

State of Mysore Vs. Union of India

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Court : Karnataka

Decided On : Feb-16-1982

Reported in : AIR1982Kant292; 1982(2)KarLJ32

Judge : K. Jagannatha Shetty and ;P.A. Kulkarni, JJ.

Acts : Railways Act, 1890 - Sections 77

Appeal No. : First Appeal No. 149 of 1974

Appellant : State of Mysore

Respondent : Union of India

Advocate for Def. : P.A. Krishna Reddy, Adv.

Advocate for Pet/Ap. : C.S. Kothavale, Govt. Pleader

Judgement :

Jagannatha Shetty, J.

1. This appeal has been brought on behalf of the State of Karnataka challenging the judgment and decree dated June 29, 1974 made by the Civil Judge, Raichur in O. S. 25/1 of 1966.

2. The suit was instituted by the State Government for recovery of Rs. 30,983-75 from the Southern Railway as compensation for the damage caused to a

transformer consigned for carriage from Madras Harbour to the railway station at Raichur.

3. There are, however, some undisputed facts which we may notice here itself. The transformer in question when reached Raichur railway station was found damaged. Oil was found leaking due to radiator fins damage. The plank of the packing was found broken at the vertical line. The bottom horizontal plank was also bent. The oil from the transformer, was found leaking very heavily from the pipe joint. On the right hand corner of the rear of the transformer the whole packing was found displaced. On the left hand bottom side the two iron slabs supporting below the wooden packing were also bent.

Having noticed these external damage, the Executive Engineer of the Electrical Division at Raichur, gave a letter Ext. D-1 dated Dec. 19, 1960 to the Station Master, Raichur, requesting for open delivery of the transformer. He sent copies of his letter to the superior officers of his own department and also to the Chief Commercial Superintendent of Southern Railway, Madras, with a specific note that the claim for damages may be accepted and the actual damages would be intimated after taking open delivery. On Feb. 7, 1961 there was a joint inspection of the transformer, by the representatives of the electrical department of the railway, the Indian Insurance Company and the representative of the plaintiff. They prepared a report Ext. P-1 noting the undisputed external damages to which we have earlier referred. The report states that the assessment of total damages could be ascertained after it was opened and there were no facilities for such opening at Raichur. It should be transported to Munirabad for that purpose. The report also states that the oil leaked out was collected and delivered to the Railway Authorities for disposal as it was found unsuitable by the Electrical Department. The report further states that the cause for damage must have been due to heavy impact of the left hand bottom rear of the transformer casing.

The transformer, however., could not be taken immediately to Munirabad. In the meantime the Executive Engineer of the Electrical Department issued a notice Exhibit P-4 dated June 21, 1961 calling upon the Chief Commercial Superintendent of Southern Railway at Madras to pay provisional damages of Rs. 1,60,000/- being

the cost of the entire transformer including the oil which was leaked out. It was also stated in the notice that that claim was subject to revision after making final inspection of the transformer and effecting necessary repairs, if any. The Commercial Superintendent in his reply dated Aug. 30, 1961 repudiated his liability to pay the damages with a contention that the transformer was inherently defective and it was leaking even when it was consigned for carriage at Madras harbour station.

In Feb, 1964, the transformer was taken to Munirabad workshop and there it was opened and repaired. The repairs effected were recorded in the works register called 'C' register. The item wise expenditure incurred thereon was also recorded in the 'C' register which has been produced and marked as Ext. P-8. There is no dispute in regard to the costs of those repairs.

The plaintiff issued a statutory notice dated July 29, 1965 under Section 80, C. P. C. calling upon the Railway to pay Rs. 33,872-75 for the damage caused to the transformer. It was followed by the institution of the suit in which the claim, however, was confined to Rs. 30,983-75 p.

4. On behalf of the Railway, the liability to pay the damages was denied and dis owned. It was asserted that there was no negligence on the part of the Railway and the transformer was inherently defective with a leakage, even when it was delivered for carriage on Dec. 1, 1960. It was also contended that the suit was not maintainable since the plaintiff has not complied with the statutory notice required under, S. 77 of the Railways Act

5. In the light of the contentions raised by the parties, the trial Court framed issues, among others, as to whether the transformer was in good condition and securely packed when it was delivered at Madras harbour Railway Station; whether, it was found damaged in transit; whether the damage was noticed and recorded at the time of open delivery by the officers of both the parties; and whether, the suit claim was the compensation for the actual damage caused to the transformer.

All those issues were determined by the Court below in favour of the Plaintiff. The suit, however, was dismissed on another ground. It was held that the plaintiff has

not complied with the statutory requirement of Section 77 Of the Indian Railways Act since there was no valid notice issued within the period prescribed under the said section.

6. Challenging the dismissal of the suit, the State had preferred this appeal.

There has been no cross-objection on behalf of the Railway nor any argument was addressed before us challenging the legality of the findings recorded by the Court below in favour of the plaintiff.

7. The sole question that arises for our consideration, therefore, is whether the plaintiff has complied with the requirement of Section 77 of the Indian Railways Act as it stood then before instituting the suit.

Relevant portion of that section (since renumbered as 78-B) reads thus:

'A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction, damage, deterioration or non-delivery of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf -

(a) to the railway administration to which the animals or goods were delivered to be carried by railway; or

(b) to the Railway administration on whose railway the destination station lies, or the loss, destruction, damage or deterioration occurred,

within six months from the date of the delivery of the animals or goods for carriage by railway.'

