

NAGPUR HIGH COURT

Dominion of India

Vs

Firm Museram Kishunprasad

Civil Revn. No. 582 of 1948

(Bose, C.J. and Hidayatullah, J.)

15.10.1948. 28.09.1949

JUDGMENT

Hidayatullah, J.

1. This is an application for revision under Section 25, Provincial Small Cause Courts Act and the defendant is the applicant here.

2. The facts of the case are that one Manoharlal Jethamal Mehta of Ambijipeta consigned on 8th May 1946, 255 bags of dry coconuts from Rajahmundry Station on the M.S.M. Railway to the plaintiff firm. The goods were to be delivered at Howbagh Station (Jubbulpore) on the B. N. Railway. The railway receipt issued to the consignor bore No.44899 and mentioned the number of bags but qualified it by stating that the wagon was 'said to contain' 255 bags. It is admitted that transshipment of the goods took place at Gondia when they were transferred to narrow gauge line.

3. When the wagon was received at Howbagh Station it was found to contain only 251 bags, and the plaintiff after serving a notice upon the Secretary to the Central Government 'Commerce and Railway Department' brought the present suit against the Governor-General in Council. The plaintiff claimed Rs. 163-6-0, that is to say Rs. 132 as the price of the four bags of coconuts, Rs. 26-6-0 as damages and Rs. 5 as notice charges. The claim of the plaintiff was decreed and hence this revision.

4. The case of the defendant was that the loss did not occur on the B.N. Railway. Since the consignment was not loaded by the sender under the supervision of the railway authorities at Rajahmundry the consignment was booked under a 'said to contain' railway receipt. The wagon was received at Gondia with the seals intact, but only 251 bags were found in the wagon. The B. N. Railway authorities, therefore, intimated this fact to Rajahmundry and transhipped the bags as found and later delivered the same to the consignee at Howbagh Station.

5. It was also contended that the plaintiff ought to have served a notice upon the M.S.M. Railway to which the consignment was delivered in the first instance and since the M.S.M. Railway had not been made a party, which the plaintiff could do under Section 80, Railways Act, the plaintiff's suit must fail since loss on the B.N. Railway had not been proved. It was also pleaded that the suit as laid was wrong because the Railway Administration was not made a defendant nor was a notice served upon it under Section 77, Railways Act.

6. The consignment was received by the M.S.M. Railway for carriage over the territory of that Railway and further over that of the B.N. Railway. Section 80, Railways Act, gives an option in such cases and overrides even contracts. That section reads:

"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 animals or goods where ...the animals or goods were booked through over the railways of two or more railway administrations, may be brought either against the railway administration to which the animals or goods were delivered by the consignor thereof or Against the railway administration on whose railway the loss..occurred."

7. Two things appear from this. Firstly each railway administration is to be treated as is separate entity with separate existence and 'personality. Secondly, the injured party has the option to sue either the railway administration with whom the contract was made or the railway administration on whose railway the loss occurred. It is true that under section 76 *ibid* in any suit against a railway administration it is not necessary for the plaintiff to prove how the loss was caused. But since different railway administrations are to be treated as separate entities, the contract is only with the administration that received the goods. That administration is the principal, and the other railway merely acts as agent of the principal. Section so saves the agent unless the agent is responsible for loss. The operation of section 80 is analogous to that of Section 233, Contract Act and by statute the agent is made liable personally under certain circumstances.

8. But a plaintiff, who having his rights against the principal, (that is to say, the railway administration with whom he enters into a contract), chooses to omit that administration and sues the agent administration, undertakes a burden which he is required to discharge strictly: See *G.I.P. Rly. v. Sham Manohar*¹, *Agent G.I.P. Rly. and E.I. Rly. V. Karaylal*², and *E.I. Rly. Co. Ltd. v. Kedarnath*³, Further, merely suing the Governor-General as representing the entire State-owned railways (at least before the Indian Independence Act was passed, which is the case here) is not a proper form of suit because that would render section 80 otiose and meaningless. Since the plaintiff has not asked for amendment of his plaint so as to include M.S.M. and B.N. Rly. Administrations we have to see in the present case if the plaintiff has established that loss occurred on the B.N. Railway. In the present case the evidence shows that at Gondia only 251

coconut bags were found in the wagon. This is evidenced by the entries in the register of goods maintained at the Gondia Station and is also corroborated by a telegram sent to Rajahmundry Station. It is true that the person who maintained the register and sent the telegram has not been examined, but

¹34 ALL. 422: (14 I.C. 803)

³6 Pat. 105: (AIR (14) .1927 Pat. 344)

²14 N.L.R 122: AIR 1917 Nag 119

he was not available at the time since he had gone away to Bihar for training. But the entry was proved, and there is a presumption under Section 114, Evidence Act, and we accept this evidence. It would thus appear that the loss did not occur on the B.N. Railway.

9. It was argued that the definition of Railway Administration includes Government and therefore the plaintiff could sue Government alone. This is not correct. The scheme of the Act requires the plaintiff to sue a particular railway administration. In the case of State-owned railways the notice to a railway administration would include Government. Similarly a suit against a railway administration would also include Government but not vice versa. This suit was filed before the recent amendment of the Civil Procedure Code, and whatever may be the position after the Indian Independence Act it is clear that the suit as laid ought to have been against one or the other railway administration or both. Suing the Governor-General would not make the railway administration a party as it is not only contrary to the scheme of the Act but would also make section 80 of the Act inoperative.

10. Further there is no proof in this case that 255 bags were in fact loaded. According to Rule 22 of the Goods Tariff General Rules then in force coconuts were required to be loaded and unloaded by senders and consignees when in wagon loads. It is nowhere stated or proved by the plaintiff that the bags were loaded by railway servants or that they had opportunity to verify the number. The wagon was placed at the service of the consignor and the number stated was accepted as correct for the purpose of charging freight. It was thus that the receipt issued qualified the number by stating that the wagon was 'said to contain' 255 bags. This was perfectly fair and in order, and the number was mentioned merely to calculate the freight.

11. Under Rule 15 *ibid* it is clearly stated that by mentioning weight etc., in the railway receipt the railway does not admit the correctness of the statement. This rule applies with even more rigour where the railway receipt in addition contains the 'said to contain' remark.

12. It is unfortunate that the railway receipt does not contain a specific reference to these General Rules thus incorporating them in the contract. But even if we leave the Rules out of account, the consignment being a wagon load, and the receipt being a 'said to contain' receipt the same result follows. The railway reserves to itself the right to check up the quantity en route (see Clause 6 printed on the back of the receipt), and this further strengthens the inference that the railway did not admit the quantity mentioned.

13. Now, in the present case, there is no evidence whatever that 255 bags were loaded. The *bijak*

of the sender was not proved in the case nor was any witness examined to prove that this quantity was loaded. Since we have held that there was no admission on the part of the B.N. Railway administration about the quantity loaded, it cannot be held that the B. N. Railway caused any loss of consignment.

14. For the above reasoning it is manifest that the decision of the Court below is not only contrary to law but is one which no Judge could reach in the case. The judgment and decree of the Court below is therefore set aside, and the plaintiff's suit is ordered to be dismissed with all costs in this Court and the Court below. Counsel's fee here Rs. 30.

Revision allowed.