NAGPUR HIGH COURT

Governor-General in Council

Vs

S.G. Ahmed

Second Appeal No. 698 of 1946

(Hidayatullah, J.)

23.02.1949

JUDGMENT

Hidayatullah, J.

This is an appeal filed by the Governor-General in Council against one Captain S.G. Ahmed, in whose favor a decree for Rs. 1,149-4-0 has been passed.

2. The plaintiff Captain Ahmed purchased a ticket from Fort Sandeman to Jubbulpore on the 5th June 1942. He booked his luggage consisting of 5 packages including a black trunk containing articles of his kit etc. to be carried in the luggage van of the train. He paid freight therefor and was given a railway receipt (No. 456224). The plaintiff arrived at Jubbulpore on the 11th June 1942, and he asked for the delivery of his luggage, but was informed that the packages had not arrived till then.

3. On the 13th June 1942 the plaintiff again went to the railway station at Jubbulpore and was delivered only 4 packages. The black trunk was not delivered to him, and he was told that it had probably been miscarried and would be delivered in due course. The plaintiff made repeated inquiries and also wrote several letters to the railway authorities, but on the 15th March 1943 he was definitely informed that the trunk was lost. The case of the plaintiff is that this trunk contained his uniform and other personal effects valued at Rs. 1,149/4/-. A list of the articles that the trunk is alleged to have contained is given as annexure A to the plaint and has not been controverted.

4. All these facts were admitted by the defendant. The two Courts below have decreed the entire claim of the plaintiff with costs against the Governor-General in Council.

5. In this appeal three questions have been raised. The first is that the suit is barred by limitation.

It is contended that the suit ought to have been filed within one year from the 11th June 1942 or at any rate from the 13th June 1942 when the railway authorities failed to deliver the black trunk, and apprised the defendant of its loss. There can be no doubt that there was failure to deliver the black trunk, and in such cases the matter is governed Article 31 of the Indian Limitation Act : see '*Jugal Kishore v. G. I. P. Rly.*[1]', '*Radha Shyam v. Secy. of State*[2]', and *'Ramlal v.*

[1]45 All 43 [2]44 Cal 16

Agent, B. N. Railway Co., Ltd., Calcutta[3]', The only question is when the railway company failed to deliver the goods. It is no doubt true that in one sense the railway failed to deliver the goods when on the 13th June 1942 they handed over to the plaintiff only 4 out of the 5 packages entrusted to their care. But it cannot be overlooked that for some time the railway authorities themselves were hoping to deliver the remaining package and were making inquiries all along the route. Numerous letters have been exhibited in the case, which go to show that the railway authorities kept on assuring the plaintiff that inquiries were being made and that he would learn the result of the inquiries in due course. In such cases it is not f AIR to expect the plaintiff to rush to Court with a suit without waiting for the result of the inquiries. Limitation can therefore begin only when there was a definite statement by the railway authorities that they were not in a position to deliver the goods : see '*Raigarh Jute Mills v. Commissioners, Calcutta Port*[4]', A direct case on this point is *'Jugal Kishore v. The Great Indian Peninsula Railway*[5]', where a Divisional Bench in almost identical circumstances refused to hold that the starting point of limitation was the initial failure to deliver the goods. That case has my respectful concurrence, and I hold that time would run not from the 13th June 1942, but from the 16th (sic) March 1943, when the fact that the railway was unable to deliver the trunk was communicated to the plaintiff. I therefore hold that the suit is within time.

6. It is next contended that there was no notice to the railway administration as is required by Section 77 of the Indian Railways Act, and on the analogy of certain cases under section 80 of the Civil Procedure Code it was argued that this matter cannot be condoned. The plaintiff had averred in his plaint that he had served notices upon the Governor General as well as the railway administration. This is what the plaintiff said in para. 10 of his plaint :

> "That the plaintiff has given registered notices to the defendant and the railway administration according to Section 80 of the Code of Civil Procedure ;"

