The Assam Bengal Railway Co., Ltd. Vs Radhika Mohan Nath

Court: Calcutta High Court

Date of Decision: Aug. 28, 1922

Judgement

Richardson, J.
The opposite Party obtained a decree in the Small Cause Court at Munshigunj against the petitioner, the Assam Bengal

Railway Company, for compensation for non-delivery of a parcel of medicines. The goods were entrusted by the opposite party as consignor to a

Steamer Company for carriage to a station on the Assam Bengal Railway. It was thus the Steamer Company which delivered the goods to the

Railway Company. This Rule, obtained by the Railway Company, calls upon the opposite party to show cause why the decree should not be set

aside on several grounds of which the following are material:

1. For that the Court below has erred in law in holding that notice to the Traffic Manager was notice to the Agent of the defendant Company within

the meaning of Ss. 77 and 140 of the Indian Railways Act IX of 1890 and the said Court ought to have held that the plaintiff"s suit was fit to be

dismissed for want of notice.

2. For that in the absence of any finding that the Traffic Manager had any authority to accept notice on behalf of the Agent or that the Agent in this

particular case had any knowledge directly or indirectly of the plaintiff"s claim within the statutory period of six months the Court below is wrong in

decreeing the suit.

3. For that the Court below has misconceived the legal effect of the Traffic Manager"s communication made without prejudice to the rights of the

Company and this has materially affect the decision of the case on the merits.

2. As to these pleas the question is whether the learned Subordinate Judge correctly applied the law to the facts found by him. What he says in his

judgment is this:-

Upon the evidence I find that the plaintiff gave notice of his claim to the Traffic Manager who offered to pay Rs. 18 to him in satisfaction of the

claim. Under the rules, the Traffic Manager settles all claims and the Agent refers such claims to him for settlement. Under the circumstances I hold

that notice to the Traffic Manager is notice to the agent as held in 13 C.W.N. 24 and the notice was given within 6 months time as laid down in the

law.

3. It has frequently been held in this Court under S. 140 of the Act, that in the case of a Railway Company the head-quarters of which are in

England, the notice required by S. 77 should be given to the Agent of the Company in India. The case of Woods v. Meher Ali (1908) 13 C.W.N.

24 on which the learned Judge relies has been distinguished more than once in language appropriate to the present case, See The East Indian

Railway Company v. Babu Madho Lal (1912) 17 C.W.N. 1131, Radha Kishun Lal v. The East Indian Railway Company (1914) 19 C.W.N. 62

and The Last Indian Railway Company v. Ram Autar (1915) 20 C.W.N. 696. Here also there is no evidence that claims of this kind are usually

referred by the Agent to the Traffic Manager and there is no finding as there was in the case of Woods v. Meher Ali, that notice had in fact

reached the Agent. In Babu Madiw Lal"s case, it was pointed out that the learned Judges who decided Woods v. Meher Ali did not lay it down as

matter of law that service on the Traffic Manager was a sufficient compliance with the Act and that the decision was based on the particular facts

of the case. Reference may also be made to Kula Chand Saha v. Secretary of State (1916) 21 C.W.N. 751. In my opinion the view of the learned

Judge that notice to the Traffic Manager was notice to the Agent is erroneous in law.

4. The case of Radha Sham Basak v. The Secretary of State (1915) 20 C.W.N.790 cited for the opposite party is distinguishable. The question

which arose there is not the question which we have to determine.

5. As to the offer made by the Traffic Manager to the opposite party, the learned Judge does not refer to the fact that the offer was made without

prejudice. In any case the offer in itself cannot show that the Traffic Manager had authority to receive the notice on behalf of the Agent.

6. So far the petitioner is entitled to succeed but for the opposite party an attempt was made to support the decision of the learned Judge on the

ground that in the present case no notice under S. 77 was necessary.

7. It was contended in the first place that the case was not within S. 77 by reason of the fact that the goods were handed to the Railway Company

for carriage not by the opposite party but by the Steamer Company. It is not easy, however, to see how the claim made by the opposite party

against the Railway Company can be maintained at all unless it be on the footing that in handing the goods to the Railway Company, the Steamer

Company acted as his agent. It was said that the Steamer Company referred the opposite party to the Railway Company. If that be so, the

explanation no doubt is that the Steamer Company took up this position, that as regards the Railway Company the Steamer Company was merely

an agent acting on behalf of the opposite party as principal.

8. In the second place, it was argued that in the present case there was no loss of any goods within the meaning of S. 77 of the Act and that for

that reason there was no necessity to give any notice of the claim to the Railway Company. It does not appear to have been contended in any

previous case in this Court that no notice is required of a claim for compensation in respect of the non-delivery or short delivery of goods entrusted

to a Railway Administration for carriage. But that is not of itself a sufficient answer.

9. S. 77 of the Act so far as it is material provides:- A person shall not be entitled.....to compensation for the loss, destruction or deterioration of

animals or goods delivered to be so carried, that is carried by railway, unless his claim to the....compensation has been preferred in writing by him

or on his behalf to the Railway Administration within 6 months from the date of the delivery of the animals or goods for carriage by railway.

