(1970) 11 AHC CK 0007

Allahabad High Court

Case No: First Appeal No. 109 of 1957

The Union of India (UOI)		APPELLANT
	Vs	
Lakshmi Ratan Cotton Mills Ltd. and Others		RESPONDENT

Date of Decision: Nov. 20, 1970

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 15(2), 80
- Contract Act, 1872 - Section 151
- Evidence Act, 1872 - Section 114
- Limitation Act, 1908 - Article 30
- Railways Act, 1890 - Section 72, 77

Citation: AIR 1971 All 531

Hon'ble Judges: S.D. Khare, J; R.B. Misra, J

Bench: Division Bench

Advocate: B.L. Gupta, D.K. Lahiri and D. Sanyal, for the Appellant; Satyendra Nath Verma and Surendra Nath Verma, for the Respondent

Final Decision: Dismissed

Judgement

Misra, J.
The present appeal by the Union of India is directed against the judgment and decree of the First Additional Civil Judge, Kanpur, dated 9th November, 1956.

2. Messrs. Bruel & Company of Bombay is a cotton merchant and commission agent On 2nd May, 1951 they booked two consignments of 100 bales each of fully pressed cotton at Raichur Station for being carried and delivered to Laxmi Rattan Cotton Mills Company Limited at Kanpur. They also got the two consignments insured with Neptune Assurance Company Limited of Bombay for Rs. 52,000/- and Rs. 51,000 respectively for the period from 2nd May, 1951 till the unloading of the bales at the destination station. Raichur Station fell on the G.I.P. Railway (now the Central

Railway) as it was prior to the division of the Indian Railways into new zones. Two Railway Receipts bearing Nos. A-7263/96 and A-7263/97, dated 2nd May, 1951 were issued in respect of the two consignments mentioning Laxmi Rattan Cotton Mills Co. Ltd. as the consignees.

3. It appears that the consignments did not reach the consignee for a pretty long time and, therefore, correspondence ensued between the consignee and the Chief Traffic Manager, G. I. P. Railway, Bombay. Later on it transpired that the goods of the two consignments had caught fire on 9th May, 1951 near Sarola Station. About 50 burnt bales were later on delivered to the consignee. The consignee preferred its claim against the insurer and the Neptune Assurance Co. Ltd. paid a sum of Rs. 92,966/- in full settlement of the claim of the consignee under the two policy Nos. 16744 and 16745. But in spite of repeated demands the Railway administration did not pay the damages. Accordingly the Laxmi Rattan Cotton Mills Co. Ltd. and the Neptune Assurance Co. Ltd. filed the suit, giving rise to the present appeal, against the Union of India for a sum of Rs. 99,906-6-9 as compensation for loss suffered by them, after serving notice u/s 80, C. P. C. through the General Manager, Eastern Railway, Calcutta, the General Manager, Northern Railway, Delhi and the General Manager, Central Railway, Bombay.

4. It was alleged in the plaint that the said loss or non-delivery of the goods had arisen by reason of the default and negligence of the defendant railway administration and, therefore, the Union of India was liable for the loss or non-delivery of the 200 bales of fully pressed cotton.

5. Two separate written statements were filed in the case; one by the defendant as representing the Central Railway and the other by the Union of India as owners of the Northern Railways and Eastern Railways. But the defence in both the written statements is almost similar. It was pleaded that the claim was barred by Section 77 of the Indian Railways Act and also barred under the provisions of Section 80 of the Code of Civil Procedure, It was further pleaded that the suit was also barred u/s 72 of the Indian Railways Act as the defendant took as much care of the goods as is required of a bailee in law, and as the alleged loss to the goods was due to an accidental fire between Visapur and Sarola Stations on the G. I. P. (now Central) Railways. It was alleged that the consignments in question were properly despatched ex-Raichur, loaded in G. I. P. wagon No. 19374; when the train (NE 14 Dn.), to which this wagon was attached, arrived at Sarola Station on 9th May, 1951, it was noticed that the wagon holding the suit consignment was on fire. The wagon was immediately isolated and steps were taken to extinguish the fire. Fire brigades from Dhond and Ahmadnagar were summoned. They arrived and started fighting the fire, but in spite of best efforts on the part of the Railway Administration 144 bales were entirely gutted. The Railway Administration did all that was required of a bailee to save the goods. In the written statement filed by the defendant as owners of the Northern Railways and Eastern Railways it was further alleged that the

defendant, being a destination station, made over delivery of the goods and salvage as received from the Central Railway, the fire and the consequent loss having taken place in the Central Railway, and they were, therefore, absolved from the liability under the provisions of Section 80, Indian Railways Act.