It is true that the plaintiff mentions only Section 80 of the Civil Procedure Code, but that would not make the notice incompetent because there is no provision for sending a notice to the railway administration under Section 80 of the Civil Procedure Code but only under section 77 of the Indian Railways Act. It is pertinent to notice that the Governor-General in Council did not specifically deny that there was a notice to the railway administration as alleged. The written statement merely stated that the notice under section 80 of the Civil Procedure Code was not served in time and was therefore invalid. In view of the fact that there was no specifics denial of

the fact that there was a notice to the railway administration and further that this ground was never taken in the trial Court I hold that it is not open to the defendant to urge this ground for the first time in appeal. There is nothing to show that the plaintiff did not serve a notice on the railway administration. In fact, if one goes by the letters exchanged between the parties there is a mention in one of the letters Ex. P-15, that the plaintiff had sent a notice on the 3rd July 1942 to the railway administration of a contemplated action The purpose underlying section 77 of the Indian Railways Act was served

[3]31 NLR Sup 79 [5]45 All 43

[4] AIR 1947 Cal 98

because the intention is to inform the railway and also to prevent the making of stale claims. This purpose has been set out at length by Nivogi, J., in '*Govindlal v. Governor General in Council*'[6], with which I respectfully concur. In view of all this I hold that the bar of section 77 of the Indian Railways Act does not apply to the present case.

7. The third point argued is that the plaintiff had failed to make a declaration of the contents of the trunk before consigning it to the care of the railway. It was argued that under Section 75 read with the Second Schedule to the Indian Railways Act the plaintiff was bound to declare the value and nature of certain of the goods that the trunk contained, and the plaintiff not having done so the railway administration cannot be held liable. The appellant urges that this relates to items Nos. 10, 16 and 18 to 21 of annexure A to the plaint. Items 18 to 20 are silver badges and silver buttons, which were part of the uniform of the plaintiff and as such would be exempt from declaration under Clause (c) of the Second Schedule to the Indian Railways Act. They therefore need not be taken into account. Item 16 is a vacuum bottle priced at Rs. 25/-. It was argued that this vacuum bottle must be made of glass and therefore falls within entry (k) of the Second Schedule. The lower appellate Court held that there was no proof that the vacuum flask was made of glass and declined to hold that any declaration in respect of it was necessary. Undoubtedly, the majority of vacuum bottles are made of glass, though steel bottles are also manufactured; but as I shall show in the sequel this does not make any difference to the plaintiff's case.

8. The next item is item 21, which is a prismatic compass without a case valued at Rs. 65/-. This falls within item (r) - scientific instruments. I hold that it was necessary for the plaintiff to declare this article to the railway administration at the time of consigning his goods.

9. The last item is 'agate glasses' valued at Rs. 200. Under Section 75 of the Indian Railways Act, if the consigned goods contain articles mentioned in the Second Schedule exceeding in value Rs. 100 then the responsibility of the railway administration is at an end if no declaration has been made. It is obvious that even if one were to take the prismatic compass and the vacuum bottle as declarable goods the total value of these two does not exceed Rs. 90. Thus unless the agate glasses are regarded as declarable goods the plaintiff's case must succeed on this point also. I found considerable difficulty in finding out what was meant by 'agate glasses', and the plaintiff is the only person who has given any explanation of it. According to him these agate glasses were

nothing more than a p AIR of spectacles belonging to him, and his evidence is that these were made not out of glass but out of pebble. Since there is no evidence to contradict this statement of the plaintiff it has been accepted by the lower appellate Court, and I do not see any reason why it should not be accepted by me. The agate glasses therefore do not fall within item (k) of the Second Schedule and are not hit by any other item in that list. The result is that the declarable goods do not exceed Rs. 100 in value, and therefore Section 75 of the Indian Railways Act does not apply to the present case.

10. My attention was drawn to a decision of Pollock, J., in Civil Revn. No. 131 of

[6] AIR 1948 Nag 17

1947 in which the learned Judge reluctantly followed *'Secretary of State v. Dunlop Rubber Co*[7]*.',* in preference to '*Palanichami v. Governor General in Council*[8]*',* This case was not cited at the time of hearing. I am bound by the interpretation of Niyogi, J., to which I have adverted. I do not therefore see any reason to change my judgment.

11. No other argument against the appellate judgment and decree was advanced before me. The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.

[7] 6 Lah 301

[8] AIR 1946 Mad 133