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Madras High Court

Case No: Appeal No. 556 of 1982

New India Assurance Company Ltd. and another		APPELLANT
	Vs	
Union of India		RESPONDENT

Date of Decision: Feb. 10, 1993

Hon'ble Judges: Thangamani, J; Srinivasan, J

Bench: Division Bench

Advocate: Nageswaran und Narichania, for the Appellant; A. Venugopal and Rekha Menon, for the Respondent

Final Decision: Dismissed

Judgement

Srinivasan, J.
Plaintiff''s are the appellants. The first plaintiff is a Nationalised General Insurance Company. The second plaintiff is a

partnership firm. The second plaintiff entrusted to the second respondent on 20.2.1974, 100 bales of cotton for being carried from Bhandhuka on

the Western Railway to Udumalpet on the Southern Railway. The consignment was intended for M/s. Venkatesa Mills Limited, Udumalpet. The

second defendant accepted the consignment and issued R.R. No. C/1 224888 dated 20.2.1974. The booking was ""To self"" and ""At Railway Risk

Rate"". The invoice value of the goods was Rs. 1,51,907.05. The consignee did not pay the value of the goods and clear the documents as the

goods suffered loss by fire soon after its arrival at the destination. The goods reached the destination station on 30.3.1974 and within a few hours

thereafter; there was a fire and the goods were damaged. As the consignee did not pay the amount and clear the documents, the consignor

continued to be the owner. The second plaintiff requested for open delivery of the consignment and it was granted in June 1974. Under Ex. A10

dated 15.6.1974 the second plaintiff wrote to the Divisional Commercial Superintendent, Madras, claiming damages on the basis of the certificate

of Damages issued by the Railway. Copies of the same were marked to the Chief Commercial Superintendent, Southern Railway, Madras-3. and

the Chief Commercial Superintendent, Southern Railway, Tiruchirapalli, besides two others.

There was a further letter under Ex. A15 dated 18.12.1974 addressed to the Chief Commercial Superintendent (claims), Southern Railway,

Madras by the first plaintiffs Recovery Agent making a claim for the damages incurred. There was a reply to the same from The Chief Commercial

Superintendent''s Office under Ex. A 17 dated 28.1.1975 in which it was stated that the claim was barred by the provisions of S. 78-B of the

Indian Railways Act, as it was not made within the time prescribed therein. A letter dated 5.3.1975 was issued in reply thereto under Ex. A 18.

Reference was made to the letter of 15.6.1974 and it was pointed out that copies had been forwarded to the Chief Commercial Superintendent,

Madras, as well as the Chief Commercial Superintendent, Tiruchirapalli. It was asserted that valid notice was lodged with the Railway

Administration in time as prescribed by S. 78-B of the Indian Railways Act (hereinafter referred to as the Act). Firstly thereto, Ex. A. 19 dated

21.7.1975 was sent by the Chief Commercial Superintendent''s office, Tiruchirapalli in which it was stated that the fire was purely accidental and

not due to any negligence or misconduct on the part of the Railway administration and the claim was not sustainable under S. 73 of the Act.

2. The present suit was filed by plaintiffs, the first plaintiff claiming a right of subrogation on assignment by the second plaintiff for recovery of a sum

of Rs. 45,375/- with interest at 6 per cent per annum thereon.

3. In the written statement, a plea was raised that the claim for compensation was not made within a period of six months as prescribed under S.

78-B of the Act and the suit was not sustainable. In paragraph B of the written statement it was stated that at the request of the second plaintiff and

without prejudice to the legal rights of the Railway Administration an open delivery certificate was granted, noting the particulars and conditions of

the consignment, in the presence of the District Agricultural Officer, Tiruppur. It was also submitted that the open delivery certificate is not an

admission of liability on the part of the defendants that the alleged damage was due to the negligence of the defendants. It is not necessary to refer

to remaining part of the written statement.

4. The trial court held that there was no claim for compensation within a period of six months as required by S. 78-B of the Act and the suit was

not sustainable. The trial court did not go into other issues and dismissed the suit on the finding referred to above. The aggrieved plaintiffs have

preferred this appeal.