6. The First Additional Civil Judge, Kanpur, who tried the suit, came to the conclusion that though the Laxmi Rattan Cotton Mills Ltd. (plaintiff No. 1) had recovered the loss from the Neptune Assurance Company Ltd. (plaintiff No. 2), the insurer, plaintiff No. 1 had the right to sue; that there was no privily of contract between plaintiff No. 2 and the defendant and, as such, plaintiff No. 2 could not sue in its own name; that although no valid notice u/s 77 of the Indian Railways Act was given to the G. I. P. (now Central) Railway Administration, the defendant would be estopped from taking such a plea and the absence of a proper notice under that section would not non-suit the plaintiffs in the present case; that a valid notice u/s 80, C. P. C. was sent to the General Manager of the Central Railway as well as to the General Manager, Eastern Railway, Calcutta and the General Manager, Northern Railway, Delhi, that the claim was not barred by time; and that the burden was on the defendant to prove that reasonable steps were taken to prevent the fire but there was no dependable evidence produced on behalf of the defendant to discharge that burden. The plaintiff No. 1 was held to be entitled to Rs. 87,358-10-9. On these findings the suit was decreed in favour of plaintiff No. 1 for Rs. 87,358-10-9 with pendent lite and future interest.

7. Feeling aggrieved, the Union of India has come up in appeal.

8. Sri D. Sanyal, appearing for the Union of India, strenuously contended that neither plaintiff No. 1 nor plaintiff No. 2 has any right to sue, and the suit is liable to be dismissed on this score alone. Elucidating his argument Sri Sanyal contended that it was for the plaintiffs to show that they had any existing title in the property to enable them to sue. The only allegation made in Paragraph 3 of the plaint is that the first plaintiff was the consignee mentioned in the two Railway Receipts. There is no allegation in the plaint that plaintiff No. 1 had purchased the property from Bruel & Company, the consignor, for value, and in the absence of any allegation about their title plaintiff No. 1 had no cause of action and no right to sue. He further contended that there being no privily of contract between plaintiff No. 2 and the defendant, the former was not entitled to sue.

9. We find difficult in accepting either of the two contentions. In the first place, no such plea had been taken by the defendant in their written statements. Nor were the parties at issue on these points. In the absence of any such plea in the written statements and in the absence of any issue on the points, such a plea cannot be allowed to be raised for the first time at the appellate stage.

10. There is an application on the record moved on behalf of the plaintiffs, dated 7-1-1956, with a prayer to issue a commission to the District Court at Raichur for the

examination of Jasrai Amarchand instead of Messrs. Bruel & Co. In that application it was specifically mentioned on behalf of the plaintiffs that Messrs. Bruel & Co. were the principal parties from whom the plaintiff No. 1 had purchased the goods in suit but the actual supplies were made by their agents at Raichur, viz., Messrs. Jasraj Amar Chand. Even if there was any vagueness in the plaint, there remained no manner of doubt, in view of this application, that plaintiff No. 1, the consignee, had purchased the goods from Messrs. Bruel & Co. In spite of such an application the defendant did not set up any such case at any stage of the case before the trial Court, Besides, the plaintiff has produced Sri R. C. Gupta, Secretary, Laxmi Rattan Cotton Mills, who deposed that 200 bales of cotton were purchased from Bruel & Co. in May 1951 through the India Cotton Supply Limited. No doubt in cross-examination he admitted that the payment was not made in his presence. All the same we find no reason to disbelieve him.

11. Sri Sanyal relied on the case of Union of India v. West Punjab Factories Ltd. reported in AIR 1960 SC 395 in support of his contention. It was held therein that:--

"From the mere fact that a Railway Receipt is a document of title to goods covered by it, it does not follow, where the consignor and consignee are different, that the consignee is necessarily the owner of goods and the consignor can never be the owner of the goods. The mere fact that the consignee is different from the consignor does not necessarily pass title to the goods from the consignor to the consignee, and the question whether title to goods has passed to the consignee has to be decided on other evidence. Ordinarily, it is the consignor who can sue if there is damage to the consignment, because the contract of carriage is between the consignor and the railway administration. Where, however, the property in the goods carried has passed from the consignor to the consignee, the latter may be able to sue. Whether title to goods has passed from the consignor to the consignee depends on the facts of each case."

Reliance was next placed on Ibrahim Isaphai Vs. Union of India (UOI) and Another, . In that case the goods were consigned to self by the consignor and the railway receipt was endorsed in favour of another. The endorsee sued the railway for short delivery of goods. It was held in these circumstances that the endorsee could not be said to have acquired an interest in the goods by the mere fact of his being the endorsee.

