Governor General In Council And Ors. vs Mahabir Ram And Anr. on 14 May, 1952

Equivalent citations: AIR1952ALL891, AIR 1952 ALLAHABAD 891

ORDER

Bind Basni Prasad, J.

1. Having regard to the conflict of authorities on the interpretation of Section 77, Railways Act we have arrived at the conclusion that this case should be referred to a Full Bench.

2. Briefly the facts are that two consignments, one of 246 bags and the second of 316 bags--total 562 bags of rice were made from the railway station Canning on the Bengal and Assam Railway to Dohrighat on the O. T. Railway on the 30th and 31-7-1942. These consignments never reached the hands of the plaintiffs and then they instituted a suit for the recovery of Rs. 9,500 as compensation. Learned Civil Judge had decreed the claim for Rs. 8,072-10-3 only.

3. One of the points raised in defence was that notice under Section 77, Railways Act had, not been given in the manner provided in Section 140 of the said Act to the three railways administrations namely: The Bengal and Assam Railway, the Best Indian Railway and the O.T. Railway. The contention on behalf of the plaintiffs-respondents was that according to Section 77 notice is required only when there has been "loss, destruction or deterioration of animals or goods delivered to be carried." It was argued that non-delivery or misdelivery of goods did not fall within the words "loss, destruction or deterioration." On this point there is a conflict of authorities not only between the decided cases of this Court but also between the late Chief Court of Avadh and this Court. In Sheo Dayal Niranjan Lal v. G. I. P. Rly. Co., 1927 ALL. L. J. 89, a Division Bench of this Court held that :

> "The word 'loss' in Section 77, Railways Act includes non-delivery or loss to the plaintiff."

In Secy. of State v. Firm Daulat Ram Makhan Lal, 1937 ALL. L. J. 794, it was held by a Division Bench of this Court that where the claim is for non-delivery or misdelivery it is not one for loss and so no notice is necessary under Section 77. In B. & N. W. Rly. Co., Ltd. v. Special Manager, Court of Wards, Balrampur, (A. I. R. 1925 Oudh 419), a learned single Judge of the late Chief Court held that a claim simply for compensation for non-delivery must be understood as including or involving a claim for the loss of goods within the meaning of Section 77 and notice was necessary. In E. I. Rly. Co. v. Kali Charan Ram Prasad, A. I. R. 1922 pat. 106, it was held that in a suit for compensation on account of non-delivery of the goods consigned, Section 77 has no application and the Railway Company is not entitled to any notice in case of non-delivery. Further conflict of authorities on this point is discussed at pp. 582 to 886 of Hari Rao's commentary on the Indian Railways Act, 1949

Edition. It is desirable that the conflict of authorities so far as this Court is concerned should be set at rest.

4. Let this case be placed before Hon'ble the Chief Justice for Constitution of a Full Bench to decide it.

JUDGMENT OP THE FULL BENCH,.

Bind Basni Prasad, J.

5. This appeal first came up before a Division Bench which in view of the conflict of authorities on the interpretation of Section 77, Indian Railways Act referred the case to a Full Bench. The relevant facts are as follows:

> On 31-7-1942 two consignments, one of 246 bags and the other of 316 bags--total 562 bags of rice--were made from the railway station Canning on the B. and A. Railway to Dohrighat on the O. and T. Railway. The consignments had to pass through the E. I. Railway also to reach their destination. These consignments never reached the hands of the plaintiffs and then they instituted a suit for the recovery of Rs. 9,500 as compensation. The plaintiffs' case in regard to their claim for compensation is set out in paras 8, 10 and 12 of the plaint which are as follows:
>
> "8. That the plaintiffs are the party who suffered loss on account of non-delivery of 562 bags of rice consigned to the defendants railways and as such are entitled to sue.
>
> "10. That due to the gross negligence and misconduct of the employees of the defendants railways 562 bags of rice have been wrongfully diverted and converted to the tangible loss of the plaintiffs.
>
> "12. That the plaintiffs' effort in the direction of recovering the whole of the goods not delivered hopelessly failed and they think they are not wrong in presuming that the goods have been wrongfully converted and the only alternative now left to them is to sue for their price etc. as damages. Hence the suit".

6. The railway administration of the B. and A. Railway, the O. and T. Railway and the E. I. Railway besides the Governor-General-in-Council were impleaded as defendants. The suit was instituted on 3-7-1948.