5. It is contended by learned counsel for appellants that the purpose of notice under S. 78-B of the Act is only to inform that Railway

administration of the loss suffered by the consignor and that the purpose has been served in this case by the request admittedly made by the second

plaintiff for open delivery as soon as the fire accident came to be known to the plaintiffs. It was further argued that in any event the letter dated

15.6.1974 under Ex. A-10 was forwarded not only to the Divisional Commercial Superintendent, but also forwarded to the Chief Commercial

Superintendent, Madras who was the concerned authority to represent the Railway Administration as required by the Act. It is submitted that the

fact that the plaintiffs have not been able to produce the postal acknowledgment will not in any way detract the validity of the claim made by the

plaintiffs. It is further argued that there was a general enquiry by the Railway officials in April 1974 and in the course of the enquiry, the cause of

accident as well as the extent of the damage were considered and that would be sufficient to show that the Railway administration was put on

notice well within the period prescribed by law and that it is not open to the Railway administration to raise a technical plea in the suit that there

was no notice in lime. It is also contended that the defendants are stopped from raising a pica that there was no notice to them as required by law.

6. Before considering the relevant facts of the case, it is necessary to the provisions of law. S. 78-B of the Act requires that a claim for

compensation should be preferred in writing within six months from the date of delivery of the goods for carriage by Railway. Admittedly, the

goods were delivered on 20.2.1974 and a claim for compensation should have been preferred before 20.8.1974. The proviso to the section also

is to the effect that any information demanded or inquiry made in writing to the Railway administration shall be deemed to be a claim for

compensation within the meaning of the section, if it is made within a period of six months. S. 140 of the Act provides that any notice required by

the Act to be served on a Railway administration may be served, in the case of a Railway administered by the Government on the Manager or the

Chief Commercial Superintendent, (a) by delivering the notice to the Manager or the Chief Commercial Superintendent or (b) by leaving it at his

office or (c) by forwarding it by post in a prepaid letter addressed to the Manager or the Chief Commercial Superintendent at his office and

registered under the Indian Post Office Act, 1898.

7. It is the contention of the learned counsel for the appellants that in the present case, the plaintiffs have served notice on the Chief Commercial

Superintendent, Madras by leaving it at his office, even if it could be said that the other two parts of the section are not satisfied in this case.

According to learned counsel, the notice was not sent by registered post; but a copy of the notice to the Chief Commercial Superintendent,

Madras, was sent only by ordinary post and that therefore it would amount to leaving the notice at the office of the Chief Commercial

Superintendent, Madras. We are unable to accept this argument, if clause (b) of S. 240 of the Act covers the case of notice being sent by post,

there is no necessity at all for clause (c) clause (c) refers expressly to notice being sent by post and if a notice is sent by post, it has to be done in

the manner required by clause (c). In other words, it should be sent by post in a prepaid letter addressed to the concerned person and registered

under the Indian Post Office Act. Clause (b) will refer to a case where notice is sent by Personal messenger and left at the office of the concerned

official. It cannot refer to a notice which is sent by ordinary post or other-wise.

8. Learned counsel submits that the request made for open delivery certificate would amount in law to a claim for compensation. He places

reliance on the judgment of the Supreme Court in Jetmul Shojraj v. D.R. Railway AIR 1982 S.C. 1879 In that case, the appellant sent a telegram

to the General Manager of the concerned Railway requesting him to give him early delivery of the goods when he found that the goods had not

reached the destination on a particular date. He confirmed the telegram by a letter within a few days thereafter and requested the General Manager

to see that the goods reached the destination immediately. Thereafter some correspondence followed. The question was, whether the telegram and

the letter would constitute a claim for compensation. Majority of the Beach held that it would amount to a claim for compensation within the

meaning of S. 77 of the Act as it stood them. The court staled the law thus:

The High Courts in India have taken the view that the object of service of notice under this provision in essentially to enable the railway

administration to make an enquiry and investigation as to whether the loss, destruction or deterioration was due to the consignor''s laches or to the

wilful neglect or the railway administration and its servants and further to prevent statu and possibly dishonest claims being made when owing to

delay it may be practically impossible to trace the transaction or check the allegations made by the consignor. In this connection we may refer to a

few of the decisions. They are Shamsul Huq Vs. Secy. of State, A. Mahadeva Ayyar Vs. The South Indian Railway Co., ; Governor-General in

Council Vs. Gouri Shanker Mills Ltd., Meghraj Hirjee & Co. v. B.N. Rly Ltd, AIR 1939 Nag. 41 . Hearing in mind the object of the section it has

also been held by several High Courts that a notice under S. 77 should he liberally construed. In our opinion that would be the proper way of

construing a notice under that section. In enacting the section the intention of the legislature must have been to afford only a protection to the

railway administration against fraud and not to provide a means for depriving the consignors of their legitimate claims for compensation for the loss

of or damage caused to their consignments during the course of transmit on the railways.

