Panna Lal vs East Indian Railway Administration And ... on 4 March, 1952

Equivalent citations: AIR1952ALL880, AIR 1952 ALLAHABAD 880

ORDER

Desai, J.

1. This is an application by a plaintiff whose suit for damages against a railway has been dismissed with costs. The applicant is the consignee. The consignment was received at the destination and goods are still in possession of the railway. The case of the applicant is that he went to take delivery of the goods at the destination but the goods were not delivered to him. The case of the railway is that the applicant never went to take possession of the goods. It is admitted that the railway did not give the notice contemplated by Section 56 to the applicant. The trial Court held that the applicant never went to take possession of the goods, that the goods are still in possession of the railway and that consequently the applicant was not entitled to sue for damages. It observed that the applicant was at liberty to take possession of the goods from the railway after paying the necessary charges.

2. There is nothing illegal in the judgment of the lower Court. A notice under Section 56 ought to have been issued by the railway to the owner of the goods, provided he was known. It does not appear that the owner of the goods was known to the railway. In the circumstances it cannot be said that the railway contravened the provision of Section 56 by not giving a notice. Further even if the railway had contravened the provisions by not giving the notice, the question still arises whether the applicant is entitled to sue for damages even though the goods are still there in possession of the railway and can be demanded by the applicant. The applicant has failed to show reason or authority for the view that an owner of goods is entitled to sue for damages on the bare ground that the railway failed to give the notice contemplated by Section 56. If the railway sells the goods without giving the notice even though the owner is known, there would arise no question of the owner's taking delivery of the goods and the owner would certainly be entitled to sue for damages. When the goods do not exist, he cannot demand them from the railway and all that he can demand is damages. But when the goods still exist there is no reason to think that he can demand damages in lieu of the goods. I consider that a railway incurs no liability by its failure to give the notice when it does not sell the goods but keeps them in its possession to be delivered to the owner on his demand. The railway is not bound to give notice of the arrival to the owner if it does not want to sell the goods. This is clear from the language of Section 56, which imposes no duty to give notice unless the goods are not claimed by the owner. The owner would generally be not present at the destination when the goods reach there. Some time must necessarily elapse between their arrival and the owner's going to the railway to claim them. What time should elapse is not laid down, but if he does not go within what the railway thinks reasonable time and it proposes to sell them as unclaimed then only will the question of giving the notice arise. It is for the railway to decide what time is reasonable, and so long

as it does not want to sell the goods it is at liberty to wait for the owner to come. The owner is not given the right to say that after a certain time the railway must give the notice to him and sell the goods. The provision about notice is enacted for the benefit of the railway; the object is to safeguard its position when it sells the goods. The principle of reasonable time is also to be invoked by it in justification of its act of selling; it cannot be invoked against it by the owner. Therefore the view taken by the appellate Court was correct. As the suit was dismissed, the applicant was not entitled to costs. The application is dismissed.