7. The defendants contended that the consignments were correctly delivered by the B. and A. Railway to the E. I. Railway and by the latter to the then B. and N. W. Railway at Mokamaghat and during the transit from Mokamaghat to Dohrighat these wagons were looted at Teghra and Barauni junctions during the 1942 disturbances by a riotous mob beyond the control of the railway employees. The railway administration, therefore, pleaded that they were not liable for compensation. It was also pleaded that no notice under Section 77, Railways Act was given and on

this ground also the suit was liable to be dismissed. The O. and T. Railway asserted in addition that it was not liable for any liabilities incurred by the B. and N. W. Railway. It was also pleaded; that the B. and A. Railway and the E. I. Railway had been wrongly impleaded.

8. Learned Civil Judge held that the B. and A. Railway and the E. I. Railway had been correctly impleaded and they were also liable for the plaintiffs' claim, that a notice under Section 77, Indian. Railways Act had in fact been given and even if it be held that no such notice was given, it was not necessary, having regard to the particular facts of this case, for the plaintiffs to send a notice under that section, that the consignments were not looted at Teghra and Barauni, that the loss to the plaintiffs was due to the misconduct, of the defendants' employees. and the defendants were liable for the plaintiffs' loss, and that the O. and T. Railway administration is liable for the liabilities of the defunct B. and N. W. Railway. In the result he decreed the plaintiffs' claim for a sum of Rs. 8,072-10-3 being the cost price of the 562 bags of rice. The railway administrations therefore prefer this appeal.

9. Before discussing the point of law involved in the appeal the questions of fact may first be dealt with. The first question argued before us was whether the consignments were looted by the riotous mob in the 1942 disturbances. It is undisputed that the consignments were not delivered to the plaintiffs. According to the leading case of Dwarka Nath v. River Steam & Navigation Co., Ltd., A. I. R. 1917 P. C. 173 it was for the Railway Administration to lay all the necessary material before the Court so that it may draw an inference whether or not the Railway administration took care of the goods as a man of ordinary prudence would take of his own goods. The Railway Administration placed some material before the trial Court and the conclusion at which it reached was that the theory of the goods having been looted by the rioters was not correct. In the present case the goods were sent under Risk Note Forms "A" and "Z". The Risk Note Form "A" provides:

> "We the undersigned do hereby agree and undertake" to hold the said Railway Administration over whose railway the said goods may be carried in transit from Canning-25 Station to Dohrighat Station harmless and free from all responsibility for the condition in which the aforesaid goods may be delivered to the consignee at destination and for any loss arising from the same except upon proof that such loss arose from misconduct on the part of the Railway Administration's servants."

10. The Risk Note Form "A" is applicable only when the goods reach the destination and the question is only about their condition at the time of their delivery, e.g., if the consignee claims compensation on the ground that the goods were delivered to him in a bad condition then the conditions contained in the Risk Note Form "A" would apply. The Risk Note Form "z" provides :

> "Non-delivery of the whole of a consignment or of the whole of one or more packages forming part of a consignment (packed in one or more packages forming part of a consignment) packed in accordance with the instructions laid down in the tariff or, where there are no such instructions; protected otherwise than by paper or other packing readily removable by hand and fully addressed, where such non-delivery is not due to accidents to trains or to fire, the railway administration shall be bound to

> disclose to the consignor how the consignment was dealt with throughout the time it was in its possession or control, and, if necessary, to give evidence thereof before the consignor is called upon to prove misconduct, but, if misconduct on the part of the Railway Administration or its servants cannot be fairly inferred from such evidence, the burden of proving such misconduct shall lie upon the consignor."

11. In view of the aforesaid terms in this Risk Note Form Z it was for the railway administration to show how the consignments in dispute were dealt with during the time they were in their possession. Learned Civil Judge after a detailed examination of the oral and documentary evidence produced by the defendants came to the following conclusion :

> "The defendants in this case have failed to prove as to how the consignment was dealt with throughout the time it was in their possession. This being so it was not necessary for the plaintiffs to prove that the non-delivery was due to misconduct on the part of the employees of the railway administration. If the goods had not been looted by a riotous mob as has been found to be the case, the non-delivery thereof could not be due to any thing except misconduct on the part of the railway employees. Even Babu Madan Mohan Prasad (D.W. 2) Sub-Inspector, Government Railway Police, admitted that he had a suspicion that the looting was done by some of the members of the railway staff itself and that in that connection some searches were also made. If the goods were looted by the railway staff, it could not be anything other than misconduct on the part of such staff."

