Cochin Port Trust Vs Associated Cotton Traders Limited and Others

Court: High Court Of Kerala

Date of Decision: Oct. 29, 1982

Acts Referred: Contract Act, 1872 â€" Section 151, 152, 162
Evidence Act, 1872 â€" Section 106
Limitation Act, 1963 â€" Section 10, 11, 12, 13, 14
Major Port Trusts Act, 1963 â€" Section 120, 43(2)

Citation: AIR 1983 Ker 154 : (1983) 1 ILR (Ker) 751

Hon'ble Judges: U.L. Bhat, J; K. Bhaskaran, J

Bench: Division Bench

Advocate: K.V.R. Shenoi, P.K. Kurien, K.A. Nayar, C.M. Ramachandra Menon, E.R. Venkiteswaran and J.B. Koshy, for the Appellant; S. Sampath Kumar, S.K. Brahmanandan and G.S. Prabhu, for the Respondent

Final Decision: Dismissed

Judgement

Bhat, J.
Defendant in O. S. No. 84 of 1970 on the file of the Sub Court, Cochin, the Cochin Port Trust, has filed this appeal against the

decree and -judgment dated 15-6-1976 of the court granting a decree for Rs. 1.10,527.30 with interest at the rate of 6% per annum and costs in

favour of the second plaintiff.

2. The first plaintiff imported 194 bales of American Cotton and the consignment reached the Cochin Port Trust by 12-5-1970. On that date, the

goods were discharged into the custody of the appellant -- defendant, who is responsible to store the goods. The defendant acknowledged receipt

of 188 bales and certified short-landing of 6 bales. Even the 188 bales were delivered to the first plaintiff charred by fire and damaged by sea

water. The defendant alleged that fire broke out in the godown in which the goods were stored. The first plaintiff suffered a loss of Rs.

1,10.527.30 as a result of the damage. The insurer, second plaintiff purchased the goods from the first plaintiff and was subrogated to the rights of

the first plaintiff. According to them, loss occurred on the fault of the defendant to store the goods in a place impervious to fire and in not taking

reasonable care of the same. The defendant also aggravated the damage by not taking effective and speedy steps to put out the fire and by using

salt water to quench the fire and even thereafter leaving the goods un-cared for in the open. Third plaintiff was impleaded on account of the

amalgamation of the second plaintiff.

3. The defendant filed written statement contending that goods were stored in a proper place with due care and caution. The defendant had taken

reasonable care of the goods. The fire and the damage were caused not on account of any lack of care or diligence or by any negligence on the

part of the defendant or its servants but on account of spontaneous combustion. All possible steps to put out the fire were taken. It was not true

that salt water was used to quench the fire. Partly burnt bales had to be removed outside so as to prevent spread of the fire further. They were

later removed and stacked at the nothern end of the wharf under the cover of tarpaulins. All necessary precautions were taken to see that there

was no danger or loss.

There were adequate and effective fire fighting equipment to deal with the situation in the quickest possible manner. There was no damage caused

by water. The auction sale arranged by the plaintiffs fetched only a low amount because it was not properly conducted. Sufficient steps to mitigate

loss were not taken by plaintiffs. The claim was barred by limitation.

4. On behalf of the plaintiffs a replication was filed traversing the averments in the written statement.

5. The trial court held that the fire was not proved to have been the result of spontaneous combustion. but must have taken place as a result of

electric short circuit on account of the lack of diligence on the part of the defendant. The trial court further held that adequate, effective and

immediate steps were not taken to deal with the fire and salt water also was used in quenching the fire. The trial court also held that the defendant

failed to place before court all the necessary material available with the defendant; and the defendant failed to take the care required of a bailee and

therefore was liable for the damage and loss. The trial court also found that the plaintiff had taken all steps to mitigale the damages. The suit was

held to be not barred by limitation and accordingly the decree followed.

6. The learned counsel for the- appellant made three important subms-sions in the course of his arguments. He contended that the finding of the

trial court that the defendant is liable for the loss is untenable in law and on facts. According to him. The finding on the question of limitation also is

bad. Learned counsel contended that the amount awarded is not correct, since the plaintiffs had not taken all steps to mitigate the damages-.

