

PATNA HIGH COURT

Union of India

Vs

Shamsuddin Waizuddin

Second Appeal No. 496 of 1953

(Kanhaiya Singh, J.)

06.09.1957

JUDGMENT

Kanhaiya Singh, J.

1. This is a second appeal by the Union of India arising out of a suit for compensation for loss of consignment. The facts are these : A consignment of two cases of Agarbatti was booked by the Modern Indian Trading Company at a station called Jaswantpur on the Mysore Railway for despatch to the plaintiff firm which was the consignee deliverable at Patna Junction station which is on the Eastern Railway (formerly East Indian Railway). The consignment was not delivered to the plaintiff. After certain correspondence the plaintiff instituted the present suit for recovery of Rs. 651-8-0 on account of loss of the goods on the allegations that in spite of the protracted correspondence and also service of notice under Section 77 of the Indian Railways Act and Section 80 of the Code of Civil Procedure, their claim remained unsatisfied.
2. The consignment had to pass through several railways, viz., the Mysore Railway, the Southern Railway, B. N. Railway and the East Indian Railway. But the plaintiff sued only the East Indian Railway through the Union of India. The other Railways were not impleaded as defendants.
3. The Union of India representing the East Indian Railway denied liability in toto for the loss and also pleaded non-maintainability of the suit by reason of non-compliance with the provisions of Section 77 of the Indian Railways Act and section 80 of the Code of Civil Procedure .
4. The learned Munsiff held that the provisions of Section 77 of the Indian Railways Act were not attracted, that the notice under Section 80 of the Code of Civil Procedure was not served on the General Manager of the Railway and that the loss of the consignment did not occur on the East Indian Railway. On these findings, he held that the East Indian Railway was not liable for compensation and dismissed the suit.
5. The learned Additional Subordinate Judge affirmed the finding of the learned Munsif that the loss of the consignment did not occur on the East Indian Railway, and the service of the notice under Section 77 of the Indian Railways Act was not necessary. As to the service of notice under

Section 80 of the Code of Civil Procedure, he differed from him and held that there was sufficient compliance with the provisions of Section 80. He was further of the opinion that although the loss did not occur on the East Indian Railway the latter was liable for the damages by reason of the provisions of Section 74-E of the Indian Railways Act. He accordingly decreed the suit.

6. The Union of India has come up in second appeal.

7. The contention of Mr. P. K. Bose, appearing for the appellant, is that though the Mysore Railway, as the booking Railway, was always liable for the loss, irrespective of the place where it occurred, the other Railway Administrations incurred no liability unless the loss occurred on any of those Railways.

8. He pointed out that in view of the concurrent findings of the Courts below that the loss of the consignment did not take place on the East Indian Railway (now Eastern Railway), the appellant was not liable for the compensation at all. He urged that the learned Subordinate Judge was wrong in thinking that the liability of the appellant arose by reason of Section 74-E of the Railways Act. His argument is that Section 74-E did nothing but give statutory recognition to the terms of the contract in vogue before. He relied upon the provisions of Section 80 of the Indian Railways Act and contended that this section was not in any way controlled by Section 74-E of the said Act. The question that falls for determination is : where in a case any consignment was booked through over the railways of two or more Railway Administration, a suit for compensation for loss of the consignment can be instituted against the railway other than the railway to which the consignment was delivered without the proof of loss, injury, destruction or deterioration thereof on that railway. Section 80 of the Indian Railways Act provides as follows :

"Notwithstanding anything in any agreement purporting to limit the liability of a railway administration with respect to traffic while on the railway of another administration, a suit for compensation for loss of the life of, or personal injury to, a passenger, or for loss, destruction or deterioration of animals or goods where the passenger was or the animals or goods were booked through over the railways of two or more railway administrations, may be brought either against the railway administration from which the passenger obtained his pass or purchased his ticket, or to which the animals or goods were delivered by the consignor thereof, as the case may be, or against the railway administration on whose railway the loss, injury, destruction or deterioration occurred".

