The East Indian Railway Company Vs Ram Autar

Court: Calcutta High Court

Date of Decision: Dec. 8, 1915

Citation: 38 Ind. Cas. 502

Hon'ble Judges: D. Chatterjee, J; Beachcroft, J

Bench: Division Bench

Judgement

1. The firm of Putidas Mahadeo Lal consigned 10 tins of cocoanut oil at the Howrah station of the East Indian Railway Company for carriage to

the plaintiff at the Patwa station on the 3rd of December 1913. The consignment did not reach the plaintiff and he gave notice of demand of

compensation to the Claims Superintendent ,of the Company at Howrah on the 25th. of December 1913. He gave a notice to the: Agent on the

10th of August, 1914, but the said notice was refused. This suit was then filed on the 2nd of- January 1915 claiming compensation for the loss of

the goods, alleging that the said loss was due to the wilful negligence of the servants of the Company or to theft by its servants. The Company

replied that the suit was incompetent as no notice had been served on the Agent as required by law; that the suit was barred by limitation; that the

Company was not liable as the loss was due to a train robbery.

2. The learned Judge below held that the plea of a train robbery was not made out; that the notice had been duly served upon the Claims

Superintendent whose duty it was to settle such claims and that was sufficient and that the suit was not barred. Upon"" these findings he gave a

decree to the plaintiff. The Company has moved this Court mainly on three grounds;--(l) That the non-service of a notice on the Agent is fatal to

the suit. (2) That the suit as laid in the plaint was barred under Article 30 of the 1"irst Schedule to the Limitation Act, and lastly that the plaintiff had

failed to prove that the case cape within the exception mentioned in the risk note B under which the Company would be liable only under certain

circumstances.

3. We think that the first ground is sound: Section 77 of the Railways Act provides that a notice of claim for compensation must be made within six

months from the date of the delivery to the Company, and Section 140 provides that the notice must be served on the Agent of the Company in

India (a) by delivering the notice to him, (6) by leaving it at his office, (c) by forwarding it by post, etc.

4. The notice to the Agent in this case was sent on the 10th of August 1914, i.e., more that six months after the delivery which took place on the

3rd of December 1913 and the notice that was given to the Claims Superintendent was not a notice to the Agent. The learned Judge below has

held that the Claims Superintendent usually settles these claims and, therefore, the notice was valid. He does not, however, find that the Claims

Superintendent was authorised by the Agent to receive such notices on his behalf and there is no evidence on the record to make out such a case.

Reliance has been placed on the case of Woods v. Meher Ali Bepari 3 Ind. Cas. 479 : 13 C.W.N. 24 : 4 M.L.T. 427. It was held in that case that

a notice to the Traffic Manager in the Claims Department was sufficient, as that officer usually settles such claims and such claims are usually

referred to him by the Agent. In the present case there is no evidence that such claims are usually referred by the Agent to the Claims

Superintendent nor is there any finding, as there was in the case of Woods v. Meher Ali Bepari 3 Ind. Cas. 479 : 13 C.W.N. 24 : 4 M.L.T. 427

that the notice had reached the Agent. In the case of Janki Das v. Bengal Nagpur Railway Company 13 Ind. Cas. 509 : 16 C.W.N. 356 : 15

C.L.J. 211 it was held by Sir Lawrence Jenkins, C.J., and N.R. Chatterjea, J., that a notice to the Goods Superintendent was not sufficient. In the

case of the East Indian Railway Company v. Madhu Lal 19 Ind. Cas 673 : 17 C.W.N. 1134 : 18 C.L.J. 147 Harington and Carnduff, JJ., held

that a notice to the Divisional Traffic Manager was not sufficient. In the case of Radha Kissen Chsoni Lal v. East Indian Railway Company 21 Ind.

Cas. 970 : 19 C.W.N. 62 Fletcher and N.R. Chatterjea, JJ., held that a notice to the Goods Superintendent was not sufficient. The law requires

that the notice should be on the Agent and we think that the notice must be on the Agent, and whether a particular officer is authorised by the

Agent to receive such notices on his behalf is a question of fact that must be decided on evidence. We are also inclined to favour the second

contention of the petitioner as the case made in the plaint was one of loss and would, therefore, come under Article 30 of the Schedule to the

Limitation Act.

5. In this view of the case it is not necessary to consider the third point.

6. We made the Rule absolute with costs two gold mohurs.