10. I will assume that the word ""loss"" in this Section means loss by the Railway Administration. The argument is that goods not delivered or short-

delivered are not ""lost"" and reliance was placed on the judgment of Jwala Prosad, J., in the East Indian Railway Company v. Kali Charan Ram

Prasad (1922) Pat. 106 ; (1922) P.H.C.C. 145. The learned Judge referred to the distinction which appears in Arts. 30 and 31 of the Schedule of

the Limitation Act between claims against a carrier on the one hand for compensation of losing or injuring goods and on the other for compensation

for non-delivery of or delay in delivering goods. In the first case limitation us from the time when the loss or injury occurs and in the second case

from the time when the goods ought to be delivered. In my opinion with respect these two articles of the Limitation Act throw little, if any, light on

the construction of S. 77 of the Railways Act. There may be reasons for the presence of both articles in the Limitation Act but they may still be

overlapping. Where there is an agreement by a carrier to deliver goods at a fixed time or within a reasonable time, a claim for goods lost may be

drawn as a claim for their no delivery.

11. The reasoning of the learned Judge then proceeds on the assumption-mistaken as I venture to think-that a claim for no delivery necessarily

imports that the Railway Company are consciously and deliberately withholding goods in their possession, which they might deliver if they chose to

do so.

12. As it seems to me, a claim for non-delivery, without more, merely asserts that the goods were not delivered at the agreed time or within a

reasonable time. Such a claim asserts nothing as to the cause of the non-delivery.

13. In Ghelabai Parsi v. East Indian Railway Company (1921) 45 Bom. 1201 there was no question as to the construction of S. 77 of the

Railways Act. The question was as to the right of the Railway Company to exemption from liability under a risk-note in Form B. The decision is

based on the judgment of Palles, C.B., in the Irish case of Curran v. M.G.W. Railway Company 12 I.R. 188 which also turned on a special

contract between the consignor and the Railway Company. Curran''s case has recently been the subject of comment in the House of Lords in

Smith v. Great Western Railway Company (1922) I. A.C. 178. But for the present purpose it is unnecessary to examine these cases. The question

discussed was a question of the burden of proof turning on the state of the evidence at the conclusion of the trial upon an issue raised between the

parties which it was necessary to decide one way or the other.

14. In the present case there is no finding that the goods were detained by the Railway Company. It is true also that there is no finding that the

goods had, as the Company alleged, been stolen from the godown. As the case seems to have been framed and placed before the Court, it was

not necessary to deal with these matters. Damages were awarded merely for the non-delivery of the goods.

15. I have indicated that in my view, a claim for compensation for non-delivery includes the case of the loss of the goods just as much as the case

of the detention of the goods. If that be so, it seems to follow that the statutory notice is a condition precedent to a verdict being taken on that

alternative footing, because on that footing the goods may have been lost.

16. If it be conceded, though I do not decide, that where goods are wrongfully detained by a Railway Company, no notice unnecessary under s.

77, a plea by the Company of want of notice must at least be met on that ground and the Court must be asked to find that the goods were being

detained and were not lost when they ought to have been delivered.

17. Where detention is not pleaded or put in issue a claim simply for compensation for non-delivery must be understood as including or involving a

claim for the loss of the goods within the meaning of S. 77.

18. The result is that in my opinion the rule should be made absolute and the suit against the Company dismissed with costs of the Court below and

of this rule (hearing-fee four gold mohurs).

B.B. Ghose, J.

19. I agree. The current of decisions in this Court is that notice under S. 77 of the Railways Act should be served on the Agent. In the case of

Woods v. Meher Ali (1908) 13 C.W.N. 24 the learned Judges expressly say that they did not desire to differ from those decisions. It was

apparently found as a fact in that case that the agent was aware of the notice, and it was held under the circumstances of the case that the agent

had the required notice. If that is so the decision was in accordance with The Secretary of State v. Dipchand (1897) 24 Cal. 306 where it was

held that the plea of want of notice would be sufficiently met if it were shown that the notice served on the Traffic Superintendent reached the

Manager (?) within six months of the delivery (?) of the goods. There is no such allegation or finding in this case. The notice served on the Traffic

Manager was not therefore sufficient in law.

20. I do not think that there is much substance in the argument advanced by the learned vakil for the opposite party in support of the decision of

the Lower Court, that no notice under S. 77 of the Railways Act was necessary in the present case as the goods were not delivered by the plaintiff

to the Railway Company for being carried by the Railway. If this contention is accepted I think it would cut the ground on which the claim against

the Railway Company rests, and the Railway Company would not at all he liable for the value of the goods. The learned vakil urged that the

Steamer Company was really liable to the plaintiff and the Railway Company is only liable because they took upon themselves the liability of the

Steamer Company to pay damages for the breach of their contract. The plaintiff however did not bring his suit on that basis, and if he had done so

there might have been various grounds for defense on behalf of the Railway Company. The liability of the Railway Company must therefore

depend on the fact that there was delivery of the goods to the Railway Company, either by the Steamer Company acting as agents of the plaintiff,

or by the plaintiff to the Steamer Company who received delivery of the goods as agents of the Railway Company. The plaintiff therefore cannot

get rid of the obligation to give notice of his claim on this ground it is next urged by the learned vakil-for the opposite party that no notice under S.

