(1956) 03 CAL CK 0013

Calcutta High Court

Case No: Appeal from Original Decree No. 236 of 1949

Darjeeling Himalayan Railway Company Ltd., (In Liquidation) and Others	APPELLANT
Vs	
Jetmull Bhojraj and Another	RESPONDENT

Date of Decision: March 15, 1956

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 80

Citation: 60 CWN 683

Hon'ble Judges: Mookeejee, J; Mitter, J

Bench: Division Bench

Advocate: Sarat Chandra Jana, Jatindra Nath Das and Benode Behari Halder, for the Appellant;Rajendra Bhusan Bakshi, Satyapriya Ghose and Bhabesh Narayan Bose for the Union of India, for the Respondent

Final Decision: Allowed

Judgement

Mookerjee, J.

The Plaintiff firm Jetmull Bhojraj filed a suit for the realisation of damages suffered by them as a portion of a consignment of textile goods had been received in a damaged condition. The claim was preferred against the Dominion of India as it then was, representing certain railway systems under State management and the Darjeeling Himalayan Railway Company Ltd. The learned Subordinate Judge decreed the plaintiff''s claim in part against the Darjeeling Himalayan Railway Company Ltd., and dismissed the suit against the Dominion of India. The Darjeeling Himalayan Railway Company Ltd., preferred the present appeal to this Court. During the pendency of the appeal the appellant Company went into liquidation and the Liquidators have been duly brought on the record.

2. A Memorandum of cross objection was filed on behalf of the Plaintiff firm. From the grounds taken in the memorandum it appeared that the Plaintiff intended to contend that the portion of the claim disallowed by the trial Court should not have been dismissed and that the Plaintiff''s suit ought to have been decreed against the Dominion of India, now the Union of India, as representing the State-owned Railway systems.

3. After the appeal had been opened and the Respondent was called upon, the attention of the Court was drawn to the fact that the Court fee paid on the memorandum of cross objection was on a valuation of Rs 5,585-2-6 being the balance of the claim which had been dismissed by the trial Court. As the Plaintiff-cross-objector had taken grounds against the Union of India for the full amount of the claim the cross objection should have been valued on the full amount of the Plaintiff''s claim as in the trial Court. No objection had been raised by the office as regards the insufficiency of the Court fee paid. The Plaintiff asked for leave to put in the deficit Court fee on the full value of the Plaintiff''s claim. This prayer was allowed, on the cross-objector paying a certain amount to the Appellant for the costs of the hearing which had already taken place. The Plaintiff has now paid the costs and has also filed the deficit Court fee.

4. It had further transpired that the Union of India had not entered appearance in this Court. As this might have been due to the circumstance that the appeal preferred by the Darjeeling Himalayan Railway Company Ltd., was directed only against the Plaintiff and not against the co-defendants, and further the memorandum of cross objection having been valued at Rs. 5,585-2-6 the Union of India might have been advised not to enter appearance in the appeal. On the valuation of the cross-objection being increased and deficit Court-fees having been paid we directed fresh service of notice on the Union of India both of the appeal and of the cross-objection, indicating the amended valuation.

5. The Union of India has now entered appearance, the appeal and the cross-objection have been re-heard in the presence of the Plaintiff and both the sets of Defendants. As the appeal taken along with the cross-objection is directed against the entire decision by the trial Court we proceed to state the salient facts indicating the points which have been urged in this Court.

6. The case as made by the Plaintiff in the Plamt was that a consignment consisting of 259 bales of textile goods were booked on the 10th May. 1946, from Wadibunder, a Station on the G.I.P. Railway to Geilekhola, a station on the Darjeeling Himalayan Railway. The goods were consigned to the Political Officer. Sikkim. Out of the said consignment 169 bales reached the destination and were delivered on or about the 7th June 1946. The fact of non-delivery of the remaining 90 bales was noted on the Railway receipt. Repeated requests for early delivery were made by the Plaintiff firm and by the Sikkim Darbar to the different Railway Administrations. The consignment was to be carried over the G.I.P. Railway, E.I. Railway, B.A. Railway and the Darjeeling

