

## The River Steam Navigation Company, Ltd. and Another Vs Hazarimal Multan Mal

**Court:** Calcutta High Court

**Date of Decision:** July 24, 1917

**Acts Referred:** Carriers Act, 1865 â€” Section 10  
Civil Procedure Code, 1908 (CPC) â€” Section 115

**Citation:** 41 Ind. Cas. 919

**Hon'ble Judges:** Charles Chitty, J; Beachcroft, J

**Bench:** Division Bench

### Judgement

1. This is a Rule issued at the instance of the defendants calling upon the plaintiffs to show cause why the decree passed against them by the Munsif

of Tezpur and modified on appeal by the Subordinate Judge of the Assam Valley Districts should not be set aside on the ground that condition No.

17 of the Bill of Lading requiring service of notice of claim at the defendants' office in Calcutta was perfectly legal, and that the Courts below had

no jurisdiction to entertain the suit without strict compliance therewith being proved. The clause in question runs as follows:

2. "No claim of any kind whatsoever in respect of the contract shall be valid, unless notice in writing shall be given and delivered at the office of the

Company at Calcutta within six months from the date of any default, loss or damage in respect of which such claim arises." The facts are that on

16th August 1914 goods were shipped by the defendant Companies' steamer at Calcutta consigned to the plaintiffs at Bishwanath Ghat. There

was short delivery, and on 21st September 1914 a notice of claim was delivered to the defendants' sub agent at Bishwanath Ghat. He is described

as joint agent, as he represented the two steamship Companies.

3. On 19th October, 13th November, and 10th December 1914 three more letters were delivered to him. On 27th January 1915 he wrote

repudiating the claim. On 29th January 1915 the plaintiffs wrote to the defendant Company's head office asking for a copy of the Bill of Lading

which was supplied on 3rd February 1915. The plaintiffs then filed this suit.

4. The learned Subordinate Judge held that the defendants had no power to restrict the manner of service of notice by limiting the service at the

Calcutta office of, the Company. He thought that the notice served in this case on the subq\*\*\*uegent at Bishwanath Ghat Was a good notice in the

circumstances of the case, especially as he found that the defendant Companies came to know of the claim in less than six months" time and had no

difficulty in tracing the goods.

5. This decision of the learned Subordinate Judge appears to be erroneous. In the first place, Clause 17 does not in any way limit the requirements

of Section 10 of the Carriers Act, 1865. It is entirely consistent with that section. Secondly, it has been held by this Court in British and Foreign

Marine Insurance Co. v. India General Steam Navigation And Railway Company 9 Ind. Cas. 960 : 38 C. 50 that notice u/s 10 of the Carriers Act

must be given. It is not enough to say that the Company had knowledge aliunde of the lose.

6. But we are met with the objection that this is merely a decision erroneous in law, that there is nothing in the procedure of the Courts below

which warrants our interference u/s 115 of the Civil Procedure Code. In the petition for the Rule the question of jurisdiction was ingeniously

introduced, but it is really not a question of jurisdiction at all. The cases of Amir Hassan Khan v. Sheo Baksh Singh 11 C. 61 : I. A. 237 : 4 Sar.

P. C. J. 569 : Rafique and Jackson's P. C No. 83 : 5 Ind. Dec. 760 and Shew Prosad Bungshidhur v. Ram Chunder Haribux 23 Ind Cas. 977 :

41 C. 323 pc make this clear, We must, therefore, decline to interfere in revision. The Rule is discharged but in the circumstances without costs.