12. Both these cases are distinguishable. In the present case the claim of the plaintiff is not based only upon the endorsement but also on the evidence that the consignor had sold the goods to the first plaintiff (Laxmi Rattan Cotton Mills Co. Ltd.). Besides, in the present case no such plea had been raised by the defendant in their written statement. Had the defendant raised such a plea in their written statement or had the parties been at issue on this point, the plaintiff could have produced even documentary proof of the sale of the goods by the consignor to the consignee.

13. In view of the Full Bench decision of this Court reported in Dominion of India as owner of G.I.P. Rly. and Another Vs. Gaya Pershad Gopal Narain, a consignee, who is not the owner of the goods but to whom the goods are consigned for the purpose of sale on a commission basis, is entitled to maintain the suit for loss in respect of the damage caused to the goods in transit.

14. For all these reasons we hold that plaintiff No. 1 is entitled to bring the suit.

15. Sri D. Sanyal also challenged the right of plaintiff No. 2 to maintain the suit. He contended that there was no privily of contract between plaintiff No. 2 and the defendant; the right of plaintiff No. 2 to sue at the most is based upon an assignment of right to sue, which would be invalid. Whether such an assignment would be valid in law, is a moot question. But, on the view taken by us above that plaintiff No. 1 is entitled to sue, it is not at all necessary for us in this case to express any concluded opinion on this question. The suit can be decreed at least in favour of plaintiff No. 1.

16. The finding of the Court below that the suit is well within time has not been challenged, and we think, rightly. The relevant Article applicable to the case is Article 30 of the 1st Schedule of the old Limitation Act. The period of limitation prescribed is one year from the date when the loss or injury occurs. To this may be added the two months required for notice u/s 80, C. P. C., vide Section 15(2) of the Indian Limitation Act. Thus the period of limitation was fourteen months to be computed from the date of the loss. Admittedly the loss occurred on 9th May, 1951, and the suit could have been filed up to 9th July, 1952. The suit having been filed on 2nd July, 1952 was thus well within time.

17. It was next contended for the appellant that the learned Judge has wrongly cast the burden of proof on the defendant, which in fact lay on the plaintiff, to Show the negligence or misconduct of the railway administration. It was alternatively argued that the defendant in any case has proved by cogent evidence that there was no negligence or carelessness on the part of the railway authorities. In support of his contention the learned counsel placed reliance upon (i) The Union of India (UOI) Vs. Mahadeolal Prabhudayal, (ii) The Union of India representing the Eastern Rly., The Union of India (UOI) Vs. Raigarh Jute Mills Ltd., and (iii) Union of India (UOI) Vs. Brijlal Purshottamdas, ". But these cases have no application to the present case. In these cases the consignment had been booked at the "owners risk rate", and, therefore, the provisions of Sections 74-C and 74-D of the Indian Railways Act (hereinafter referred to as the Act) were attracted. In the instant case, however, from the materials on the record, it is clearly established that the consignments were booked at the "railway risk rate." This is evident from the two railway receipts in question as also from the deposition of Sri V. P. Salkar, who was the Chief Goods Clerk at the relevant time. He stated that, "there is only one rate for cotton which is called Railway Risk Rate,"

18. The measure of general responsibility of a railway administration as carrier of goods has been provided by Section 72 of the Act. The section reads thus:--

The responsibility of a railway administration for the loss, destruction or deterioration of animals or goods delivered to the administration to be carried by railway shall, Subject to the other provisions of this Act, be that of a bailee under Sections 151 152 and 161 of the Indian Contract Act, 1872 (DC of 1872)."

19. Sections 151 152 and 161 of the Indian Contract Act read thus:--

Section 151: "In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed."

Section 152: "The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in Section 151."

Section 161: "If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time."

The position of the railway administration; being that of a bailee, it was bound to take as much care of the goods bailed to him as; a man of ordinary prudence would, under similar circumstances, take of his own goods, as enjoined by Section 151 of the Indian Contract Act. The initial burden thus lay upon the railway administration to show that it took the requisite care as provided by Section 151 of the Indian Contract Act. If the defendant succeeded in discharging that initial burden, the onus to prove the negligence or misconduct on the part of the railway administration would then shift on the plaintiff.

20. We are supported in our view by a decision of the Calcutta High Court reported in Indian Trade and General Insurance Co. Ltd. Vs. Union of India (UOI), . In that case a consignment of jute was despatched by railway under "Railway Risk" and was damaged by fire. In the suit filed for damages against the railway the defendant contended that the fire was purely accidental, but did not produce all the evidence it should have produced, and it was also found that the wagon containing the jute was taken along a longer route. In these circumstances it was held that:--

"The Court must draw a presumption which a Court is permitted to do u/s 114(g) of the Evidence Act and came to the conclusion that the defendant was negligent in dealing with the goods."

