

Union of India (Uoi) Vs. Aruna Machine Tools Super B-iii

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Court : Andhra Pradesh

Decided On : Dec-27-2004

Reported in : 2005(2)ALD356; 2005(2)ALT391

Judge : V.V.S. Rao, J.

Acts : [Railways Act, 1989](#) - Sections 2(33), 65, 74, 106, 106(1) and 107; [Railway Claims Tribunal Act, 1987](#) - Sections 3 and 13(1); [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 19 and 20; [Sale of Goods Act, 1930](#)

Appeal No. : CMA No. 1634 of 1998

Appellant : Union of India (Uoi)

Respondent : Aruna Machine Tools Super B-iii

Advocate for Def. : K.S.N. Murthy, Adv.

Advocate for Pet/Ap. : B.H.R. Chowdary, SC for South Central Railway

Disposition : Appeal dismissed

Judgement :

V.V.S. Rao, J.

1. This appeal is filed under Section 23 of the [Railway Claims Tribunal Act, 1987](#) ('the Tribunal Act', for brevity) by Union of India represented by the General

Manager, South Central Railway, Secunderabad.

2. The respondent herein (hereafter called 'consignor') is the manufacturer of shoe brakes. It entrusted 800 pieces of shoe brakes to Indian Railways, Madurai to be carried to Vijayawada in South Central Railway and delivered to the Deputy Controller of Stores, Vijayawada, who is a consignee. The goods did not reach Vijayawada and therefore, on 9.11.1992, the consignor issued a notice of loss of goods followed by a reminder on 1.12.1992. The Chief Claims Officer of South Central Railway, Madras by a communication dated 18.4.1996 (marked as Ex.A.3) informed that the goods were diverted to Bellampalli. By another letter dated 18.9.1996 (marked as Ex.A.4), the Chief Claims Officer informed that the Railways would conduct enquiry and settle the claim within ten days. As the claim was not settled, the consignor moved the Railway claims Tribunal under Section 13 of the Tribunal Act being O.A. No. 17 of 1997 claiming a compensation amount of Rs. 98,176/- with interest at 12% per annum.

3. OA No. 17 of 1997 was opposed by the appellant herein disclaiming any liability and also raising the question of locus standi of the consignor to approach the Tribunal for settlement of the claim. The application was also opposed on the ground that Railways are not responsible to pay the interest as claimed. The learned Tribunal framed four issues and also an additional issue, which read as under:

(i) Whether the application is maintainable?

(ii) Whether the subject consignment was delivered at destination, if not, is not the respondent liable for the nondelivery?

(iii) Whether the Applicant is entitled to interest as claimed?

(iv) To what relief ?

Additional Issue:

(i) Whether the Applicant has no locus standi to maintain the application in view of Section 74 of Railways Act?

4. The learned Tribunal by its order dated 16.4.1998 allowed the original application directing the appellant to pay the amount as claimed with interest at 12% per annum from 7.4.1997. In its order, the learned Tribunal came to the conclusion that the consignor issued a valid notice under Section 106 of the [Railways Act, 1989](#) (the Act, for brevity), that the appellant herein is liable to pay the compensation for nondelivery of the subject consignment and that the consignor, having issued Ex.A. 8 notice on 7.4.1997, is entitled for interest at 12% per annum from that date only.

5. In this appeal, learned Counsel for the appellant, Sri B.H.R. Chowdary, relies on Sections 3, 4 and 106 of the Act to contend that as the respondent failed to issue notice to the General Manager, South Central Railway in whose jurisdiction the consignment originated, the application is not maintainable in view of Section 107 of the Act. Secondly, he would urge that the respondent as consignor entrusted the goods to the consignee at Madurai and therefore, cannot be treated as lawful owner having locus standi to file the application before the learned Tribunal claiming compensation.

6. Learned Counsel for the respondent, Sri K.S.N Murthy, relies on Section 74 of the Act and a decision of the Allahabad High Court in Union of India v. Indian and Overseas Trading Co., Kanpur, 1987 ACJ 1028, in support of the contention that the consignor is entitled to file the claim before the learned Tribunal. He would also submit that when the consignor approached the Deputy Controller's Office for necessary action with regard to the non-delivered consignment of shoe brakes, a letter dated 17.8.1994 was issued advising the consignor to approach the Railway Claims Tribunal and also returned the Railway Receipt (marked as Ex.A.5). Therefore, the consignor has locus standi to claim compensation. Secondly, he would urge that immediately after coming to know about the loss of goods, the consignor approached the Railway Administration at Madras, who advised the consignor by letter dated 17.8.1994, to approach the Railway Claims Tribunal, Secunderabad. Therefore, he would urge that it is not open to the appellant to raise the ground, as is now raised before this Court, which was not urged before learned Tribunal such a ground was not raised.

7. The two points that would arise for consideration, namely:

(i) Whether the notice under Section 106 of the Act issued by the respondent to the South Central Railway is valid notice for the purpose of Section 107 of the Act? and

(ii) Whether the respondent has locus standi as consignor to invoke the jurisdiction of the Tribunal?