This section provides alternative remedies to the person who has suffered a loss. The suit for compensation for loss of goods booked through railways of two or more Railway Administrations may be brought at the option of the person suing either against the Railway Administration to which the goods were delivered by the consignor or against the Railway Administration on whose railway the loss, injury, destruction or deterioration occurred. Mr. Bose contended that since, as found by the Courts below, the loss did not occur on the East Indian Railway the remedy for the plaintiff was to sue the booking railway, viz. the Mysore Railway, to which the goods were consigned and that the plaintiff was without remedy so far as the East Indian Railway was concerned. He relied in support of his contention on the cases of *Governor-*

*General of India in Council v. Sukhdeo Ram*¹, *Union of India v. Shamsu Mian*², *Manilal Raghavji v. Union of India*³, and *Kishanlal Roopchand and Co. v. Indian Dominion*⁴, Mr. Syed Hasan, appearing for the respondent, contended that this was a case of non-delivery and Section 80 of the Railways Act had no application. In support of his contention, he relied upon a decision in the case of *Union of India v. Bansidhar Modi*⁵. His further contention was that the cases relied upon by Mr Bose had no force and authority in view of the recent amendment of the Indian Railways Act by which a new Section 74-E was added. He argued that Section 74-E made all the railways through which the goods travelled responsible for the loss, because under Section 74-E of the Act the person tendering the goods to a Railway Administration shall be deemed to have contracted with each one of the Railway Administrations or owners of the transport system through which the goods pass. In my opinion, the contention of Mr. Bose appears to be well founded and must prevail. Section 80 of the Railways Act was considered and interpreted by a Division Bench of this Court in the case of AIR 1949 Patna 329 referred to above. In this case the plaintiffs consigned 600 tins of cocoa-nut oil to the South Indian Railway for delivery at Monghyr station on the East Indian Railway. The goods consigned had to traverse three Railway Administrations, the South Indian Railway, B. N. Railway and, finally, the East Indian Railway. On reaching Monghyr, the consignment was found short by 25 tins. The plaintiffs claimed damages for this short delivery. In that case it was found that the loss had not occurred on the East Indian Railway. The question raised there was: whether all the railways concerned were jointly and severally liable? In that case Sinha, J. delivering the judgment of the Court observed as follows :

"In my opinion there is no warrant for this conclusion in the provisions of Section 80, Railways Act. That section has given the plaintiff the choice of claiming his remedy either against the railway administration to which the goods were consigned or against the railway administration on which the loss occurred. The remedy is alternative, and not cumulative. In the present case the goods were carried over three railways. Can it be said that the plaintiffs had the right of suit against any one of those three? Under Section 80, in all cases they could sue, the South Indian Railway to which the goods had been consigned, irrespective of the question whether or not the goods were lost on that railway. In my opinion, that railway has been made responsible by the statute because the consignor entered directly into a contract with that railway for safe carriage and delivery of the goods. The contract with the South Indian Railway, in so far as it related to its own administration, would be in the capacity of the principal.

That railway may be said to be the agent of the Bengal Nagpur Railway and the East Indian Railway in respect of the goods for the purpose of carriage on those railways. If the goods were lost on the South Indian Railway that railway would be liable both because it was the contracting party and because it was at fault. But, if the goods were lost on the Bengal Nagpur Railway, on what grounds should the South Indian Railway be responsible? Not on the theory of agency. The principal is liable for the negligence of the agent; but the agent is not liable for the negligence of the principal. Similarly, with respect to the loss, if supposed to have taken place on the East Indian Railway. Hence, it cannot be said that in so far as Section 80, Railways Act, has made the South Indian Railway Administration in the present case liable, it is with reference to any theory of agency". This case is on all fours with the present

case. This case was relied upon in the subsequent two cases reported in AIR 1956 Patna 71 and AIR 1956 Patna 434 referred to above. It was held in AIR 1958 Patna 71 that a suit for compensation for loss can be brought either against the Railway Administration under whose railway the consignment was booked or against the Railway Administration on whose railway the loss occurred. The latter railway was only bound for such loss if the loss had occurred at any place within that railway. The same principle was laid down in the case reported in AIR 1956 Patna 434. The case of AIR 1954 Patna 548 does not seem to be in point. It will be noticed that the decision reported in AIR 1949 Patna 329, was not considered at all. Further, it appears that the exact extent and scope of Section 80 was not raised and was not considered. There is only a casual observation that Section 80 in terms does not refer to non-delivery at all. In any case, there is an earlier Division Bench decision in the case of AIR 1949 Patna 329 and the ruling given in that case must prevail. In my opinion, the cases reported in AIR 1949 Patna 329 and AIR 1956 Patna 71 and AIR 1956 Patna 434 clearly support the contention of Mr. Bose that the East Indian Railway cannot be made to compensate because the loss was not proved to have occurred on that railway. Of course, the Mysore Railway to which the consignment was made over was always liable as it was the contracting party; but in this case the plaintiff did not implead the Mysore Railway as a defendant.