[His Lordship then discussed the evidence and concluded as follows :--] There is no good reason to disagree from the finding of the learned Civil Judge that the looting of the disputed goods at Teghra and Barauni is not established. The plaintiffs suffered the loss on account of the misconduct and negligence of the railway employees, When the consignments were not delivered to the plaintiffs and no good reason for non-delivery is shown the inference is irresistible that the nondelivery was due to the misconduct and negligence of the employees of the defendants.

12. The second question of fact is whether or not a notice under Section 77, Railways Act was sent by the plaintiffs. Such a notice must be sent within six months from the date of the delivery of the goods for carriage by the railway, The consignments were made on 31-7-1942. On 28-1-1943, that is to say, within six months of the delivery of goods to the railway for carriage the plaintiffs sent a letter to the railway administration claiming the compensation. This is evident by the defendants' letters Exs. 17 and 18. If the letter dated 28-1-1943 did not conform to the requirements of Section 77, Railways Act the defendants could have produced it. The defendants, however, did not file it. In para 15 of the plaint the plaintiffs specifically alleged that they had sent a notice under Section 77, Railways Act. Nevertheless, this letter of 28-1-1943 which was relied upon by the plaintiffs as a notice was not produced by the defendants. There is no good reason to differ from the finding of the learned Civil Judge that a notice under Section 77, Railways Act was in fact sent by the plaintiffs to the railway administration.

13. The third point argued was that the O. and T. Railway is not responsible for the liabilities of the defunct B. & N. W. Railway. (After discussing the evidence on the point, the judgment proceeds as follows:) There is no good reason to differ from the finding reached by the learned Civil Judge that the O. & T. Railway is responsible for the liabilities of the defunct B. & N. W. Railway.

14. It has been held above that the plaintiffs' letter, dated 28th January 1943, was a notice under Section 77, Railways Act. That letter, however, was not produced by the defendants. It is, therefore, arguable whether that letter complied with the requirements of Section 77. If it is held that the said letter did not comply with the requirements of Section 77 it becomes necessary to consider whether or not a notice under Section 77 was required in the present case. It has been already shown above that the plaintiffs' claim is based on non-delivery of the 562 bags of rice and on the allegation of their wrongful conversion by the defendants. Section 77, Railways Act provides:

> "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 or deterioration 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 to the railway administration within six months from the date of the delivery of the animals or goods for carriage by railway."

15. The word "loss" occurring in this section has not been defined and the question for consideration is whether non-delivery of goods is covered by the word "loss." On this question there is a divergence of judicial opinion. According to one school of thought it means loss by the carrier of the articles committed to him or injury to them whilst in his care. It has been held that the word "loss" has been used in the sense of something that happens to the goods as distinct from any loss or injury sustained by the owner. A thing can be said to be lost to the railway administration, when it loses possession of the goods involuntarily or through inadvertence and for the time being is unable to trace them. According to the other school of thought it means loss suffered by the consignor or the true owner, whether such loss occurred by reason of misdelivery or non-delivery, i.e. it includes cases where the goods are not forthcoming.

16. I take up first the cases decided by our own High Court.

17. In G.I.P. Rly. Co. v. Ganpat Rai, 33 ALL. 544 there was a claim for the recovery of compensation on account of non-delivery of goods. The goods were lost on the G. I. P. Railway and it was stated that they were stolen in transit and that the thief was tried and convicted. In these circumstances it was held that a notice under Section 77 was necessary. That was a clear case of loss on account of theft and is thus distinguishable from the present case where the loss is not proved to be due to any such cause.

18. In Secy. of State v. Firm Jiwan, 45 ALL. 380 it was held :

> "On a construction of risk note form B, the word 'loss' as therein used does not mean loss to the owner of goods despatched, but loss of the goods by the railway company

> to whom they are delivered for carriage. Hence where goods of a perishable nature were delivered to a railway company for carriage under risk note form B, and by the negligence of the company's servant, were so delayed in transit that they became worthless and had to be destroyed, it was held that the owner could not recover damages against the company."

The same view was taken in E. I. Rly. Co. v. Firm Kishin Lal Tirkha Mal, 45 ALL. 530.

19. In Jugal Kishore v. G. I. P. Rly. Co., A. I. R. 1923 ALL. 22 (2) the words "against a carrier for losing or injuring goods" occurring in Article 30, Limitation Act came in for interpretation and it was held that these words suggested not a mere loss of the goods to the owner, which might be caused by misdelivery, but an actual losing of goods by the carrier himself.