7. The defendant is a body constituted under the Major Port Trusts Act, 1962 (for short the ''Act''). Section 43 of the Act states that subject to the

provisions of the Act. responsibility of the Port for the loss, destruction or deterioration of goods of which it has taken charge shall, in the case of

goods carried by railway, be governed by the provisions of the Railways Act. 1890 and in other cases, be that of a bailee under Sections 151, 152

and 162 of the Contract Act. 1872 omitting the words ""in the absence of any special contract"" in Section 152 of that Act. Section 151 of the

Contract Act states that 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 of that Act states

that 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 of the Contract Act is not relevant for the purpose of this case.

8. The bailee is bound to take as much care of the goods as a man of ordinary prudence would, under the similar circumstances, take of his own

goods of the same bulk, quality or value as of the goods lost. This indicates the standard of diligence required of a bailee. The nature or amount of

care required must necessarily vary from case to case. He has a duty to take all reasonable precautions to obviate risks which may be reasonably

apprehended or foreseeable. HE has a duty to take all proper measures for the protection of the goods when such risks are imminent or had

actually occurred. of course, a bailee is not expected to guard against fantastic possibilities. Vide Brabant v. King 1895 AC 632: Fardon v.

Harcourt-Ravington 1932 All ER 81.

9. It is well settled that when goods entrusted to a bailee are lost or damaged, there is the initial presumption of negligence or failure to take

reasonable care of the goods on the part of the bailee; though such presumption may be rebutted by the bailee. To escape the liability for the loss

or damage, onus of proof is on the bailee that he had taken necessary precautions and care required under by law. If the bailee places before the

Court evidence to show that he had taken reasonable care to avoid damage which is reasonably foreseeable or had taken all reasonable

precautions to obviate risks which may be reasonably apprehended, he may be absolved of his responsibility. See Trustees of the Port of Madras

Vs. Home Insurance Co. Ltd., .

9A. If the goods are destroyed by fire, arising from the premises of the bailee, the bailee has to establish that the fire originated from causes over

which he had no control and could not have been expected to have had such control. See River Steam Navigation Co. v. Choutmull (1899-26 tad

App 1). When fire breaks out in the premises under the control of the bailee, as between the parties to the case, bailee alone will be in a position to

explain the cause of the fire. It is a fact specially within his knowledge and therefore, u/s 106 of the Evidence Act, burden of proving of that fact

will be upon him. Similarly, burden of proving that he had taken all reasonable precautions which an ordinary man of prudence would take is also

on him. Plaintiff may show that the bailee has failed to place before the court all materials available to him u/s 106 of the Evidence Act and ask the

Court to presume that if produced, such documents may go against the bailee. He may also show that on the materials produced, it could be seen

1hat the bailee has not taken as much care as is required under law.

10. The goods in question are cotton hales. In order to facilitate easy transportation, cotton is compressed under high pressure in order to have

compact bales and pack the same. Cotton, unlike certain other goods like metal, etc. is easily combustible. When a bailee takes charge o! Roods

like cotton bales, he is expected to know the peculiarities of the goods and is expected to so arrange the place of storage, the manner of storage,

precautions to be taken, watch and care to be maintained in such a way as to avoid all reasonable risks of damage either by fire or by other

elements.

11.-12. What, according to the bailee, was the cause of fire in the instant case ? the written statement states that the cause of fire was spontaneous

combustion in the bales situated somewhere in the middle of the stack. This contention was raised on the basis of Ext. B9 report submitted to the

defendant by the Deputy Conservator, DW1, who. however, does not speak to the report. Ext. B9 states that smoke started in the middle of the

lot of cotton bales which gives more weight to the fact that the fire could have been caused by spontaneous combustion and not by electrical short

circuit from the roof. It is also stated that the fire seems to have started spontaneously and not due to any act or omission on the part of the Port

Trust as the goods were stored in the normal manner and due care and precaution were bestowed for safe custody in the Overflow shed. The

report does not give any other reason for this conclusion. The report also does not refer to any other evidence in support of the conclusion though

it is seen that as many as 16 witnesses were questioned. DW1, when examined in Court, also suggested that it was a case of spontaneous

combustion. In cross-examination, it was elicited from him that there are records in the Fire Station showing the particulars of fire and in what

manner it was extinguished and these records are in the custody of the defendant,

13. As against this is the report Ext. A submitted by PW1 who is an experienced surveyor with Headquarters at Bombay. His services were

obtained by the plaintiffs to make a survey and to arrange an auction of the damaged cotton. He had inspected the particular godown where the

cotton bales were stored and examined all the necessary particulars. He noticed 72 electric lights with wiring inside steel conduit pipes hung from

the roof. There were also other goods stored in the godown. The fanlight in bay No. 7 was charred presumably caused by fire breaking out from

there. He also was unable to definitely ascertain the cause of fire. But in Ext. A he stated that short circuit of electric installation might be the cause.