It was further held in that case that:--

"The responsibility of the railway administration in respect of goods booked under railway risk is that of a bailee u/s 151 of the Contract Act. The railway administration

must take as much care of the goods while under its control as a man of ordinary prudence would take of such goods if they were his own. The railway administration is liable for the loss, destruction etc., if it happens by its default or negligence. When loss, destruction etc. occurs, it is not for the plaintiff to prove, in the first instance, as to how it happened.

The burden of proof of the issue as to negligence ultimately rests with the plaintiff The plaintiff has to satisfy the Court that the defendant was negligent, but the duty of showing how the consignment was dealt with during transit lies on the railway administration, as a matter within its special knowledge. As the law does not cast on the plaintiff the obligation of proving how the loss arose and as it imposes on the defendant the duty of showing how the goods were dealt with while under its control, the latter must first adduce evidence disclosing its treatment of the goods and the plaintiff may rely on that evidence in addition to any tendered by him to show that the loss bad occurred by reason of defendant''s default or negligence or that the loss could not have occurred but for such default or negligence. If the defendant does not adduce all the evidence at its command, the plaintiff may, in proper cases, ask the Court to make a presumption u/s 114(g), Evidence Act and to come to the conclusion that the evidence which has been withheld, would have gone against the defendant."

21. So, in view of the provisions of Section 151 of the Contract Act read with Section 72 of the Indian Railways Act, it was for the railway administration first to prove that it did take all the care which was required of a bailee u/s 151 of the Contract Act. We have now to consider if the defendant has been able to discharge this initial burden.

22. The defendant produced in all 11 witnesses. Four of the witnesses (V. P. Salkar, Chief Goods Clerk at Raichur; Rawoo Bala, Shunting Master, Dhond Junction; S. J. Lodbe, Trains Clerk at Dhond; and Bajanna Rajanna, Train Examiner at Dhond) deposed about the care and precautions taken by the railway administration from the time of the loading of the cotton bales into the railway wagon till the time of the detection of the fire in the wagon. The remaining seven witnesses (Fakira Kashi Ram, the pointsman at Sarola; Ram Chandra Bhagwant Kulkarni, the guard; Anthony Doraswami, the engine fireman; G. N. Raj, Purohit, Assistant Station Master, Sarola; P.V. Okhade, Train Examiner at Dhond; V.R. Solanki, Section Controller, Dhond, and A. N. Devasthali, A. D. C. I. at Ahmadnagar) deposed about the efforts of the railway administration to quell the fire. Most of these witnesses deposed that records were maintained by the railway administration which contained information on most of the material questions involved in the present case touching the points deposed to by them, and some of the witnesses had also to admit that they had come to depose in the case after having refreshed their memory from the relevant record, yet curiously enough those records were not produced by the Railway Administration.

23. V.P. Salkar, who was the Chief Goods Clerk at Raichur, had to admit in cross-examination that though no record was kept at the station about the wagons

that were fit, yet record was kept of unfit wagons. No such record was however, produced to show that the wagon in question was not among the unfit wagons.

24. Rawoo Bala, Shunting Master at Dhond Junction, who deposed about the formation of N. E. 14 Dn. Ex. Dhond to Nandgaon (which was to carry the wagon in question) on receipt of the necessary memo from the Trains Clerk, admitted in cross-examination that the meraos that are issued to him are kept in the office record. According to the Trains Clerk, when a wagon contains cotton or any other inflammable substance, a remark is given in the memo issued to the Shunting Master for the formation of train to see that the wagon may not catch fire in shunting. The Shunting Master further admitted in cross-examination that record is maintained to show who did the checking of a train, and at what time he received the memo for the formation of a train and when he handed over the train. But none of these records have been produced before the Court. From the records, if produced, it could have been known whether or not any particular instruction about tile cotton wagon was given in the memo for the formation of N. E. 14 Dn. train at Dhond that was to carry the wagon in question.

25. S. J. Lodhe, the Trains Clerk at Dhond, who gave the memo to the Shunting Master for the formation of N. E. 14 Dn. and who deposed that, when a wagon contains cotton or any other inflammable substance, a remark is made in the memo issued to the Shunting Master giving particular instructions about the cotton wagon, also admitted that he tried to trace the record but it would not be found. He further admitted in cross-examination that all the records were available when a Railway Inspector was deputed to enquire into this case of fire. This witness further admitted that a despatch book is also maintained in which he gives the numbers of individual wagons either from the engine side or from the brake side and it is an indication of his having checked the train. But none of these necessary records has been produced by the railway administration.