20. In E. I. Rly. Go. v. Fazal Ilahi, 47 ALL. 136 it was held that there was no distinction between a suit for damages on account of the "loss" of goods by a railway company and a suit for damages on account of "non-delivery."

21. In Sheo Dayal Niranjan Lal v. G. I. P. Rly. Co., 49 ALL. 236 the claim for compensation was based on loss of goods and in that connection their Lordships observed:

> "Apart from this pleading of the plaintiffs we are of opinion that the word 'loss' in Section 77, Railways Act does include a case of non-delivery. We are aware that there is a case in this Court in which a contrary view was taken. But the facts of that case were entirely different. We need not say whether that case was rightly decided or not, but the case before us is clearly different. We refer to the ease of Badri Prasad v. G. I. P. Rly., 22 All. L. J. 897. That was a case decided by a single Judge of this Court. On the other hand, there is another case still more recently decided by another single Judge of this Court, in which it was held that the word, 'loss' did include non-delivery; see E. I. Rly. Co. v. Fazal Ilahi, 47 All. 136. There are several oases in the books in which different views have been taken of the meaning of the word 'less' but the majority of the cases do establish that the word loss in Section 77 includes 'nondelivery' or loss to the plaintiff."

22. A contrary view was, however, taken by another Division Bench in Secy. of State v. Firm. Daulat Ram Makhan Lal, 1937 ALL. L. J. 794. That was a case for compensation for misdelivery of certain goods. Their Lordships observed :

> "Under 8. 77, Railways Act, IX [9] of 1890, notice is required in the case of a claim for compensation for loss, destruction or deterioration of goods. The present claim however is one for non delivery or misdelivery and is not one for loss, and we are satisfied that no notice was necessary in the present case, although the rulings are somewhat conflicting on the point."

23. In Dominion of India v. Modi Sugar Mills Ltd., 1950 ALL. L. J. 41 a learned single Judge of this Court held :

> "The word 'loss' in Section 77, Railways Act covers both loss by Railway and loss to the owner and notice under Section 77 of the Act is essential in all cases of claims against a Railway Company for compensation except where the suit is for recovery of specific goods or for recovery of money in consequence of the sale of the goods under Section 55 or 56 of the Act." '

24. Coming to the cases decided by the late Chief Court of Oudh, in the B. & N. W. Rly. Co., Ltd. v. Special Manager, Court of Wards, Balrampur, A. I. R. 1925 Oudh 419 a learned single Judge observed :

> "To my mind the mere fact that the plaintiff put forward a case of non-delivery only does not necessarily lead to the conclusion that it is not a case of the loss of the goods. The fact of non-delivery is the effect which may ensue from several causes. Such a cause may be wrongful detention or loss. In the present case the plaint does not state that the non-delivery was due to the loss of the goods, but there is no allegation either that it was due to wrongful detention. On the other hand there is evidence on the record to show that the claim which the plaintiff-respondent originally put forward was a claim for compensation for the loss ..... I agree with the view taken in the Calcutta case that the distinction between loss and non-delivery in Articles 30 and 31, Limitation Act does not justify a conclusion that the word 'loss' in Section 77, Railways Act excludes non-delivery of the goods."

25. In E. I. Rly. Co. v. Firm Moca Ram Gaja Nand, A. I. R. 1925 Oudh 615 a learned single Judge observed :

> "Notice under Section 77 is required in all cases where the loss of goods is alleged. If the plaintiff alleges nondelivery, without stating what the cause of non-delivery is, and it appears upon trial that in fact non-delivery was due to loss, then the plaintiff falls if he has not give a notice under Section 77. A case of non-delivery may or may not be a case of loss. If it is a case of loss, then notice is required."

26. In Bala Prasad v. B.N.W. Rly. Co., A. I. R. 1927 Oudh 478 (2) it was held that no notice was necessary under the provisions of Section 77, Railways Act in a suit for compensation for nondelivery of goods where it was not certain that there was any loss, destruction or deterioration and the goods might still be in possession of the railway company.

27. Coming to the Patna cases, the first case laid before us is Agent of B. N. Rly. Co., Ltd. v. Hamir Mull Chagan Mull, A. I. R. 1925 pat. Y27. It was held 'in that case that non-delivery constitutes 'loss' within the meaning of Section 77 and therefore the service of notice under that section is essential even in cases of non-delivery.