The wiring of the overhanging lights were not protected by steel pipes and were of rubberised material. The covering material was in warped

disfigured state and the actual wires were visible even where the fire had not broken out. This report was marked during the examination of PW 1

without any objection. In his evidence also he spoke against the theory of spontaneous combustion. He has experience in the line. He had never

come across a case of spontaneous combustion in cotton bales stored in godown. D. W. 1 also has no personal experience of any instance of

spontaneous combustion in cotton bales. According to him, he had read about it in books. He did not clarify what books they were. In the treatise

on Stowage by Captain R.B. Thomas (1971 Edn. at page 136) it is stated that for a long time the theory held that wet cotton is liable to

spontaneous combustion, but the theory has long since been dissipated. Wet cotton, if scored in a confined place will heat uP and deteriorate but

no danger of spontaneous combustion or ignition is to be apprehended. However, cotton which is or has been in contact with oil or grease is liable

to spontaneous combustion. Similar are the observations in ""Modem Ship Stowage"" by-Joseph Leiming (1963 Edn. at page 2051- It has not been

suggested on behalf of the defendant that the cotton bales when they were stored in the godown of the defendant were wet or there was oil or

grease on any parts of any of the bales. The trial court was right in holding that the defendant failed to establish spontaneous combustion as the

cause of fire.

14. The trial Court was of the view that the preponderance of probability established was to the effecl that the fire must have been caused by

electrical short-circuit. This finding is challenged by learned counsel for the appellant. There can be no dispute that electrical short-circuit could

cause fire in a stack of cotton bales. We have already seen that there were 72 hanging electric lights in the Overflow shed No. 10 where the goods

were stored. The report of p. W. 1 would show that even where the wire*; were not damaged by the fire, the protective covering of the wires had

become twisted and the wires were visible, of course, the wires along the walls were placed inside conduit pipes. The evidence of D. W. 4. The

Assistant Shed Foreman, under whose supervision the goods were stored in the shed was to the effect that the main switch was not turned on at all

on that date. This goes against the evidence of D. W. 2, the Wharf Superintendent, to the effect that the main switch had been switched off. If it

was never switched on. on that day, it could not have been switched off. The work of conveying and storing lasted for about 3 to 4 hours. It

appears to be wholly unlikely that the lights would not have been switched on. In view of the conflict of evidence noticed above, the evidence to

the effect that the main switch had been turned off cannot be accepted. There is also evidence of D W. 7 that the wiring inside the roof was

rubberised wiring. It was not protected by conduit pipes, the evidence of D. W. 7. Traffic Manager, is to the effect that there are re- cords with

the defendant regarding electrification work. The records were not produced before the Court. The defendant did not place any material before

the Court to show when the electrification work was done, whether the electric system was under constant check and testing and how long before

the occurrence the same was tested and checked for the last time. There can be no doubt that the electrical system in the godown should have

been checked before deciding to store cotton bales. That was evidently not done. At any rate the defendant has no case that it was done. In these

circumstances, the inference drawn by the trial court that there must have been electrical short circuit leading to the fire appears to be correct.

15. Employees of the defendant, D. Ws. 2 and 5, have deposed that match boxes were not allowed inside the go-down. It is therefore possible to

infer that any negligent act of smoking could not have been the cause of fire. D. W. 2 has deposed that before storing security staff will search the

premises. D. W. 5 has denosed that he examined the shed carefully. According to D. W. 7. it was usual to carefully examine the godown so that

objectionable cargo can be shifted. Thus, it is seen that the purpose of examination was only to shift the objectionable cargo: probably if there were

easily inflammable goods inside the godown, they could have been shifted. As we have already seen, the presence of oil or grease would add to

the danger of fire. No witness examined on behalf of the defendant has stated that the godown was examined or searched to detect the presence

of oil or grease and the employees assured themselves about the absence of such materials.