9. The contention of Mr. Hassan that the amendment of the Railways Act by adding a new Section 74-E had altered the whole law is not quite valid. It appears that formerly the persons delivering the goods to Railways used to enter into contracts in certain prescribed forms and one of the terms of those contracts provided that "the agreement shall be deemed to be made separately with all Railway Administrations or transport agents or other persons who shall be carriers for any portion of the transit at a special reduced or "owner's risk rate". By introduction of Section 74-E all the risk notes under which the goods used to be consigned to the Railways have been abolished and in their place statutory provisions have been enacted in Sections 74 to 74-E. Section 74-E does nothing more than give statutory recognition to the terms of the contract contained in the risk notes which were previously in vogue. This section only provides that although the goods were delivered to one railway the other railways through which the goods travelled would also be deemed to have contracted with the persons delivering the goods for their carriage. The existence of a contract alone, however, is not sufficient to fasten the liability, although all the railways will be deemed to have entered into the contract. The question remains who will be responsible and in what cases. That question is determined by Section 80 of the Indian Railways Act. Section 80 has not been modified and there is nothing to suggest that Section 74-E of the Act, in fact, controlled Section 80. Section 80 only determined the liability of the different Railways.

Once that liability has been fixed, the railways cannot argue that it had not entered into contract with the persons who made the consignment because such a contention is now invalid in view of the provisions of Section 74-E of the Act. This is all that is provided by Section 74-E. But before Section 74-E comes into play, the loss must be proved as provided in Section 80. If the loss is not proved, then the only remedy to the person making the consignment is to sue the contracting Railway, in the instant case the Mysore Railway, or all the Railways jointly. In my opinion, this contention of the learned Advocate for the respondent is not valid. I think, the plaintiff cannot succeed in this case because, as found by the Courts below, the loss did not occur on the East Indian Railway.

10. The next contention of Mr. Bose is that the suit was incompetent because the notice under Section 80, Code of Civil Procedure, was not served on the General Manager of the East Indian Railway. What happened in this case was that the plaintiff sent a notice to the Secretary, Union of India, Railway Department, New Delhi, and forwarded a copy of this notice to the General Manager, East Indian Railway. There is no question that there has not been a compliance with the terms of Section 80 of the Code of Civil Procedure, because under that section the notice should have been given to the General Manager of the Railway Administration concerned and, therefore, the notice to the Secretary, Union of India, Railway Department, was invalid. The question is whether the service of a copy of the said notice on the General Manager of East Indian Railway can be regarded as sufficient compliance with the provisions of Section 80; of the Code of Civil Procedure. Strictly speaking by their notice, the plaintiff did not purport to prefer a notice to his claim to the East Indian Railway. In my opinion, it is not a valid service of notice. A similar question arose with respect to the service of notice under Section 77 of the Railways Act in the case of *Fagumani Khuntia v. Dominion of India*⁶, In that case their Lordships of the Orissa High Court held that the service of a mere copy of the notice sent to another Railway Administration was not a proper service. Although there the question related to service of notice under Section 77 of the Indian Railways Act, the principle laid down in that case, in my opinion, governs this case also. A Division Bench of the Bombay High Court has given a similar ruling in the case of *E. I. Rly. Co. v. Jethmull Ramanand*⁷, (G). A somewhat similar question was raised in the case of AIR 1955 Madras 151. I would reproduce here with respect the following observations of the learned Judge:

"I am unable to take the view, for which I can find no support in a maze of somewhat conflicting case law, that the 'railway administration' under Section 77 means 'any railway administration' over which the goods are carried. The generally accepted view and one which would also follow from the language of Section 77 read with Section 80 is that each railway administration is treated as a separate entity with a separate existence and a separate juristic personality. In the present case no notice, or copy of a notice, or, in fact, any communication of any kind was sent by the plaintiff to the B. B. and C. I. Railway or even to any subordinate thereof. They are the original contracting railways and would in any event, other requirements being satisfied, be liable for the loss, no matter where it occurred". It is thus quite manifest that all the Railway Administrations constitute separate entities and must be served separately under section 77 of the Railways Act or section 80 of the Civil Procedure Code, as the case may be, to render one or the other liable for the loss and that a mere transmission of the copy of a notice served on one Railway Administration to another Railway Administration is not a valid service on the latter. Therefore, it must be held that the notice under section 80 of the Code of Civil Procedure was not legally served on the appellant and the suit was not maintainable.

11. In the result, the appeal is allowed with costs and the judgment and decree of the Court below are set aside and the suit is dismissed with costs throughout.
Appeal allowed.

Cases Referred.

¹ AIR 1949 Pat 329

² AIR 1956 Pat 71

³ AIR 1956 Pat 434

⁴ AIR 1955 Mad 151

⁵ AIR 1954 Pat 548

⁶ AIR 1956 Ori 29

⁷ ILR 26 Bom. 669