77 was necessary as the plaintiff sued for non-delivery of the goods and not for loss. For this- distinction reliance is placed on the case of East

Indian Railway Company v. Kali Charan (1922) Pat. 106; (1922) P.H.C.C. 145 I find some difficulty in understanding the facts of the case as

reported. It is stated at page 147 of the report the Court below has found that the goods in question were lost not on account of a running train

robbery, (sic) on account of theft but on account of the willful neglect on the part of defendant''s servants. Thus there was finding that the goods

were lost, and in such a case it cannot be questioned that notice is necessary. But there is another passage at page 148 which runs thus:-

The Lower Court has disbelieved the plea set up by the defendant of the loss of the goods in the manner alleged by the Company and has

expressly held that it was a case of non-delivery of the Goods to the plaintiff. The learned Judge however, held that although no notice was

necessary, the plaintiff had actually given notice, which according to him was good notice under S. 77 of the Act. He cited a number of cases in

support of his opinion that the notice served was sufficient. It may however be pointed out, in passing, that the cases of the Calcutta High Court

cited do not seem to support his proposition. The observations, therefore, in the judgment that notice under S. 77 was not necessary in the case of

non-delivery of goods, are mere obiter. In conclusion the learned Judge declined to exercise his discretionary power of revision in favour of the

Company as in his opinion justice had been done.

21. Reference has been made to Arts. 30 and 31 of the Limitation Act in support of the contention that there is a distinction between loss and non-

delivery. That distinction may be necessary for the purpose of fixing the starting point for the period of limitation for suits under different

circumstances. Art. 30 applies only to a suit for compensation against a carrier for losing or injuring goods, and difficulty was actually experienced

in applying the appropriate article to suits for damages for non-delivery before the amendment of the Limitation Act; I shall refer to it later on. It

can therefore be hardly argued by reference to those articles that the word loss in S. 77 of the Railways Act excludes non-delivery of the goods.

The words non-delivery of in Art. 31 of the Limitation Act was first introduced by way of amendment in the Limitation Act of 1877, by S. 3 of Act

X of 1899. By S. 2 of the same Act addition of a new S. 10 to the Carriers Act of 1865 was made. S. 9 of the Carriers Act provides that ""In any

suit brought against a common carrier for the loss, damage or non-delivery of goods...it shall not be necessary for the plaintiff to prove...."" Under

the new S. 10, notice was required to be given as is provided in S. 77 of the Railways Act. The word "non-delivery" does not appear in S. 10, but

it seems to me that it was not intended to exclude the necessity of giving notice in the case of non-delivery, although a different article was found

necessary for the purpose of limitation of suits. The case might have been different if the suit was for damages for wrongful detention of the

plaintiff"s goods. But in such a case as that, the plaintiff must prove that the goods are with the Railway Company which have been wrongfully

detained by them, otherwise his suit must fail. The word "loss" used in S. 77 is in my opinion wide enough to include all cases where the goods are

not forthcoming and therefore includes a case of non-delivery. It may also be observed that under S. 72 of the Railways Act, subject to the other

provisions of the Act, the liability of the Railway Company isthat of a bail under Ss. 152 and 161 of the. Indian Contract Act. S. 161 of the

Contract Act runs as follows. If by the fault of the bailee the goods are not returned, delivered or tendered at the proper time, he is responsible to

the bailor for any loss or destruction or any deterioration of goods from that time."" It seems to me that if any person asks for damages for any loss

on account of goods not being delivered against a Railway Company, he is under the provisions of S. 72 bound to give notice under S. 77.

22. In order to see whether the contention of the opposite party can find any support in the case of Curran v. Midland G.W. Ry. Co. 12 I.R. 188

and the case of Ghelabhai v. E.I. Ry. Co. (1921) 45 Bom. 1201 which followed the Irish case, we have examined those cases as also the case of

Smith v. G.W. Ry. Co. (1922) I. A.C. 178 in which Curran''s case was distinguished and commented on. Curran''s case turned upon the question

of burden of proof with reference to the special contract entered into between the parties and cannot therefore be of any assistance in deciding the

question whether the word ""loss"" in S. 77 of the Railways Act excludes the case of ''non-delivery''.

23. I am therefore of opinion that it was incumbent on the plaintiff who sues the Railway Company for damages for non-delivery of goods to give

notice as provided in S. 77 of the Railways Act. I desire however to make it clear that I do not intend to express any opinion as to the meaning of

the word ""loss"" where it is contained in a risk note or any other document, which should be construed with reference to the context. I agree with

the order proposed by my learned brother.