Point No. i:

8. Section 2(32) of the Act inter alia defines 'Railway Administration', as to mean the General Manager of a Zonal Railway. Sections 3 and 4, which are included in Chapter II of the Act empower the Central Government to constitute Government Railways, into as many Zonal Railways as it may deem fit and appoint a person to be the General Manager of the Zonal Railway.

9. Section 2(32) and Sections 3 and 4 of the Act are of no assistance to decide the point under consideration. These provisions only relate to the power of the Central Government, to constitute Zonal Railways and appoint a General Manager for each Zonal Railway, these provisions are intended to facilitate administrative convenience and cohesion for the purpose of smooth running of Railways. They do not in any manner deal with the powers, functions and duties of Government Railways as such.

10. Sections 106 and 107 of the Act reads as under:

106. Notice of claim for compensation and refund of overcharge :-(1) A person shall not be entitled to claim compensation against a Railway Administration for the loss, destruction, damage, deterioration or nondelivery of goods carried by Railway, unless a notice thereof is served by him or on his behalf-

(a) to the Railway Administration to which the goods are entrusted for carriage; or

(b) to the Railway Administration on whose railway the destination station lies, or the loss, destruction, damage or deterioration occurs.

Within a period of six months from the date of entrustment of the goods.

(2) Any information demanded or enquiry made in writing from, or any complaint made in writing to, any of the Railway Administrations mentioned in Sub-section (1) by or on behalf of the person within the said period of six months regarding the non-delivery or delayed delivery of the goods with particulars sufficient to identify the goods shall, for the purpose of this section, be deemed to be a notice of claim for compensation.

(3) A person shall not be entitled to a refund of an overcharge in respect of goods carried by railway unless a notice therefor has been served by him or on his behalf to the Railway Administration to which the overcharge has been paid within six months from the date of such payment or the date of delivery of such goods at the destination station, whichever is later.

107. Applications for compensation for loss, etc., of goods :-An application for compensation for loss, destruction, damage, deterioration or non-delivery of goods shall be filed against the Railway Administration on whom a notice under Section 106 has been served.

11. Sub-section (1) of Section 106 of the Act stipulates that a person shall not be entitled for any compensation unless he issues a notice to Railway Administration within a period of six months from the date of entrustment of the goods. To whom such notice has to be issued? This is explained by Clause (a) of Sub-section (1) of Section 106 as well as Clause (b) of Sub-section (1) of Section 106 of the Act. As per Sub-Clause (a) of Sub-section (1) of Section 106 of the Act, a person so as to claim compensation may issue a notice of loss, destruction, damage or non-delivery to the Railway Administration to which the goods are entrusted for carriage. Clause (b) of Sub-section (1) of Section 106 of the Act also enables a person to issue notice to the Railway Administration on whose railway the destination station lies, or the loss, destruction, damage occurs. Clauses (a) and (b) of Sub-section (1) of Section 106 of the Act are separated by disjunctive word 'OR' which makes it abundant clear that the choice is given to the person either to issue notice to the Railway Administration to which goods are entrusted or the Railway Administration on whose railway the destination lies, or the loss occurs.

The submission of the learned Counsel for the Railways, therefore, is wholly misconceived and is liable to be rejected.

12. Yet another reason for rejecting the contention of the learned Counsel is provided by Section 13 of the Tribunal Act itself. Section 13 thereof reads as under:

13. Jurisdiction, powers and authority of claims Tribunal:-(1) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any civil Court or a Claims Commissioner appointed under the provisions of the Railways Act,-

(a) relating to the responsibility of the Railway Administrations as carriers under Chapter VII of the Railways Act in respect of claims for-

(i) Compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a Railway Administration for carriage by railway;

(ii) compensation payable under Section 82-A of the Railways Act or the Rules made thereunder: and

(b) in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a Railway Administration to be carried by Railway.

(1-A) The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of Section 124A of the [Railways Act, 1989](#) (24 of 1989), all such jurisdiction, powers and authority as were exercisable immediately before that date by any civil Court in respect of claims for compensation now payable by the Railway Administration under Section 124A of the said Act or the rules made thereunder).

(2) The provisions of the ([Railways Act, 1989](#) (24 of 1989) (Ins. by Act 28 of 1994, Section 9 with effect from 1.8.1994) and the rules made thereunder shall, so far as may be, be applicable to the inquiring into or determining, any claims by the Claims Tribunal under this Act.

13. As per Sub-section (1) of Section 13 of the Tribunal Act, the Railway Tribunal established under Section 3 of the said Act is conferred with the jurisdictional power and authority, which was exercisable immediately before that day by the Civil Court or a Claims Commissioner appointed under the said Act. When the goods are entrusted by a seller to a carrier to be delivered at a different destination of the buyer, the Civil Court, in whose jurisdiction destination lies, has jurisdiction.