26. Bajanna Rajanna, the Train Examiner at Dhond Junction at the relevant time admitted in cross-examination that the yard master gave him memo for the N. E. 14 Dn. on 9th May, 1951 for examining the wagons for safe running. He admitted in cross-examination that the yard master in his memo mentioned nothing special to be checked. He also admitted that all those memos must be kept in Record, and that formation memos were kept in record even in May 1951. In cross-examination the witness further admitted that before coming to depose he checked his own record (the Train Register Book), which was intact. This Train Register Book, according to the witness, indicates the time taken in checking, the signature of the person checking the train and also particulars of formation of the train besides other things. But none of these important documents has been produced.

27. Similarly some of the witnesses who came to depose about the efforts on the part of the railway administration to quell the fire have also admitted that there were material records maintained which could have thrown light on the points, but

for reasons best known to the defendant those records too have not been produced and have been withheld. Anthoney Doraswami, the fireman of Engine No. 877, which had gone with N. E. 14 Dn. on 9th May, 1951, deposed about the engine being fitted with Brial wires, full plate and spark-arresters, and about A grade coal being used in the engine. He admitted in cross-examination that the loco-book shows what apparatus is fixed up in an engine, while the loco-memo mentions the coal which is used. According to this witness, if the apparatus deposed by him to have been fitted in his engine is fixed in an engine, it does not give sparks. But no loco-book or loco-memo has been produced before the Court. V. R. Solanki, the Section Controller at Dhond, who deposed that, on receiving a telephone from Sarola that a bogie of N. E. 14 Dn. was on fire he directed the bogie to be isolated and for making efforts to extinguish the fire with all available water, also admitted in cross-examination that a message book regarding all messages received or sent out is maintained at his office and a similar message-book must also be maintained by the station master. But these message books are conspicuous by their absence.

28. No doubt the witnesses have Stated that every effort was made to quell the fire. But the learned Judge did not find it safe to rely on the oral testimony of the witnesses who had come to depose after 5 or 6 years, particularly when the records relating to the facts deposed to by the witnesses which were maintained by the railway administration, were, for reasons best known to the defendant, withheld and not produced before the Court. Those records, were the primary evidence in the case and could have thrown sufficient light on the questions involved. The primary evidence having thus been withheld, it is open to the Court to draw a presumption adversely against the defendant u/s 114(g) of the Indian Evidence Act. The witnesses produced being the servants of the railway administration were apt to support the defendant, for any proof of negligence was to recoil on the witnesses themselves who were under the obligation to take all the necessary care and precaution.

29. Even on merits, we find, from the statement of Bam Chandra Bhagwant Kulkarni, the guard, that the Municipal Board at Ahmadnagar too had a fire extinguishing engine but the municipal authorities were not phoned for help because, according to the witness, there was no road between Ahmadnagar and Sarola. But from the statement of Rang Nath, Fire Brigade Supervisor of Ahmadnagar Municipality, produced by the plaintiff, it is clear that there was a metalled road between Ahmadnagar and Sarola and the Ahmadnagar Municipality was equipped with fire brigade ever since 1948, yet no intimation asking for the fire brigade was received from the railway.

30. From all that has been discussed above it is clear that the defendant has failed to discharge the initial burden of proving that the railway took the necessary care as was required of a bailee u/s 151 of the Indian Contract Act.

31. We now turn to the issue regarding the amount of compensation. In Exhibit "D" annexed to the plaint the plaintiff has given the particulars of his claim, which

consists of six items. The Court below, however, allowed only the first two items: (1) Rs. 46,959-2.0 as cost of 100 bales sent under R/R No. 7263/96, and (ii) Rs. 46124-8-9 as cost of 100 bales sent under R/R No. 7263/97. The remaining four items of Rs. 4,397-2-0 for railway freight on 200 bales, Rs. 4,467-15-6 for inter-state transit custom paid, Rs. 87-6-6, paid at Raichur on 200 bales, and Rupees 3,595-4-0 for bank-exchange and interest, were disallowed. The Court below calculated the total price of the goods of the two consignments at Rs. 93,083-10-9. After making an allowance of Rs. 5, 725/- on account of the estimated price of the salvaged goods ultimately delivered to the plaintiff, a decree for Rs. 87,358-10-9 was passed in favour of plaintiff No. 1 with pendent life future interest and proportionate costs.

32. Sri Sanyal, however, sought to argue that the plaintiff has failed to prove the price of the goods. But in view of the statement given by the defendant''s counsel on 9th July, 1957 in the Court below admitting the price of the goods as given in Exhibit "D" annexed to the plaint to be correct, the argument advanced by the learned counsel cannot be accepted for a moment. We, therefore, accept as correct the amount of compensation arrived at by the Court below as due to the plaintiff.