Himalayan Railway. Except the last one the rest were State-managed ones. In September, 1946, the Plaintiff was informed by the Railway Administration that the 90 bales had been traced at Gadkhali, a Station on the Bengal Assam Railway now included in the State of Pakistan after the partition in 1947. These 90 bales reached Geillekhola in December, 1946, and the contents were found to be in a very damaged condition. The Plaintiff neither had nor could have any information about the damaged condition until the goods arrived at Geillekhola. The Plaintiff demanded open delivery. On the 12th February, 1947, open delivery was granted and the damage was assessed by the Claims Inspector of the Bengal Assam Railway and the Commercial Inspector, Darjeeling Himalayan Railway at Rs. 27,920/- and odd As none of the Defendants admitted liability the Plaintiff filed the present suit for compensation claiming in addition to the amount assessed at the time of open delivery a further sum being the difference between the ex-mill price and the retail price at the relevant time and a proportionate refund of the Railway freight. It was alleged by the Plaintiff that notice u/s 80 of the CPC had been duly sent to the Government.

7. The Darjeeling Himalayan Railway Company Ltd., questioned the locus standi of the Plaintiff firm to file the suit when the consignment had been addressed to the Political Agent, Sikkim. The Political Agent was claimed to be the actual owner of the goods. It was further assorted that no damage had been done to the consignment while the same was being carried on the Darjeeling Himalayan Railway. In any view the claim was barred by limitation. It was further pleaded that the Plaintiff''s suit was barred as no notice u/s 77 of the Railways Act had been served upon the Defendants within six months from the date of the delivery of the consignment at the forwarding station. The correctness of the value of the goods on which the damage had been assessed at the time of the open delivery was also questioned. Other contentions in the Plaint were also denied.

8. Two sets of written statements were filed on behalf of the Dominion of India, one representing the East Indian Railway Administration and the other the G.I.P. Rly. It may be noticed that by the time the written statement was filed the Bengal and Assam Railway as a railway system within the Union of India had become merged in the East Indian Railway. In both the written statements objections were raised that the suit was barred as no proper notice had been served either u/s 77 of the Railways Act or u/s 80 of the CPC and that the claim was barred by limitation. There was a general denial about the other statements made in the Plaint as no portion of the official records about the carriage of the disputed goods were available to the administration.

9. Various issues were raised. The learned Subordinate Judge held on the materials before him that the goods in fact belonged to the Plaintiff and the firm had locus standi to maintain the present suit. For reasons which will be referred to later on it was held that in the special circumstances of this case the suit was not barred. As

regards the service of notice it was found that no notice had been served on any one of the Railway Administrations under the management of the Government. The Government Railway systems were therefore not liable. Though no formal notice had been served on the Darjeeling Himalayan Railway Company Ltd., but reading the correspondence as a whole the trial Court came to the conclusion that the Darjeeling Himalayan Railway Company Ltd., would not be deemed to have had notice u/s 77 of the Railways Act. The learned Subordinate Judge passed a decree against the Darjeeling Himalayan Railway Company Ltd., for the amount assessed at the time of the open delivery disallowing the additional claims.

10. As stated already the Darjeeling Himalayan Railway Company Ltd., preferred the present appeal and a memorandum of cross-objection has been filed for the balance of the claim disallowed by the trial Court and for a decree against the Union of India.

11. Although an objection had been raised in the trial Court about the locus standi of the Plaintiff to file the present suit the issue had been decided in favour of the Plaintiff. A faint objection was raised in this Court also but we do not think that there is any sufficient) reason why the conclusion reached by the learned Subordinate Judge on this point should be modified. The references made to the correspondence and the oral evidence as adduced support the Plaintiff''s contention.

12. We proceed to deal with the subject-matter of the appeal on behalf of the liquidators of the Darjeeling Himalayan Railway Company Ltd.

13. It is contended that u/s 80 of the Indian Railways Act no claim is sustainable against the Darjeeling Himalayan Railway Company Ltd., unless it is proved that the damages had occurred while the goods were in the custody of that railway system.

14. Section 80 of the Indian Railways Act lays down how compensation is to be levied when goods are booked over the line of more than one railway administration by through booking over several independent railways. The aggrieved party may sue either the railway administration with which the contract of carriage was entered into and | or the administration on whose line the injury had occurred: G.I.P. Railway v. Jugol Kishore (1) (I.L.R. 52 All 238).