16. D. W. 1 has deposed that there are regulations indicating the precautions to be taken before storage. These regulations were not produced

before the Court. He also admitted that there were no records to show that all safety measures were provided in this shed. According to him. The

concerned department would submit a report regarding the condition of the shed after fire. That report also was not forthcoming. D. W-5''s

evidence would show that there were rules prescribing duties of each employee. These rules also were not produced.

17. It is the consistent evidence of D. Ws. that each shed has a watchman and each shed is under 24 hour watch. None of them was able to tell

the Court who was the watchman on guard at the time of the fire. After storing the cotton bales in shed No. 10, it was closed and locked at about

2 P. m. It is the admitted case that two police Officers of the Island police first detected smoke coming out of the shed at about 5. 15 P. M. and

informed the persons on duty at the main Kate of the defendant and they raised an outcry. It is significant to note that not a single witness examined

for the defendant spoke of the presence of the watchman at any time after 2 P- m. and before the fire was ultimately put out at 9 P. m. The

necessary inference is that the shed was actually not kept under watch during the relevant time the persons who were expected to watch were also

not examined the least that the bailee could do when he is storing combustible material is to keep the godown - under constant . watch. May be

there was watch on paper but the evidence does not indicate that there was actually watch kept over the godown. The cotton bales were damaged

extensively. There is every possibility to think that the fire must have smarted long before 5-15 p. m. Even when the fire started, if the watchman

had been there, they could have easily detected it either by smell or perceiving the smoke. It was left to two police Officers going on rounds to

detect the smoke and inform the defendant.

18. We have no doubt in our mind that when the defendant undertook the task of storing material like cotton bales in the godown, the defendant

had a duty to take adequate precautionary measures, particularly against fire, P. W. 1 has frankly admitted that no sprinklers had been installed in

the shed. There were no fire extinguishers inside the shed, though there was a suggestion that there were fire extinguishers outside. No witness was

able to say that these fire extinguishers had been used. This evidence would show that the bailee had not taken reasonable precaution to ensure

that fire if started, could be attempted to be put out immediately. We have already indicated that fire must have started long before 5.15 p. m.

when smoke was seen by two Police Officers. The absence of watchmen would certainly has delayed detection of the fire. Even though smoke

was detected at 5. 15 P. m., fire fighting operations started only at about 6 p. m. If there were fire extinguishers outside the shed we do not know

why they were not used. May be, they were not in a usable condition. There is evidence to show that near the sheds were hydrants to take fresh

water to ships. D. W. 5 has admitted that there is no rule that the hydrants could be used only to supply water to ships. In an emergency, they

could certainly have been used to tackle the fire. The evidence is that the hydrants were not used for the purpose. All these things could have been

done before the fire force from the Island, Ernakulam, Mattancherry and the fire float attached to the Tanker Berth reached the place. This shows

that the defendant had not made any internal arrangement to tackle fire. The evidence is that the fire float attached to the Tanker Berth used the

saltish water of the backwaters to put out the fire. The evidence of p. W. 1 is that the use of saltish water further damaged the cotton hales. It is not

explained why the fire float had to use this water when barely 1500 feet away was a huge, tank containing good water.

19. D. W. 7 has deposed that he could not say what materials were used in the construction of the shed and electrical wiring, though the defendant

has records to show the same These records were also not produced. He had also admitted that the defendant had not issued any specific

directions in regard to storage of cotton bales.

20. In view of the evidence and circumstances mentioned above, the irresistible inference is that the defendant did not place all the necessary

materials before the trial Court; the defendant did not establish spontaneous combustion as the cause of fire: in all probability the fire must have

started due to electrical short-circuit; the defendant did not issue specific instructions in the matter of storage of cotton bales, the defendant had not

taken sufficient precautions to ensure that goods stored like cotton were not in danger of destruction by fire, elementary precautions of providing

fire extinguishers and sprinklers etc. had not been taken: there was delay in starting fire fighting operations with the available facilities. In these

circumstances we agree with the trial court that the defendant had failed to prove that the defendant had taken reasonable precautions against

damage by fire. The defend ant has failed to dislodge initial presumption of negligence. Therefore, the defendant cannot be absolved from the

liability to meet the claim for damages.

21. At the instance of the plaintiffs, a reputed firm namely, the firm of the petitioner arranged for auction of the goods as there was substantial

damage to the same. Auction was conducted by Bennet and Co. after advertising in Bombay, Ahamedabad and South India group editions of

Indian Express, a Tamil Newspaper at Coimbatore and Malabar Herald, Cochin and Bombay and Ahamedabad editions of Times of India.