33. This leads us to the last point urged by Sri Sanyal that the suit was bad for want of a valid notice u/s 77 of the Indian Railways Act. This point is covered by issue No. 4 in the suit. The defendant had also raised the plea that the suit was bad for want of a valid notice u/s 80, C. P. C. We find from the material on the record that the notice u/s 80, C. P. C. had been duly served and there is no defect in the notice. "This point has also not been challenged before this Court. So the only question for consideration is whether the suit is bad for want of a valid notice u/s 77 of the Act.

34. Section 77 reads thus:--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."

The mandate u/s 77 is absolute. Before a person can be entitled to a claim for compensation for the loss of goods in transit it is obligatory for him to prefer the claim in writing to the railway administration within six months from the date of the delivery of the goods for carriage by the railway. Railway Administration is a defined term under the Railways Act. Section 3 (6) defines it as follows:--

" ''Railway administration'' or ''administration'', in the case of a railway administered by the Government means the manager of the railway and includes the Government, and in the case of a railway administered by a railway company means the railway company."

Section 140 of the Act provides the mode of service of notices on railway administration, and reads thus:--

"Any notice or other document required or authorized by this Act 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 in India of the railway company.--

(a) by delivering the notice or other document to the Manager or Agent; or

(b) by leaving it at his office; or

(c) by forwarding it by post in a prepaid letter addressed to the Manager or Agent at his office and registered under Part III of the Indian Post Office Act, 1866 (XIV of 1866)."

35. The learned Judge came to the conclusion that u/s 80 of the Act a suit for compensation could be brought either against the railway administration to which the goods were delivered by the consignor thereof for carriage or against the railway administration on whose railway the loss or destruction occurred. The goods in the present case were booked at Raichur Station and the loss occurred at or before Sarola station. Both these stations lay on the G. I. P. (now the Central) Railway and, as such, the notice u/s 77 of the Act had to be given to the General Manager of the G. I. P. (Central) Railway. The learned Judge found that no notice u/s 77 of the Act was given by the plaintiff to the General Manager of the Central Railway. He, however, held that, in view of the correspondence between the plaintiff and the G. I. P. and the E, I. Railways the Central Railway Administration had full knowledge of the claim made by the plaintiff, and further that it was on the advice of the Central Railway Administration contained in letter dated 9th August, 1951 (Ex. 1) to the effect that the Chief Commercial Manager, E. I. Railway, Benaras Cantt. was the proper authority to dispose of the claim of the plaintiff and that they should have the communication direct with him, that the plaintiff did not give a further notice to the Central Railway authorities. Consequently the defendant was estopped from contending that no notice u/s 77 of the Act was given to the General Manager of the Central Railway.

36. The contention of Sri Sanyal, however, is that, in view of Section 80 of the Act, the suit could be filed either against the railway to which the goods were delivered for carriage or against the railway administration on whose railway the loss occurred. As station Raichur where the goods were delivered for carriage and station Sarola where the loss occurred, both lay on the G.I.P. (now Central) Railway, the claim should have been made with the G. I. P. (i.e. Central) Railway Administration u/s 77 of the Act. According to the learned counsel, each railway system constituted a separate unit and was a ''railway administration'' by itself and, therefore, the service of notice u/s 77 of the Act on the Eastern Railway Administration would not satisfy the requirement of Section 77. A notice u/s 77 of the Act should, according to him, have been served within six months making a claim on the G. I. P. (i. e. Central) Railway Administration. In support of his contention the learned counsel relied upon

Union of India (UOI) Vs. Brijlal Purshottamdas, where, interpreting Section 80 of the Act, the Supreme Court laid down thus:--

"There was never any doubt that the railway company which contracted to carry goods partly over its own railway and partly over the railways of other carriers, was responsible for the goods for the whole journey unless it limited its liability by agreement.

The only doubt was about the responsibility of the other companies over whose railway the goods were carried. Before Section 80 was enacted there was elaborate case law on the question whether they could be held liable in "tort or by recourse to the doctrine of agency or Partnership. Section 80 now places the liability of all the railway administrations concerned on a firm statutory footing.

The section provides that in the case of goods booked through over the railway of two or more railway administrations, a suit for compensation for loss of the goods can be brought against the administration to which the goods were delivered by the consignor irrespective of the question whether or not the goods were lost on its way. The suit can be brought against the other administrations only if the loss occurred on their railways. The liability u/s 80 is statutory. The section overrides all agreements purporting to limit the liability of an administration with respect to through booked traffic.

If it was the intention of the legislature to give a right of suit only against the administration on whose line the loss occurred, it would have said so. The section gives a right of suit against the administration to which the goods are delivered by the consignor and it matters not that the loss occurred while the goods were being carried by another administration and was due to the negligence of the latter."