15. The Courts in England had held that where a contract was made with one railway company for the delivery of goods at a station on some other line it must be regarded as an entire contract made with the first company alone and not with that company as the agent of the other concerns to whose station the goods are to be sent [Bristol & Exter Railway Company Ltd. v. Collin (2) (1579) 7 H.J.. 194]. This view however was not fully countenanced by Rankin, J., Dekhori Tea Co., Ltd. v. A.B. Railway Co., Ltd., (3) (I.L.R. 47 Cal. 6.17.)

16. Section 80 of the Indian Railways Act creates a statutory liability on the part of the Railways. It makes the railway administration to which the goods are consigned

and | or the railway administration on whose lines the loss occurred, liable to be sued at the option of the plaintiff.

17. The relationship of principal and Agent was attempted to be introduced for considering the question as to which of the railways is liable when goods are delivered to one railway for carriage over other railways to a destination of such other railway; the railway with which the contract is entered into is considered to be the principal and the other railway administrations including the one at the destination as the Agent.

18. But as observed in Governor-General in Council v. Sukdeoram Marwari, (4) (A.I.R. 1949 Patna 329), this section lays down a specific rule of law governing the liabilities of different railways over which goods may be carried and those specific rules must be given effect to irrespective of any other consideration based on agencies or partnership.

19. It was held by this Court in E.I. Railway Company v. Nopechand Magniram (5) (19 C.L.J. 434), that when goods are carried by different railways and are lost in the course of transit, for fastening liability on any particular railway system it was necessary to prove that the loss occurred on the line of that railway. Damage while on transit over a particular railway system was required to be proved by the plaintiff in Sri Gangajee Cotton Mills Co., Ltd. v. E. I. Railway Company, (6) (I.L.R. 44 All 763); Darbarimal v. Secretary of State (7) (I.L.R. 6 Lahore 499); Madras and Southern Marhatta Railway v. Chinna Nagiah, (8) (A.I.R. 1946 Mad. 227). In G.I.P. Railway v. Sham Monohar (9) (I.L.R. 34 All 422) no evidence was led to prove that the goods had come into possession of the particular railway and the loss had occurred while on that railway. The Court held that in view of the provisions of section 80 of the Indian Railways Act no decree could be passed against that railway without a finding that the loss had occurred on that railway.

20. The onus is on the Plaintiff to prove that the loss has occurred while on the railway over which the goods have passed which is attempted to be made liable.

21. In our view the decree as passed against the Darjeeling Himalayan Railway Company Ltd., cannot be sustained as there is no evidence to show that the goods were damaged while the same were in transit over this railway system. 90 bales had been mis-directed to Gadkhali. For such mis-direction the Darjeeling Himalayan Railway Company Ltd., could not and was not attempted to be made liable. Whether this was due to some mistake or latches on the part of the Bengal & Assam Railway or of the G.I.P. Railway need not be considered at this stage.

22. From Ex. 1 (f) a communication addressed to the Chief Transportation Manager. Bengal & Assam Railway from one of the Railway Officers dated 12th October, 1946 it appears that the 90 bales had been detained at Gadkhali under instruction of the Chief Transportation Officer of B & A Railway.

23. On the 8th January 1947 the Traffic Superintendent, B. & A. Railway, is intimating by Ex. IZ(5) that the goods have been received from the B. & A. Railway in a damaged condition when the consignment was opened and open delivery was given the extent of the damage done was noted. The Commercial Inspector, Darjeeling Himalayan Railway Company Ltd.. who had represented that railway at the time of the open delivery in February, 1947, was examined as D.W. I, in this case. He had no knowledge of the circumstances under which and at what place the damage had occurred. None of the witnesses examined on behalf of the Plaintiff could either speak about the time or the circumstances under which the damage had been done. There is thus no escape from the conclusion that the Plaintiff has failed to prove that the loss had occurred owing to the negligence or latches of the Darjeeling Himalayan Railway Company Ltd., or even during the period that the consignment was in charge of that railway. We must accordingly hold that apart from any other consideration the decree passed against Defendant) No. 2 cannot be sustained on this ground.

24. As indicated already, the Plaintiff''s claim has been dismissed as against the Union of India representing the State Railway. The Bengal and Assam Railway system has fallen within the Indian Union and has subsequently been merged with E.I. Railway and later on a new nomenclature has been given.

