

interest *pendente lite* until realisation, the appeals shall stand dismissed. In view of the substantial failure of the appeals, the appellant shall pay the costs in this Court. One hearing fee.

1961

Mahabir Prasad
Rungta

v.

Durga Datta

Hidayatullah J.

GOVERNOR GENERAL IN COUNCIL

v.

MUSADDI LAL.

(J. L. KAPUR and J. C. SHAH, JJ.)

1961

January 31.

Railway—Non-delivery of goods—Suit for compensation for non-delivery, if distinct from compensation for loss, destruction or deterioration—Notice of claim for compensation, if condition precedent—Limitation from when to run—Indian Railways Act, 1890 (IX of 1890), ss. 72 and 77—Indian Limitation Act, 1908, Arts. 30, 31.

The respondent served on the Railway Administration a composite notice under s. 77 of the Indian Railways Act and under s. 80 of the Code of Civil Procedure and sued for price of goods and for loss on account of non-delivery. The claim was resisted by the Railway Administration on pleas amongst others that the suit was not maintainable without an effective notice under s. 77 of the Railway Act and that the suit was barred because at the date of the suit the period of limitation prescribed by Art. 31 of the Indian Limitation Act had expired.

A full bench of the Allahabad High Court upheld the decree of the trial court in favour of the respondent holding that a claim for compensation for non-delivery of goods was a claim distinct from the claim for compensation for loss, destruction or deterioration of the goods, and to the enforcement of a claim of the former variety by action in a court of law under s. 77 was not a condition precedent.

Held, that s. 77 of the Indian Railways Act imposes a restriction on the enforcement of liability declared by s. 72 of the Act and prescribes a condition precedent to the maintainability of a claim for compensation for goods lost, destroyed or deteriorated while in the custody of the railway Administration who are bailees and not insurer of goods. The section is enacted with a view to enable the railway administration to make enquiries and if possible to recover the goods and deliver them to the consignee and to prevent stale claims. Failure to deliver goods is the consequence of loss or destruction and the cause of action for it is not distinct from the cause of action for loss or destruction.

1961

—
 Governor-General
 in Council
 v.
 Musaddi Lal

Held, further, that merely because Arts. 30 and 31 of the Indian Limitation Act prescribe different points of time from which the limitation is to run for suits against carriers it cannot be inferred that the claim covered by either article is not for compensation for loss, destruction or deterioration of the goods; and the said Arts. 30 and 31 cannot be projected upon ss. 72 and 77 of the Indian Railways Act for holding that suit for compensation for non-delivery of goods does not fall within s. 77.

The Madras and Southern Mahratta Railway Co. Ltd. v. Haridoss Banmalidoss, (1918) I.L.R. 41 Mad. 871, *Hill Sawyers and Co. v. Secretary of State*, (1921) I.L.R. 2 Lah. 133, *Martab Ali v. Union of India*, [1954] 56 Bom. L.R. 150, *Union of India v. Mitayagiri Pullappa*, I.L.R. [1958] A.P. 323, *Assam Bengal Railway Co. Ltd. v. Radhika Mohan Nath and Others*, A.I.R. (1923) Cal. 397 and *Bengal Nagpur Railway Co. Ltd. v. Hamir Mull Chhagan Mull and Another* (1926) I.L.R. 5 Pat. 106, approved.

Governor-General in Council and Others v. Mahabir Ram and Another, (1953) I.L.R. 1 All. 64 and *Jais Ram Ramrekha Das v. G.I.P. Railway and Another* (1929) I.L.R. 8 Pat. 545, overruled.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 313/1956.

Appeal from the judgment and decree dated July 25, 1952, of the Allahabad High Court in Second Appeal No. 2547 of 1946.

R. Ganapathy Iyer and *T. M. Sen* for the appellant
K. P. Gupta, for the respondent.

1961. January 31. The Judgment of the Court was delivered by

Shah J.