28. The second case is that of Jaisram Ramrekha Das v. G. I. P. Rly., A. I. R. 1929 Pat. 109. An opposite view was taken in this case and it was held that in the case of damage claimed for non-delivery of a consignment no notice was necessary under Section 77 as the word "loss" in that section did not include non-delivery. The same view was taken in 'the Governor-General in Council v. Kasiram, A. I. R. 1949 pat. 268.

29. In Dominion of India v. Hazari Lal, A. I. R. 1949 Pat. 410 a Full Bench of the Patna High Court held :

> "Where the plaintiffs case in the plaint is that the goods have been lost owing to the negligence on the part of the servants of the defendant Railway Company, the case must be treated as one of loss, even though the plaintiff may have framed the suit as for non-delivery. In such a ease notice under Section 77 is necessary and no question whether the word "loss" in Section 77 means only actual loss of the goods or includes loss to the plaintiff owing to failure to delivery, arises."

The view taken in the Agent of B. N. Rly. Co., Ltd. v. Hamir Mull Chagan Mull, A. I. R. 1925 pat. 727 was overruled.

30. Coming to the cases decided by the Calcutta High Court, the first case placed before us was the Assam Bengal Railway Co., Ltd. v. Radhika Mohan Nath, A. I. R. 1923 cal. 397. It was held in that ease that a claim for compensation for non-delivery includes the case of the loss of the goods just as much as the case of detention of the goods. Where detention was not pleaded or put in issue, a claim simply for compensation for non-delivery must be understood as including or involving a claim for the loss of the goods within the meaning of Section 77. The word 'loss' used in Section 77 was wide enough to include all cases where the goods are not forthcoming and, therefore, included a case of non-delivery. The same view was taken in Duni Chand Bam Saran Das v. Secy. of State, A. I. R. 1931 cal. 585 and Secy. of State v. Surjyamal Haribaksh, A. I. R. 1934 Cal. 783.

31. In Sristhidhar Mandal v. Governor General in Council,. A. I. R. 1945 cal. 412 it was held that Section 77, Railways Act applied to claims, for compensation for non-delivery also.

32. In Jainarain v. Governor-General of India 4 Dom. L. R. (cal.) 225 the word "loss" occurring in Article 30, Limitation Act was the subject of interpretation and it was held that it means a loss by the Railway and not loss caused to the consignor. This is hardly of any help as we have to interpret the word "loss" as occurring in Section 77, Railways Act.

33. In M. & S. M. Rly. Co. Ltd. v. Haridoss Banmalidoss, 41 Mad. 871 it was held that a notice under Section 77, Railways Act was necessary to all claims for compensation arising not only from non-delivery or accidental loss or destruction or deterioration of goods but also from wilful delivery to a person not entitled to them.

34. In Seetharama Sastri v. Hyderabad State, A. I. R. 1950 Mad. 30 and in Governor-General in Council v. Messrs Khadi Mandali,, A.I.R. 1950 Mad. 438 the word "loss" as occurring in Section 77,

Railways Act was not the subject of interpretation. Articles 30 and 31, Limitation Act were discussed. They are hardly of any help to the present case.

35. In Ramlal v. B. N. Rly. Co. Ltd., Calcutta, A. I. R. 1936 Nag. 21 it was held that a claim of non-delivery may entail the necessity of a notice where such non-delivery might be due to loss of the goods concerned; but where there had been no such loss, damage or deterioration, such a. notice was not necessary.

36. In Hill Sawyers & Co. v. Secy. of State, A. I. R. 1921 Lah. 1 a Full Bench of the Lahore High Court held that the word 'loss' in chap. 7, Railways Act included loss to the owner of the goods made over to a railway administration which had been misdelivered and so had been lost to the person entitled thereto.

37. In Haryana Cotton Mills Co. Ltd., Bhiwani v. B. B. & C. I. Rly. Co., Bombay, A. I. R. 1927 Lah. 471 it was held :

> "Where goods were consigned for carriage to railway, but they were not delivered to the consignee even on demand and further there was refusal on the part of railway to give information as to the fate of the goods, a. suit by consignee for damages is one for conversion and. Section 77 does not apply."

38. In E. I. Rly. Co., Calcutta v. Piyara Lal Sohan Lal, A. I. R. 1928 Lah. 774 it was held :

> "Where a Railway Company is sued for compensation for non-delivery of goods and the plaintiff does not admit loss of goods, the railway must first prove loss of goods and on such proof the onus will shift to the plaintiff to prove wilful neglect on the part of the railway or its servants etc., according to the terms of the risk note."