25. The learned Subordinate Judge has dismissed the Plaintiff''s suit against the Union of India as it was found that no notice had been served on the E.I. Railway Administration and the G.I.P. Railway. This finding has not been and cannot be seriously assailed. It is, however, contended that so far as B and A. Railway is concerned correspondence was going on with the administration of this railway and from such correspondence it is reasonable to hold that there was a sufficient compliance with the condition imposed u/s 77 of the Railways Act.

26. Section 77 provides that a person shall not be entitled to compensation for the loss, destruction or deterioration of goods delivered and 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."

27. On behalf of the plaintiff this objection was attempted to be met by the argument that in the special facts of this case no notice u/s 77 was required to be given or in the alternative even if such a notice was necessary the correspondence between, the plaintiff and the Sikkim Durbar on the one hand and the different railway administrations on the other were sufficient to satisfy the condition.

28. We do not think that the plaintiff has been able to satisfy us that the claim for compensation was not for "loss, destruction or deterioration" of the goods.

29. It is not necessary for us to enter into a discussion as to what is the implication of the word "loss" in section 77, whether it has a wider meaning attached to it in this

country than is the case under the English Authorities. As observed in Nursingdas v. G.I.P. Railway (10) (I.L.R. 7 Lah 319) loss includes loss by the carrier as also to the owner whether for misdelivery or for their non-delivery. As the compensation claimed is for the deterioration of the goods which had been delivered for carriage, the claim in the present case is for compensation for goods having been deteriorated. Notice u/s 77 of the Act must be served within six months from the date of the delivery of the goods for carriage by railway. Time is to be calculated as from the date of the delivery of the goods for carriage and not from the date of delivery as had been held in certain decisions East Indian Railway Co. Vs. Jogpat Singh, ; Governor-General in Council v. Sarbeswar Das, 83 C.L.J. 165).

30. So far as the G.I.P. Railway or E.I. Railway Administrations are concerned no such notice either directly or indirectly had been served. It is however contended as there is no form of notice fixed under the statute there will be sufficient compliance if the railway administration is intimated of a claim for compensation. In the correspondence which was carried on for months together there is no indication of any claim for compensation. Requests for enquiry and for early delivery of the goods which could not be traced at that time cannot be taken as notice of a claim for compensation. The correspondence therefore in the present case cannot assist the plaintiff in maintaining the present claim against railway administration as a substitute for service of notice under Sec. 77 of the Railways Act.

31. The claim by the plaintiff therefore is barred u/s 77 of the Indian Railways Act.

32. The proposition that the contracting railway is liable to pay compensation to the consignor and to the consignee in any event is not always correct. Reference need be made to Section 72(1) of the Railways Act which lays down that the responsibilities of the railway is that of bailees under the Indian Contract Act. If there is no negligence or mis-conduct on the part of the contracting railway it having duly discharged its duties and responsibilities u/s 72(1) of the Railways Act that railway also will have to be absolved from all responsibilities for the loss of the goods.

33. The decision of the Patna High Court in Jankidas Marwari Vs. Governor-General of India in Council and Another, . 336] on which strong reliance was placed on behalf of the Plaintiff must be held to be a wrong decision. The Court overlooked in that case the principle that even a contracting railway can not be held liable if it is not guilty of any negligence or default.

34. We may also deal shortly with the defence that the claim is barred under Articles 30 & 31 of the Indian Limitation Act. The present claim is for compensation for injuring the goods and it may be taken that it is also for compensation for delay in delivering the goods, though the former appears to be the correct reading of the nature of the claim.

35. Under Article 30 a suit for compensation for injuring goods has to be brought within one year from when the loss or injury occurred. In the present case there is no proof or evidence as to whether and when the injury occurred; when there is no evidence there are difficulties in determining the starting point of limitation. If we had not found that the claim of the plaintiff was otherwise barred it would have been necessary for us to consider this aspect in greater detail.

36. If the claim falls under Article 31 of the Limitation Act it is clearly barred as one year had expired from the date when the goods ought to have been delivered. A substantial portion of the consignment was delivered on the 7th June, 1946 and that would be the date when the remaining portion of the consignment ought to have been delivered. The suit having been filed on the 9th April 1948 it was barred by limitation. In view of our decision on the other points it is not necessary to consider this defence at greater length. The result therefore is that the appeal is allowed, the cross-objection is dismissed and the plaintiff''s suit is dismissed. Considering the special circumstances of this case we direct that the parties would bear their respective costs in both the Courts.

Mitter, J.

I agree.