SHAH, J.—On January 30, 1943, Bhola Nath Sambhu Ram as agent of the respondent L. Musaddilal delivered a bale of cloth to the railway administration E. I. Rly. at Agra railway station for carriage by railway to the Chola Station in the E. I. Rly. The consignment was accepted by the railway administration and a railway receipt was issued in the name of the consignor Bhola Nath Sambhu Ram. Bhola Nath Sambhu Ram endorsed the railway receipt in favour of the respondent and sent it by post to the respondent. The bale of cloth did not reach Chola, and the railway administration was unable despite efforts to trace it. There was correspondence between the railway administration and the respondent about the consignment. Failing to obtain satisfaction

for the loss suffered by him, the respondent served a composite notice under s. 77 of the Indian Railways Act and s. 80 of the Civil Procedure Code on December 7, 1943, and thereafter on May 18, 1944, filed suit No. 283 of 1944 in the court of the II Munsif, Bulandshahr, for a decree for Rs. 782-3-6 being the "price of the bale" and Rs. 200 "for loss on account of non-delivery." The railway administration resisted the claim on the pleas among others that the suit was not maintainable without an effective notice under s. 77 of the Railways Act and that the suit was barred because at the date of the institution of the suit, the period of limitation prescribed by Art. 31 of the Limitation Act had expired. The trial court decreed the suit. In appeal, the Additional Civil Judge, Bulandshahr, reversed the decree passed by the trial court and dismissed the suit. A Full Bench of the High Court of Allahabad reversed the decree passed by the first appellate court and restored the decree of the trial court. With certificate of fitness under Art. 133(1)(c) of the Constitution, this appeal has been preferred by the Union of India.

Section 77 of the Railways Act in so far as it is material provides :

"A person shall not be entitled to.....compensation for the loss, destruction or deterioration of... goods delivered to be.....carried, unless his claim to.....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.....goods for carriage by railway."

Section 77 manifestly prescribes a condition precedent to the maintainability of a claim for compensation for goods lost, destroyed or deteriorated while in the custody of the railway administration. The notice prescribed was not served by the respondent upon the railway administration within six months from the date on which the goods were delivered for carriage, and prima facie the suit would be barred for non-compliance of a statutory condition precedent. But the respondent pleaded and the plea has found favour with the High Court that the suit filed by him

1961

—
*Governor-General
in Council
v.
Musaddi Lal*
—
Shah J.

1961

Governor-General
in Council

v.

Musaddi Lal

Shah J.

was for compensation not for loss, destruction or deterioration of the goods, but "for non-delivery of the goods." In the view of the High Court, a claim for compensation for non-delivery of goods is a claim distinct from a claim for compensation for loss, destruction or deterioration of goods and to the enforcement of a claim of the former variety by action in a court of law s. 77 is not a condition precedent.

The railway administration in India is not an insurer of goods: it is merely a bailee of goods entrusted to it for carriage. Section 72 of the Railways Act prescribes the measure of the general responsibility of a railway administration as a carrier of goods. By that section, the responsibility of a railway administration for loss, destruction or deterioration of goods delivered to be carried by railway is subject to other provisions of the Act to be that of a bailee under s. 152 and s. 161 of the Indian Contract Act, 1872. Sections 151 and 152 of the Indian Contract Act deal with the duties of a bailee. If a bailee takes as much care of the goods bailed to him as a person of ordinary prudence would under similar circumstances of his own goods of the same bulk, quality and value as the goods bailed to him, in the absence of a special contract, he is not responsible for loss, destruction or deterioration of the goods bailed. By ss. 160 and 161 of the Indian Contract Act, the bailee is under an obligation to return or deliver according to the bailor's direction the goods bailed as soon as the time for which the goods were bailed has expired or the purpose for which the goods were bailed has been accomplished and if on account of default of the bailee the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods. The railway administration being a bailee of the goods delivered for carriage to it is therefore a bailee during the period when the goods remain in its custody for the purpose and in the course of carriage and for the purpose of delivery after the goods are carried to the destination.

But the quantum of care which the railway administration is required to take is that care which it would take having regard to the bulk, quality and value of its own similar goods.

