly a case of a claim based on a tort.
Prima facie, the word "loss" must be given the same meaning in the series of sections which find place in Chap. 7 of the Act. It has been often said that the true meaning of any passage in a statute is what best harmonizes with the subject and with every other passage in the statute. Now, it is true that this was a case under Section 75, Railways Act, but I am unable to see any particular reason why the word "loss" should have a different meaning in Section 75 than in Section 77, or for the matter of that in Section 80 of the Act. No reason whatever was suggested

by learned counsel for the plaintiff to show that the word should have different meanings in Section 77 and in Section 75. The Indian Railways Act is a consolidating and amending enactment. Now, it is of the essence of a code of this nature to be exhaustive of any matter specifically dealt with by it. Chapter 7 of the Act by itself constitutes a complete enactment of the law affecting the liability and responsibility of railway administrations in respect, 'inter alia', of goods delivered to them as carriers. That the goods in question were delivered to the B. B. and C. I. Railway Company as carriers is undisputed. The suit is essentially for compensation for loss occasioned by nondelivery of goods at the destination, and in my opinion whether the claim is laid in contract or tort can make no difference. For all these reasons the conclusion I have reached is that the word, 'loss' in Section 77 does include the entire claim made by the plaintiff whether on the footing of nondelivery, or negligence, or wrongful detention or conversion on the part of the railway administration.

14. The argument advanced by Mr. H.V. Shah, learned counsel for the plaintiff, was that Section 77, Railways Act did not apply to a case of wrongful detention or conversion and that the evidence before me was sufficient to establish conversion or wrongful detention which meant the same thing. Reliance was placed on certain passages in Salmond's Law of Torts to show what acts amount to conversion, and it was argued that it was enough, for the plaintiff to show that the goods were delivered to the railway administration and were not returned to the plaintiff. I am unable to accept the argument that the plaintiff has established from the evidence on record that there-was conversion of the goods in question.

[1]19 Bom 159

The test to be applied is not merely to see whether there was failure to return the goods. It must also appear that there was an intention to keep the goods in defiance of the plaintiff. In other words detention is not conversion unless there is an, adverse claim. A carrier who on demand being made states that he could not return the goods because they were looted while in his possession cannot 'ipso facto, be said, to have been guilty of conversion. There must be at least some' evidence of conduct of the defendant which shows that he not only possesses the goods, but also intends to hold them in defiance of the plaintiff, and to deprive the plaintiff of possession of them. I do not think the present argument advances the plaintiff's case any further.

15. Also fatal to the plaintiff's case is the bar of limitation. On behalf of the defendant reliance was placed on Articles 30 and 31 of the schedule to the Indian Limitation Act. Both these articles apply to carriers and under both, the period of limitation prescribed is one year. Mr. Madon, learned counsel for the defendant, particularly relied on Article 31 under which the time from which the period begins to run is stated to be when the goods ought to be delivered. It was the case of, the plaintiff himself that in the ordinary course of events these goods should have reached Gujranwalla station on or about 18th August, 1947. Assuming that there should be sufficient margin of time allowed in determining the date when the goods ought to have been delivered and that consideration should be given to the disturbed times; I am at a loss, to see how it can be said that the goods ought to have been delivered sometime within one year, or fourteen

months (adding two months for giving notice under Section 80, Civil Procedure Code) of 20th September, 1950, which is the date on which the suit was filed. In my opinion Article 31 of the Limitation Act applies to the facts of this case. Mr. H.V. Shah, learned counsel for the plaintiff, relied on Article 48 and contended that the suit, so far as it was based on conversion, would fall under that article and the period of limitation would be three years from the date of the knowledge as mentioned in that article. I do not think Article 48 is applicable to the facts of the present case and even if it were applicable, its operation would be excluded by the provisions of Article 31 on the principle 'generalla specialibus non derogant'. Article 48 is a general article and its operation would be excluded by the specific articles which deal with suits against carriers as such. Article 31, in my opinion, must apply to all cases of claims for non-delivery of goods irrespective of the question whether the suit is laid in contract or tort. In - *'Venkatasubba Rao v. Asiatic Steam Navigation Co., Calcutta*[2]*',* a Full Bench of the Madras High Court expressed the same view. Moreover, on the facts of the present case there is no basis for holding that the case fell within the purview of Article 48. There is no evidence at all before me of dishonest misappropriation, theft, or conversion of the goods in question. The case as I have already stated is clearly covered by Article 31 of the Limitation Act, and the suit is, therefore, barred by the law of limitation.

16. The evidence before me indicates that though the risk-note "Z" is not produced the forwarding note shows that 80 out of 85 bales were carried under risk-note "Z", Risk note "Z" is substantially the same as risk-note "B" and it is issued in the alternative to risk-note "B" when the consignor desires to enter into a general agreement instead of executing separate risk-notes for every consignment. That appears to be the case here. The relevant part of the risk-note "Z" is as follows :

[2] AIR 1916 Mad 314 (FB)

> "....I/We, the undersigned, in consideration of such consignments being charged for at the special reduced or owner's risk rates, do hereby agree and undertake to hold the said Railway Administration harmless and free from all responsibility for any loss, destruction or deterioration of, or damage to, all or any of such consignments from any cause whatever, except upon proof that such loss, destruction, deterioration or damage arose from the misconduct on the part of the Railway Administration or its servants : provided that in the following cases :
>
> (a) Non-delivery of the whole of a consignment or of the whole of one or more packages forming part of a consignment packed in accordance with the instructions laid down in the tariff or, where there are no such instructions, protected otherwise than by paper or other packing readily removable by hand and fully addressed, where such non-delivery is not due to accidents to trains or fire,
>
> (b) Pilferage from a package or packages forming part of a consignment properly packed as in (a), when such pilferage is pointed out to the servants of the railway administration on or before delivery, the Railway Administration shall be bound to disclose to the consignor how the consignment was dealt with throughout the time it was in its

possession or control, and, if necessary, to give evidence thereof before the consignor is called upon to prove misconduct, but, if misconduct on the part of the Railway Administration or its servants cannot be fairly inferred from such evidence, the burden of proving such misconduct shall lie upon the consignor."

Mr. H.V. Sah relies on the following words in the risk-note :

"....the Railway Administration shall be bound to disclose to the consignor how the consignment was dealt with throughout the time it was in its possession or control, and, if necessary, to give evidence thereof before the consignor is called upon to prove misconduct, but, if misconduct on the part of the Railway Administration or its servants cannot be fairly inferred from such evidence, the burden of proving such, misconduct shall lie upon the consignor."

And it is argued that the onus is on the railway administration, whether the consignment is under risk-note "B" or "Z", to show that there was no misconduct on the part of any employee of the railway administration. The defendant has not led any evidence before me to show how the consignment was dealt with throughout the time it was in the possession or control of the railway administration. On this part of the case it cannot be stated in the circumstances of the present case that it was incumbent on the plaintiff to establish misconduct on the part of the railway administration. In the absence of any evidence led by the defendant misconduct would have to be inferred, and this part of the case must be decided against the defendant.

17. In the result the suit will be dismissed with costs.
Suit dismissed.