In the above case the section under consideration was Section 80 and not Section 77 of the Indian Railways Act. The question now before us was not pointedly involved in that case. The only question for consideration in that case was whether in a case of goods booked through over the railways of two or more railway administrations a suit for compensation for loss of the goods can be brought against the administration to which the goods were delivered by the consignor irrespective of whether or not the goods were lost on its railway. In the instant case the problem before us is whether the service of notice u/s 77 of the Act on the E. I. Railway Administration will satisfy the requirement although the goods were booked and lost on stations lying on Central Railway Administration.

37. Sri S.N. Verma, appearing for the plaintiff-respondents, on the other hand, placed reliance on an unreported decision of a Division Bench of this Court in "Dominion of India v. M/s. Madan Engineering Tool Products" F. A. No. 161 of 1950 (All), decided by Hon''ble Takru and S. D. Singh, JJ. on 21-12-1962. In that case pointedly the question of notice u/s 77 of the Act was involved. In that case the goods were booked at Badami Bagh railway station on the North-Western Railway

for Dasna on the East Indian Railway. The goods had, therefore, to be carried initially on the North-Western Railway (which after Partition of the country came to be known as the East Punjab Railway) and then on the East Indian Railway. After regrouping of the railways the relevant portions of the East Punjab Railway and the East Indian Railway became parts of what is now called the Northern Railway. The plaintiff (consignor) gave notice of their claim u/s 77 of the Act, but not to the East Punjab Railway, though their contention was that one of the letters sent by them to the East Punjab Railway should be treated as a claim u/s 77. The contention on behalf of the Union of India was that it was necessary for the plaintiff to lodge their claims u/s 77 with both the railways, and that no claim having been lodged with the East Punjab Railway, the suit so far as that railway was concerned was liable to be dismissed. The letter sent by the plaintiff was not, however, treated by the trial Court to be a notice satisfying the requirements of Section 77 of the Act On appeal, the same, first, came up before a learned Single Judge of this Court, who referred it to a larger bench after formulating the following three questions:--

(1) Whether such a notice was at all necessary to be given to the East Punjab Railway when such a notice had been given to the East Indian Railway, namely whether the notice to one railway should be deemed to be sufficient?

(2) Whether the letter which was sent to the East Punjab Railway on 26th November, 1947 should be deemed to be a substantial compliance with the requirement of Section 77 of the Indian Railways Act?

(3) Whether under the circumstances pointed out by the learned counsel for the respondent it should be deemed that that railway waived the giving of such a notice? Question Nos. 2 and 3 were decided in the negative. On question No. 1 the Division Bench held that it was not necessary for a claimant to give notice of his claim u/s 77 of the Railways Act to every administrative zonal unit of the State-owned railway in case of through booking, and if one notice is given to the railway administration which included all the zonal units concerned over which the goods travelled Section 77 of the Railways Act will have been duly complied with. It was further held that so long as the provisions of Sections 77 and 80 stand as they are and the expression "railway administration" includes the Government, notice to the "railway administration" (which expression includes the Government), or, in other words, to the Government alone, is enough irrespective of the number of administrative units of the State railway on which the goods may have travelled or on which the loss may have been occasioned.

38. The above view was taken by the Division Bench after a survey of the various reported cases of the different High Courts, viz., " Kanyaka Parameswari Cloth Stores Vs. Union of India (UOI) and Others, " Kondapalli Virraju Vs. Union of India (UOI) and Others, " Darjeeling Himalayan Rly. Co. Ltd. and Others Vs. Jetmull Bhojraj and Another, ; " Union of India (UOI) Vs. Durgadutt Poddar and Others, "; "Dominion of India v. Firm Museram Kishun Prasad AIR 1950 Nag 85"; " P.R. Narayanaswami

Iyer and Others Vs. Union of India, " and " Ramco Textiles Vs. Union of India (UOI), . Admittedly both the railway units in the abovenoted unreported Division Bench case--as also in the case under consideration -- were owned by the Central Government at all the material times. In that case this Court considered the question whether the two railway units, namely, the East Punjab Railway and the East Indian Railway, were separate railway administrations or they formed one railway. It was observed that "if they did form separate "railway administration", it goes without saying that notice of the claim u/s 77 had to be served on them separately."

39. The term "railway administration'', as defined by Section 3 (6) of the Act, has already been quoted above. It contemplates that in case of a railway administered by a Government it means the manager of the railway and includes the Government itself., If, therefore, a ''railway administration'' includes the Government, and if notice of the claim u/s 77 of the Railways Act is served on the Government, it cannot be said that it has not been given to the ''railway administration''.