39. Having noticed the divergent views held on the point under consideration by the various High Courts and even by the same High Court in different decided cases it is necessary to examine in some detail as to what is the real scope of the word "loss" occurring in Section 77, Railways Act. Section 77 occurs in chap, VII of the Act the heading of which is "Responsibility of Railway Administration as Carriers." Sections 72 to 78 deal with the responsibility of a railway administration as a carrier of animals and goods and in each of these sections the phrase "loss, destruction or deterioration" occurs. Section 77 provides that a notice is necessary only where a compensation is claimed on account of "loss, destruction or deterioration of goods". Such a notice is not necessary where the compensation is claimed on any other ground. According to Section 77 the responsibility of a railway administration is that of a bailee under Sections 151, 152 and 161, Contract Act, 1872. Section 151, Contract Act provides that a bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed. This section, therefore, provides for the extent of care which a railway administration is bound to take in respect of the goods delivered to it for carriage. Section 152 lays down that if the bailee takes the amount of care mentioned in Section 151 then he is not liable, in the absence of any special contract for the loss, destruction or

deterioration of the goods. Section 161 provides that:

> "if by the default o 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 from that time."

It is impossible to infer from these sections that if the bailee takes the required amount of care for the preservation of the articles bailed but does not return the goods to the bailor he can escape the liability by showing only that he has taken the care of the goods as required by law. Under Section 161, Contract Act if delivery is not made at the proper time then the bailee is liable from the time the goods are not returned A suit based on non-delivery for reasons other than loss, destruction or deterioration is really based on breach of duty. The distinction between a suit based on non-delivery and a suit based on loss, destruction or deterioration is also recognised in Arts. 30 and 31, Limitation Act.

40. The question is whether in the present case it can be held that the claim is based upon "loss" as used in Section 77. The word "loss" as occurring in the section has not the same meaning as in ordinary parlance, for if it were so there was no need of putting the words "destruction and deterioration" in juxtaposition with it. Even in destruction and deterioration there is loss to the owner of the goods. Nevertheless, those two words occur side by side with the word "loss" and when they so occur, meaning must be assigned to them and it must be held that where there is destruction or deterioration of goods, it is not "loss" within the meaning of the word occurring in Section 77. The word "loss" as used in this section means not loss to the owner but loss by the railway administration for if it meant loss to the owner then there was no need for the words "destruction or deterioration." There is loss to the owner even when there is "destruction or deterioration". The word "non-delivery" is a genus. Non-delivery of goods may be due to a variety of causes, e.g., (1) Loss of the goods by the carrier, that is to say, loss owing to acts such as theft and robbery. (2) Deterioration owing to natural causes. (3) Destruction owing to natural causes such as flood or artificial causes, e.g. incendiarism. (4) Conversion. (5) Detention, e.g., where there is a dispute about wharfage and the railway administration wrongfully detains the goods. (6) Misdelivery either by honest mistake or on account of fraud. (7) Capricious act of the railway employees, e.g. the goods even on arrival at the destination are not delivered to the owner without any rhyme or reason. (8) Wrongful sale of goods e.g. where the railway administration wrongfully sells the goods on arrival at the destination.

41. I am of opinion that where non-delivery of goods is due to loss of goods by the railway administration or to their deterioration or destruction then only a notice under Section 77, Railways Act is necessary but where non-delivery of goods is due to any other reason then no such notice is required. Had it been the intention of the law that a notice was necessary in all suits for compensation against a railway administration there was no need to provide in Section 77 that only when there is "loss, destruction or deterioration" a notice should be given. If the word "loss" meant pecuniary loss or privation of an article to the owner the words "destruction and deterioration" would not have occurred immediately after it in Section 77. Hence even if it be held that in the present case the requisite notice under Section 77 was not given by the plaintiff the suit cannot fail

because the claim is not based upon the loss of the goods by the railway administration but upon non-delivery for other causes. The evidence does not establish that there was the loss of the goods by the railway administration. I would respectfully dissent from the views expressed to the contrary in the decided cases of this Court or of other High Courts. The suit was rightly decreed by the learned Civil Judge.

42. I would, therefore, dismiss the appeal with costs.

Wali Ullah and Gurtu, JJ.

43. We agree.

By the Court.

44. The appeal is dismissed with costs.