Section 77 of the Railways Act is enacted with a view to enable the railway administration to make enquiries and if possible to recover the goods and to deliver them to the consignee and to prevent stale claims. It imposes a restriction on the enforcement of liability declared by s. 72. The liability declared by s. 72 is for loss, destruction or deterioration. Failure to deliver is the consequence of loss or destruction of goods; it does not furnish a cause of action on which a suit may lie against the railway administration, distinct from a cause of action for loss or destruction. By the use of the expression, "loss, destruction or deterioration," what is contemplated is loss or destruction or deterioration of the goods and the consequent loss to the owner thereof. If because of negligence or inadvertence or even wrongful act on the part of the employees of the railway administration, goods entrusted for carriage are lost, destroyed or deteriorated, the railway administration is guilty of failing to take the degree of care which is prescribed by s. 72 of the Railways Act.

There are undoubtedly two distinct articles, Arts. 30 and 31 in the first schedule of the Indian Limitation Act dealing with limitation for suits for compensation against carriers. Article 30 prescribes the period of limitation for suits against a carrier for compensation against loss or injury to goods and Art. 31 prescribes the period of limitation for suits for compensation against a carrier for non-delivery or delay in delivering the goods. The period of limitation under each of these articles is one year but the points of time from which that period is to be reckoned are different. But because the Indian Limitation Act provides different points of time from which the period of limitation is to run, it is not possible to infer that the claim covered by either article is not for compensation for loss, destruction or deterioration of the goods. We are unable to project the provisions of Arts. 30 and 31

1961

*Governor-General
in Council*

v.

Musaddi Lal

Shah J.

1961
 ———
 Governor-General
 in Council
 v.
 Musaddi Lal
 ———
 Shah J.

of the Limitation Act upon ss. 72 and 77 of the Railways Act and to hold that a suit for compensation for loss because of non-delivery of goods does not fall within s. 77. The view we have expressed is supported by a large volume of authority in the courts in India—for instance *The Madras and Southern Mahratta Railway Co., Ltd. v. Haridoss Banmalidoss* (1), *Hill Sawyers and Co. v. Secretary of State* (2), *Martab Ali v. Union of India* (3), *Union of India v. Mitayagiri Pullappa* (4), *Assam Bengal Railway Co., Ltd. v. Radhika Mohan Nath* (5) and *Bengal Nagpur Railway Co. Ltd. v. Hamir Mull Chhagan Mull* (6).

The view expressed to the contrary in the Allahabad High Court in *Governor-General in Council v. Mahabir Ram* (7) and by the Patna High Court in *Jais Ram Ramrekha Das v. G. I. P. Railway* (8), is in our judgment erroneous.

This appeal will therefore be allowed and the respondent's suit will stand dismissed. As the Union of India was permitted to appeal for obtaining the decision of this Court which may settle the conflict of views even though the amount involved is small, we think that it is just and proper that there should be no order as to costs throughout.

Appeal allowed.

1961
 ———
 January 31.

THE ORIOL INDUSTRIES LTD.

v.

THE BOMBAY MERCANTILE BANK LTD.

(P. B. GAJENDRAGADKAR, K. N. WANCHOO and
 K. C. DAS GUPTA, JJ.)

Bank—Payment in company's account—Cheques drawn by authorised agents without so describing themselves or stating as on behalf of the company—Payment if wrongfully made—Indian Companies Act, 1913 (VII of 1913), s. 89.

The Managing Agents of the appellant company withdrew certain sums of money from its account with the respondent

(1) (1918) I.L.R. 41 Mad. 871.

(2) (1921) I.L.R. 2 Lah. 133.

(3) [1954] 56 Bom. L.R. 150.

(4) I.L.R. [1958] A.P. 323.

(5) A.I.R. 1923 Cal. 397.

(6) (1926) I.L.R. 5 Pat. 106.

(7) (1953) I.L.R. 1 All. 64.

(8) (1929) I.L.R. 8 Pat. 545.