Further, copies of notification and notices in English and Gujarati were also circulated in the Bombay Cotton Exchange. There was no advertising

in the leading newspapers in Malayalam or Tamil Therefore, it is contended by the appellant, that there was no sufficient advertising of the auction

and auction did not fetch the proper price. The contention is that the plaintiffs have not taken adequate steps to mitigate the damage. There is no

doubt that the main cotton market is Bombay, Ahamedabad and Coimbatore. There are textile mills in Kerala also. The auction should attract

persons connected with textile mills and not rural people or rustic people. It is too much to say that the persons connected with the textile mills in

Coimbatore or Kerala can come to know about auction only from the language newspapers and not from the English newspapers. We are not

impressed with the argument that for want of advertisements in Tamil and Malayalam newspapers, the auction did not attract sufficient number of

participants. It is established that plaintiffs and their agents had taken sufficient steps to mitigate the damages.

22. The last contention urged is that the suit is barred by limitation. Section 120 of the Major port Trusts Act. 1963 reads thus:--

120. No suit or other proceedings shall be commenced against a Board or any member or employee thereof for anything done, or purporting to

have been done, in pursuance of this Act until the expiration of one month after notice in writing has been given to the Board or him stating the

cause of action, or after six months after the accrual of the cause of action.

Sub-sec. (2) of Section 43 of the Act reads thus:

(2) A Board shall not be in any way responsible for the loss, destruction or deterioration of, or damage to, goods of which it has taken charge,

unless notice of such loss or damage has been given within such period as may be prescribed by regulations made in this behalf from the date of the

receipt given for the goods under Sub-section (2) of Section 42.

23. The law requires a claimant to issue a notice to the Port Trust stating the cause of action. Admittedly, such notice had been issued in this case.

Section 120 also insists that the suit must be filed before the expiration of six months after accrual of the cause of action. The goods in this case

reached the Cochin Port on 12-5-1970 and the same day they were discharged into the custody of the defendant. The damage by fire was caused

on 17-5-1970. The suit was filed on 14-12-1970.

24. It is argued by learned counsel for the appellant that the suit ought to have been filed before six months of the date when the defendant got

custody of the Roods or from the date of damage by fire. The suit, having been filed nearly seven months thereafter, would be barred by time. The

answer of the claimant is that since a statutory notice of month is mandatory, the period of limitation has to be treated as seven months. The lower

Court agreed with this view.

25. Sub-section (2) of Section 15 of the Limitation Act, 1963 reads thus:

(21 In computing the period of limitation for any suit of which notice has been given, or for which the previous consent or sanction of the

Government or any other authority is required, in accordance with the requirements of any law for the time being in force, the period of such notice

or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Sub-section (2) of Section 29 of the Limitation Act reads thus.

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the

Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining

any period of limitation prescribed for any suit, appeal or application by any special law or local law. The provisions contained in Sections 4 - 24

(inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

26. By virtue of Sub-section (2) of Section 15, if a notice prior to suit has to be given under law, in computing the period of limitation for the suit,

the period of such notice has to be excluded. Admittedly, before a suit could be filed against the Cochin port Trust, under the provisions of the Act

and the regulations, the claimant had to issue a notice stating the cause of action and the period of notice shall be one month. If no such notice is

given, the suit would not be maintainable and could be dismissed on that ground. If Sub-section (2) of Section 15 applies to the instant case, it is

clear that the period of notice namely one month shall be excluded in computing the period of six months stipulated as period of limitation u/s 120

of the Major Port Trusts Act.

27. Limitation for a suit against the Cochin Port Trust for damage to goods etc. is governed by the .special provision in Section 120 of the Maior

Port Trusts Act and not by any of the articles in the Schedule to the Limitation Act, 1963. For this reason, can it be said that Section 15(2) of the

Limitation Act will not govern the computation of limitation for a suit against the Cochin Port Trust? the answer is found in S 29(2) of the Limitation

Act, 1963. This provision states, inter alia, that where any special or local law prescribes for any suit etc. The period of limitation different from the

period prescribed in the Schedule, for the purpose of determining the period of limitation, the provisions contained in Sections 4 - 24 shall apply

only in so far as and to the extent of which they are not expressly excluded by such special or local law. We have carefully gone through the

provisions of the Major port Trusts Act. We are unable to find in that Act any provision expressly excluding the applicability of Sections 4 - 24 of

the Limitation Act, 1963 to a suit for damage for which limitation is prescribed u/s 120 of the Major port Trusts Act. It may be that one could

draw an inference that the scheme of the Major Port Trusts Act and the provisions in Section 120 of that Act by implication exclude the Operation

of the provisions of the Limitation Act. 1963. But an implied exclusion is not sufficient for the purpose of Section 29(2) of the Limitation Act.