14. Sections 19 and 20 of the Code of Civil Procedure 1908 (CPC), deal with this aspect. They need to be noticed.

19. Suits for compensation for wrongs to person or movables :-Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

20. Other suits to be instituted where defendants reside or cause of action arises :- Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation:-A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

15. A plain reading of the above two provisions would show that a suit can be filed within the jurisdiction of one Court where legal wrong was done resulting loss of property. Similarly, a suit for compensation for loss of goods would also be maintainable within the jurisdiction of the Court where the goods were lost or loss occurred. In the case where the consignor wants to issue notice to the consignee, the jurisdiction of the Court within which the defendant or defendant resides or carries on business can be availed. Therefore, in either view of the matter, non-issue of notice to the General Manager, Southern Railway, Madras would not bar a claim petition by the respondent before the Railway Claims Tribunal, Secunderabad Bench. The finding recorded by the learned Tribunal that there was a valid notice under Section 106 of the Act remains unchallenged. No such ground is even urged in memorandum of grounds nor argued across the bar.

16. In any view of the matter, as held by the Supreme Court in *Jetmull Bhojraj v. Darjeeling Himalayan Railway Co. Ltd.*, : [1963]2SCR832 , Section 78-B of the Railways Act, 1890 (which has been reenacted, as Section 106 of the Act) is not intended to deprive the legitimate claim for compensation and that it was intended to shield the Railway Administration against fraud. It is apt to extract the following passage in the judgment of the Supreme Court.

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. In this connection we may refer to a few of the decisions. They are: *Shamsul Huq v. Secretary of State*, ILR 57 Cal. 1286 = AIR 1930 Cal. 332; *Mahadeva Ayyar v. S.I. Rly. Co.*, ILR 45 Mad 135 = AIR 1922 Mad. 362 (FB); *Governor-General in Council v. Gouri Shankar Mills Ltd.*, ILR 28 Pat 178 = AIR 1949 Pat. 347) (FB); *Meghraj Hirjee and Co. v. B.N. Rly Ltd.*, AIR 1939 Nag 141. 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.

17. Therefore, the point is decided in favour of the respondent and against the appellant.

Point No. ii:

18. In the law governing sale of goods the right to goods is determined by the terms of the contract. Ordinarily, the title and right in the goods passes to the buyer immediately on the delivery of the goods. However, it is not a universal principle. More often than not the goods are delivered to the buyer either at the place of manufacturing or at the place where the buyer desires to be delivered. The delivery point may not sometimes be crucial in deciding as to when the title in the goods passes to the seller. These are subject-matter of the agreement between the seller and the buyer and also subject to the provisions of [Sale of Goods Act, 1930](#). The Railways Act being a special enactment, however, prevails over the general law of sale of goods as well as law of contract. Therefore, one has to look to the provisions of the Act itself in deciding the question whether consignor is entitled to lay a claim for compensation for loss, destruction or non-delivery of the goods. Section 74 of the Railways Act as relevant in this context and reads as under:

74. Passing of property in the goods covered by Railway receipt:-The property in the consignment covered by a Railway receipt shall pass to the consignee or the endorsee, as the case may be, on the delivery of such Railway receipt to him and he shall have all the rights and liabilities of the consignor.

19. As per the above provision the title in the goods vest in the consignor would not pass to the consignee immediately on entrustment of the goods to Railways. The title therein shall pass to the consignee or the endorsee, on the delivery of Railway Receipt. The word 'railway receipt' is defined in Section 2(33) as to mean

the receipt issued under Section 65 of the Railways Act and it shall be prima facie evidence of the weight and number of the packages stated therein. It is the case of the consignor that when he approached the Chief Claims Officer, Madras by letter dated 17.8.1994 the consignor was informed that the Chief Claims Officer, South Central Railway, is proper authority and returned the Railway Receipt. Therefore, the Railway Receipt cannot be said to have delivered to the consignee, in which event, consignor can maintain the claim. I see force in the submission having regard to factual background as well as legal position. This view is also supported by the decision of the Allahabad High Court in Union of India v. Indian and Overseas Trading Co., Kanpur (supra).

20. In the above cited case, the Allahabad High Court considered the question as to whether the consignor can file a suit against Railways claiming compensation for short delivery by the railways. After referring to the provisions of Railways Act, 1890 as well as [Sale of Goods Act, 1930](#) and various precedents on the point, the Allahabad High Court laid down as under:

'As discussed hereinabove by me the law is settled that the consignor has got a right to institute a suit against the Railways for loss, damage or non-delivery of goods in transit entrusted to it for delivery to the consignee unless the consignee actually takes the delivery at the destination. This rule, however, is subject to the well established exception contained in Sections 23 and 39 of the Sale of Goods Act. To put in a different way the terms of the contract of sale have to be considered and whether they indicate that the moment the seller entrusts the goods to the carrier the ownership in the goods vests in the buyer and the carrier is presumed not only to be the buyer's agent but to have assented to the appropriation to the contract of goods so delivered.'

21. In this case, as held above, the Railway Receipt which is marked as Ex.A.5 was not delivered to the consignee, namely, Deputy Controller of Stores, Vijayawada and therefore, on additional Issue No. (i) the learned Railway Tribunal has come to the correct conclusion.

22. In the result, the appeal, for the above reasons, fails and is accordingly dismissed with costs.