40. In the abovenoted unreported case the argument was that inasmuch as the Government would have two capacities, one as owning the East Punjab Railway and the other as owning the East Indian Railway, notices of the claims should be given to the Central Government for the two capacities possessed by it separately. The Court, however, repelled this argument and observed thus:--

"It is difficult for us, however, to take that view of the position or status of the Central Government. The Central Government, whatever may be the extent of the railway system owned by it, would be one legal entity. If it owns a railway system, large in extent and covering vast areas, and if in the interest of facility of administration, the railway system is divided or grouped into different units, which units are put in the charge of managers or general managers, it would not lead to the inference that each administrative unit so formed would constitute a separate "railway administration'', or that the Central Government, as owners of the different units of the railway system, would have different legal status in the eyes of law in respect of each such unit. A person may own two or more properties. His legal entity remains the same Irrespective of the number of properties owned by him. It would change only when the capacity in which he owns the property becomes different."

41. It is true that the language of Section 80 and other sections and the definition of the phrase ''railway administration'' does give an impression that even individual railway system or unit might be a "railway administration'' for the purposes of the Act. It has, however, to be remembered that the Railways Act was enacted at a time when the different railways in India were owned not only by the Central Government but even by Indian States or private Companies. It was, therefore, necessary for the Act to be so drafted that the liability of the different railways may, in case of through booking, be properly adjudged. Presumably this was the reason why provisions like Section 80 of the Act have been retained even now in their

original form for determining the liability of different railway systems in cases of loss, destruction or deterioration of goods in through booking.

42. We respectfully agree with the view taken by the Division Bench in the above case and hold that service of notice u/s 77 of the Act on the Eastern railway administration would satisfy the requirements of the section although the station on which the goods were booked and the station on which the goods were lost both lay on the G.I.P. (now Central) Railway.

43. Now the question arises whether there has been a service of notice preferring claim u/s 77 of the Act on the Eastern Railway Administration within six months of the date of booking. In this connection we may examine a few letters that were exchanged between plaintiff No. 1 and the defendant.

44. By their letter dated 27th July, 1951 (Ex. 14) plaintiff No. 1 asked from the Chief Traffic Manager, GXP. Railway, Bombay for the claim-forms for the loss. In reply to this letter the Superintendent of Claims, by letter dated 9th August, 1951 (Ex. 1), wrote back thus:--

"In acknowledging receipt of your above I have to state that as the destination station lies on E. I. Rly the Chief Commercial Manager, E. I. Rly., Benaras Cantt. is the proper authority to dispose of your claim and you are, therefore, advised to communicate further with him direct."

Again, in reply to another letter regarding this claim, the Chief Traffic Manager, Central Railway, Bombay, vide his letter dated 10th November, 1951 (Ex. 2) wrote:--

"The Chief Commercial Manager, E. I. Railway, Benaras Cantt., is the competent authority to deal with the claim in this connection."

The letter dated 10th December, 1951, from the Chief Commercial Manager, E. I. Railway, Calcutta (Ex. 3) is rather important. It says:--

"The first reference received in this connection was the letter dated 3rd August, 1951 addressed by M/s. Lakshmiratan Cotton Mills to my Benaras Office and we also received a subsequent letter dated 6th August, 1951 addressed by Sri Devendra Swaroop, B.A.,LL.B. Advocate, Kanpur to the General Manager, E. I. Railway, which was a combined notice u/s 77 or the Indian Railways Act and Section 80 of the Civil Procedure Code, in which he preferred a claim of Rs. 1,03,421-1-3 for nondelivery of both these consignments.....

As the transaction relates to the local traffic of the G.I.P. Railway and the consignment was carried right through over the G.I.P. Railway route, I hope, you will kindly appreciate that this Railway is handicapped in dealing with the claim unless definite information is received from them regarding disposal of the remaining 150 bales. It has been however, intimated by the G.I.P. Railway that both these consignments were involved in a fire and only 57 bales could be salvaged. I am

therefore in communication with the Chief Traffic Manager, G.I.P. Railway, who has been speedily requested to furnish full particulars regarding disposal of these 150 bales and also instructions regarding settlement of the claim for non-delivery thereof.

I shall address you further on the subject on receipt of this reply."

45. As the goods were booked for carriage on 2nd May, 1951, so the claim u/s 77 of the Act could have been preferred up to 2nd October, 1951. In this case we find that the claim to the General Manager, E. I. Railway was preferred on or about the 6th of August, 1951, well within time.

46. Even if a notice u/s 77 of the Act was necessary to be given to the Central Railway, although we do not hold so, the defendant would be estopped from urging this point inasmuch as it was on the direction of the Central Railway itself that plaintiff No. 1 had to approach the E. I. Railway in the matter and to prefer the claim u/s 77 of the Act to the General Manager, E. I. Railway.

47. For all these reasons the appeal must fail. It is accordingly dismissed with costs.