Sections 4 - 24 of the Limitation Act would not apply if the exclusion is only express. An implied exclusion is not sufficient to exclude the operation

of the provisions of the Limitation Act, 1963 to a suit of this nature.

28. We are fortified in this view by decisions of some other High Courts. The decision in Chhaganlal Sakerlal Vs. The Municipality of Thana,

related to a suit to which Section 167 of the Bombay District Municipalities Act. 1901 prescribed a period of six months as period of limitation.

The section also contemplated a statutory notice of one month being issued. The Bombay High Court held that the special law did not contain an

express exclusion and therefore by virtue of Section 29(2) of the Limitation Act, the provisions in Section 15(2) of the Limitation Act, would apply

and the period of one month has to be excluded. The same view was taken by the Calcutta High Court in Commissioners of Pabna Municipality

and Another Vs. Nirode Sundari Dasya Basak and Another, the Madras High Court in dealing with a parallel provision in the Madras Port Trust

Act. 1(105 also has taken the same view in Trustee of Port of Madras v. Sympson and Company Ltd., Madras 1967 2 Mad LJ 67 : AIR 1967

Mad 1941 and The Trustees of the Port of Madras Vs. Mettur Chemical and Industries Limited,). AS against these decisions, the learned counsel

for the appellant relies on the decision of the Division Bench of the Madras High Court in Trustees of the Port of Madras Vs. Home Insurance Co.

Ltd., . This was a case where a consignee transferred his right to the insurer for consideration a few days before the expiry of six months period

and the insurer who was subrogated to the rights of the consignee claimed that he has six months period from the date of subrogation to file the suit

This contention was repelled by the Court which held that whether the suit is by the consignee or by the insurer. The period of limitation remains

the same. In passing an observation was made that whoever be the plaintiff, the suit must be within sat months from the accrual of the cause of the

claim. There was no occasion for the Court to examine the question whether the period of notice could be excluded from computing the period of

limitation. Nor did the Court purport to give any decision on that question. We therefore do not think that this decision is an authority for the

proposition canvassed by the learned counsel for the appellant. We respectfully agree with the other decisions referred to above and hold that in

computing the period of six months limitation provided u/s 120 of the Maior Pert Trusts Act, the period of notice has to be excluded.

29. According to teamed counsel for the appellant, at any rate, the suit should have been filed within seven months of 12-5-1970 when the

defendant got custody cf the goods and not within seven months of the date of fire. The period of limitation prescribed is six months after the

accrual of the cause of action. The responsibility of the defendant as bailee commences from the moment the defendant got custody of the goods.

Therefore the date of getting custody, no doubt, is one fact in the bundle of facts constituting the cause of action. But in a case like this, where

goods are damaged by fire, can it be said that the cause of action accrued when the bailee got custody of the goods ? We are unable to answer the

question in the affirmative. On the date when the bailee got custody, goods were intact and undamaged and the bailee could have delivered the

goods in a good condition. It cannot be said that on that day the cause of action for this suit arose. So also, it cannot be said that in the next few

days, the cause of action for suit for damages on the ground of damage to the goods could have arisen. The crucial aspect of the cause of action in

this case is the fact that the goods suffered damage by fire on account of lack of diligence on the part of the bailee. The fire took place only on 17-

5-1970. Before the fire, the plaintiff did not have cause of action to bring this suit. It is the fire brought about by lack of diligence on the part of the

bailee and which caused damage to the goods that required the plaintiffs to file this suit. It cannot be said that the cause of action accrued at any

time prior to such damage. Therefore, the accrual of the cause of action cannot be said to have taken place at any point of time prior 17-5-1970.

The suit has been filed within six month from the date of damage by fire after excluding the period of notice and we agree with the trial Court that

the suit has been filed within time.

In the result, the judgment and decree of the trial Court are confirmed and the appeal is dismissed with costs.