9. The above ruling will not a ply to the present case. In the case before the Supreme Court, a letter and telegram were sent to the General

Manager who was entitled to represent the railways as prescribed under the Act. In the present case, the request for open delivery was not made

to the Chief Commercial Superintendent or the General Manager. It was made only locally and that was granted by the local official. Further, it

was not made in writing. At any rate, there is nothing on record to show that a request for open delivery was made in writing. S. 78-B expressly

requires the claim to be in writing. If the request for open delivery is to be construed as claim for compensation, the first requisite is that it should be

in writing. In the present case, there is no evidence to show that it is in writing. The admission of the defendants in the written statement will not

prove that such request was made in writing. The written statement merely refers to the request having been made for open delivery and it does

admit that there was a written request. Further, it was not made to the concerned officials. Hence the request for open delivery cannot be a claim

for compensation within the meaning of the section.

10. Learned counsel drew our attention to the judgment of the Karnataka High Court in Stale v. Union of India 1982 Karnataka 292. When the

party concerned found the goods to be damaged, he gave a letter to the station master requesting for open delivery. He sent copies of that letter to

the superior officers and also to the Chief Commercial Superintendent, Southern Railway with a specific note that the claim for damages may be

accepted and the actual damages would be intimated after taking open delivery. A copy of the letter was forwarded to the official to whom a claim

should have been made and it was also expressly staled in the letter that it should be treated us claim for compensation. In those circumstances a

Division Bench of the Karnataka High Court look the view that it amounted to a notice within the meaning of S. 77 of the Act. The facts of that

case are entirely different from the present one and that ruling cannot help the appellants in this case.

11. Learned counsel refers to the judgment of a learned single Judge of the Calcutta High Court under the Carriers Act, reported in National

Insurance Co. Ltd. and another Vs. Om Prakash Poddar, The discussion in the judgment related to the question of negligence. The learned Judge

held that the burden was on the carrier to prove absence or negligence. The case did not relate to the question of notice being sent within the

period required under law. The judgment does not apply to the facts of this case.

12. The argument of learned counsel that the joint enquiry report submitted by the officials of the Railway in April 1974 would amount to notice

within the meaning of S. 78-B of the Act is unsustainable. The report docs not show that the enquiry was held pursuant to any request made by the

plaintiffs herein to assess the damages for the goods. The enquiry appears to be a routine one by the Railway Officials to find out the cause for

accident. The enquiry report comes to the conclusion that none of the staff members was responsible for the accident. Incidentally the report

reserves the extent of damages caused by fire and that too only on the basis of an assessment made by Station Fire Officer. That will not in any

way help the plaintiffs to claim that the report should be treated as a notice under S. 78-B. As already pointed out, there is no written claim by the

plaintiffs for compensation as contemplated by section.

13. The contention that forwarding the copy to the Chief Commercial Superintendent, Madras, should be accepted as claim having been made by

the plaintiffs within the meaning of the section cannot be sustained. Admittedly the copies were not forwarded under registered post. They were

sent only under ordinary post, even according to the plaintiffs, and it will not satisfy the requirements of the section. There is no evidence excepting

the oral accretion of the plaintiffs that copies were actually sent to the persons to whom they were marked. In the circumstances, we cannot accept

the contention that copies of Ex. A 10 were forwarded to the Chief Commercial Superintendent who was the authority to represent the railway-

Administration.

14. Learned counsel for the respondents draws our attention to the judgment of the Allahabad High Court in Ram Padarath v. Union of India AIR

1974 Allahabad 465. In that case notice was served on the Chief Commercial Superintending Railways when there is a General Manager. The

Court held that the requirements of S. 77 read with S. 140 as it stood then were not satisfied as the officer to whom the notice has been sent is

subordinate in rank to the General Manager.

15. The requirements of the Section are mandatory and unless they are complied with strictly, it is not possible to accept the claim of the plaintiffs

and we see no reason to interfere with the same. The appeal fails and is dismissed. But in the circumstances, there will be no order as to costs.