8. The Court below has held that the notice Ext. P-4 dated June 21, 1961 issued by the plaintiff claiming compensation of Rs. 1,60,000/- was beyond the period of six months from Dec. 1, 1960 on which date the goods were consigned for carriage.

It is not in dispute and indeed cannot be disputed that if Ext. P-4 was the required notice under Section 77 of the Indian Railways Act, then the claim by the plaintiff was clearly barred by time. But, Mr. Kothawale for the appellant, however, did not depend upon Ext. P-4. He urged that having regard to the correspondence Ext. D-1 and Ext. P-1 exchanged between the parties, there was sufficient compliance with the requirement of Section 77 and a further notice in this case was unnecessary and uncalled for.

9. In our opinion, the contention urged for the appellant is well founded and must be accepted as correct for the following reasons :

Ext. D-1 dated Dec. 19, 1960 was the letter written by the Executive (Electrical), Raichur, asking for open delivery of the damaged transformer. That letter was addressed to the Station Master, Raichur, with a copy transmitted to the Chief Commercial Superintendent, Southern Railway at Madras. In that copy of the letter, it was expressly pointed out to the Chief Commercial Superintendent that the actual damages would be estimated after, taking open delivery of the transformer and the plaintiff's claim for damages in the meanwhile may be accepted. Exhibit P4 dated Feb. 7, 1961 is a joint survey made in regard to the external damage to the transformer when it was given open delivery. The Assistant Commercial Superintendent of Southern Railway and the Divisional Electrical Engineer, Southern Railway were also parties to that report. The report gives us the particulars of the actual damage caused to the transformer including the leakage of the oil from it. During the open delivery, 200 gallons of oil was collected and given to the railway authorities for disposal as it was found not suitable for use by the Electrical Department. The said report also states that the actual assessment of the damages could be made only when the transformer was opened at Munirabad. Exhibits D-1 and P-1 are thus a sufficient notice to the railway as to the damage caused to the transformer and the consequent loss occasioned to the plaintiff.

The question is whether in addition to the open delivery of the transformer with all the damage noted in the report Ext. P-1 followed by the disposal of the leaked out oil by the railway authorities, it was necessary for the plaintiff to issue a further

notice under Section 77 calling upon the Railway to pay the compensation.

10. The purpose of issuing a notice under Section 77 was explained by the Supreme Court in *Jetmull Bhojraj v. Darjeeling Himalayan Railway Co. Ltd.* : [1963]2SCR832 . Mudholkar, J., who spoke for the majority view observed at page 1884 :

'The High Courts in India have taken the view that the object of service of notice under this provision is 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 of the railway administration and its servants and further to prevent stale 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 Bearing in mind the object of the section it has also been held by several High Courts that a notice under Section 77 should be 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 transit on the railways.'

In *Bala Prasad v. B. N. W. Railway Company* AIR 1927 Oudh 478 (2), Oudh High Court accepted a letter to the Railway asking for open delivery as a perfectly good business notice as required under S. 77 of the Railways Act.

In *Amarchand Pannalal v. Union of India*, AIR, 1955 Assam 221, the Assam High Court took a similar view and stated that the demand for open delivery was a valid claim under Section 77. It was further observed that Section 77 merely requires that a demand for compensation should be made but it nowhere prescribes that the money value of the claim should be stated or that the claimant should notify that he intends to bring an action. In *Govindlal v. Governor General in Council*, ILR (1947) Nag 369: (AIR 1948 Nag 17), the Nagpur High Court observed that even a mere admission of the loss of the property delivered for carriage may dispense with an enquiry into the validity or invalidity of the notice contemplated under

Section 77.

11. In the light of the principles stated above, it seems to us that it is unnecessary for the plaintiff to issue a formal notice claiming the exact compensation from the railway. In the joint inspection report Exhibit P-1 to which the high railway officials were signatories, the damage to the transformer was noticed; the leakage of the oil was determined; the oil leaked out was collected and delivered to the railway for disposal. The railway authorities were then informed that the internal damage to the trans. former would be determined after it was opened at Munirabad in their presence, but the railway officials did not go to Munirabad despite the intimation by the concerned officers of the plaintiff. In Ext. P-1 an attempt was made to assess the damages, but it could not be estimated for want of facilities at Raichur and it was reserved to be estimated later at Munirabad. The railway authorities were parties to all these proceedings.

12. The claim of the plaintiff for payment of damages in the circumstances must be deemed to be implied, firstly by the demand for open delivery, and secondly in the joint inspection report. Where a person says that his consignment has been damaged and has not been delivered as it should have been according to the contract entered into, or he demands an open delivery and in that open delivery the actual damage caused to the consignment was noticed or an attempt was made to estimate the damages, he must be regarded as making it clear to the railway authorities that he would be holding the railway administration liable for the payment of damages for breach of that engagement. In such a case, as the Supreme Court observed in *Jetmull Bhojraj's* : [1963]2SCR832 case the object underlined under Section 77 is fully satisfied and a claim for compensation is implied and a further claim for compensation was uncalled for.

13. In the result, the appeal is allowed. In reversing the judgment and decree of the Court below, the plaintiffs suit is decreed with costs here and below with 6% current interest from the date of suit till realisation.

14. Appeal allowed.

