Union Of India vs West Punjab Factories Ltd on 24 August, 1965

Equivalent citations: 1966 AIR 395, 1966 SCR (1) 580, AIR 1966 SUPREME COURT 395, 1966 (1) SCWR 248, 1966 2 ANDHLT 269, 1966 SCD 988, 1966 (1) SCJ 350, 1966 (1) SCR 580, ILR 1966 1 ALL 281

Author: K.N. Wanchoo

Bench: K.N. Wanchoo, P.B. Gajendragadkar, M. Hidayatullah, J.C. Shah, S.M. Sikri

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
WEST PUNJAB FACTORIES LTD.

DATE OF JUDGMENT:
24/08/1965

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
GAJENDRAGADKAR, P.B. (CJ)
HIDAYATULLAH, M.
SHAH, J.C.
SIKRI, S.M.

CITATION:
1966 AIR 395 1966 SCR (1) 580

ACT:
Indian Railways Act, s. 72-Responsibility of railways for loss of goods -Whether continues of delivery not taken within three days of reaching destination, after which demurrage is payable under the rules- Maintainability of suit for damages by consignor of goods when risk not transferred to consignee-Damages whether payable at contract rate or market rate-Interest whether payable on amount of damages for period before date of suit.

HEADNOTE:
There was a fire at a railway station in which certain

goods& were destroyed. Two suits were filed claiming damage for loss of goods by 'the said fire. The first suit was filed by a factory which claimed to be owner of the goods as consignor. The other suit was filed by a consignee in whose favour the relevant documents were endorsed. The Union of India resisted both the suits. The trial court and the High Court concurrently held that the loss was due to the negligence of the Railways. The1 Union of India appealed to this Court.

It was contended on behalf of the appellant : (1) The suits, as filed, were not maintainable. (2) In the first-suit delivery of the goods had been made to the consignee and the High Court's finding to the contrary was wrong. (3) Damages should have been awarded at the contract rat-. and not the market rate (4) Interest could not be awarded for the period before the suit on the amount of damages decreed. (5) In the second suit notice had been given to the consignee that the consignment had arrived on February 23, 1943. The consignee did not come to remove the goods till March 8, 1943 when the fire broke out, and the liability of the railway administration ceased after the lapse of reasonable time after arrival of the consignment at the railway administration.

HELD: (i) A railway receipt is a document of title to goods covered by it, but from that alone it does not follow, where the consignor and consignee are different, that the consignee is necessarily the owner of the goods and the consignor in such circumstances can never he the owner of the goods. It is quite possible for the consignor to retain title in the goods himself while the consignment is booked in the name of another person. In the first of the present suits the risk remained with the consignor according to the agreement of the parties, and it had not been proved that the consignor had parted with the property in the goods. Therefore the suit by he consignor was maintainable. [586 D-H]

In the second suit the railway receipt was endorsed in the consignees favour and the courts below had concurrently found that the consignee was the owner of the goods. There could therefore be no dispute about the maintainability of the second suit also. [588 D]

(ii) Though there was a token delivery to the consignee in the first suit as appeared from the fact that the railway receipt had been sur-

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rendered and the delivery book had been signed, there was no redelivery by the railway to the consignee. The goods had not been unloaded and were still under the control and custody of the railway and the evidence of the Assistant Goods Clerk was that his permission had still to be taken before the goods could be actually removed by the consignee. The contention in the first suit that the delivery had been made to the consignee before March 8, 1943 therefore, in the

peculiar circumstances of the case had to fail. [590 C-D]

(iii) The High Court rightly calculated the damages on the basis of the on March 8 as it is well settled that it is the market price at lest be damage occurred which is the measure of the damages to be awarded. [590 E-F]

(iv) In the absence of any usage or contract, express or implied, or of any provision of law to justify the award of interest it is not possible to award interest by way of damages and therefore no interest should have been awarded in the present two suits up to the date of filing of either suit. [591 A]

Bengal Nagpur Railway Co. Ltd. v. Ruttanji Rant, & Ors. 65 I.A. 66, Seth Thawardas Pherumal v. Union of India [1955] 2 S.C.R. 48, Union of India v, A. L. Rallia Ram, [1964] 3 S.C.R. 164 and Union of India V. Watkins Mayer & Co. C. As. Nos. 43 and 44 of 1963 dt. 10-3-65, relied on.

(v) Under s. 72 of the Indian Railways Act, the responsibility of the railway administration for the loss, destruction or deterioration of animals or goods delivered to the administration to be carried by railway is, subject to the other provisions of the Act, that of a bailee under ss. 151, 152 and 161 of the Indian Contract Act. The responsibility continues until terminated in accordance with sq. 55 and 56 of the Railways Act. [591 E]

It may be that under the Rules framed by the Railways goods are kept at the railway station of destination only for one month, and that demurrage has to be paid after three days of reaching the destination. But the responsibility of the railway is under s. 72 of the Indian Railways Act and it cannot be cut down by any rule. Even if owing to the said Rules the responsibility of the railway as a carrier ends within a reasonable time after the goods have reached their destination-station, its responsibility as a warehouseman continues and that responsibility L. the same at that of a bailee. [592 E-H]

Chapman v. The Great Western Railway Company, (1880)5 Q.B.D. 278, distinguished.

In the present case the consignee (in the second suit) claimed the goods well within the period of one month mentioned in the rules. The fact that he was liable to pay demurrage because he did not take delivery of the goods within three days did not relieve the railway of its respon-sibility as warehouseman. As it had been concurrently found by the courts below that there had been negligence by the railway within the meaning of ss. 151 and 152 of the Indian Contract Act, the railway war, liable to make good the loss caused by the fire. [593 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 601 and 602 of 1963.

Appeals from the judgment and decree dated December 9, 1958, of the Allahabad High Court in First Appeals Nos. 373 of 1945 and 92 of 1946.

Civil Appeal No. 603 of 1963.

Appeal by special leave from the judgment and decree dated December 9, 1958 of the Allahabad High Court in First Appeal No. 374 of 1945.

N. D. Karkhanis and R. N. Sachthey, for the appellant (in all the three appeals).

G. S. Pathak, Rameswar Nath, S. N. Andley and P. I. Vohra, for the respondents (in all the three appeals). The Judgment of the Court was delivered by.

Wanchoo, J. These three appeals raise common questions and will be dealt with together. They arise out of two suits filed against the Government of India claiming damages for loss of goods which were destroyed by fire on the railway platform at Morar Road Railway Station. One of the suits was filed by Birla Cotton Factory Limited, now represented by the West Punjab Factories Limited (hereinafter referred to as the Factory). It related to six consignments of cotton bales booked from six stations on various dates in February and March 1943 by the Factory to Morar Road Railway Station. In five of the cases, the consignment was con- Signed to J. C. Mills while in one it was consigned to self. The consignments arrived at Morar Road Railway Station or. various dates in March Delivery was given of a part of one consignment on March 7, 1943 while the remaining goods were still in the custody and possession of the railway. On March 8, 1943, a fire broke out at the Morar Road Railway Station and these goods were involved in the fire and severe damage was caused to them. It is not necessary to refer to the details of the damage for that matter is not in dispute between the parties. The case of the Factory was that the damage and loss was caused while the goods were in the custody and control of the railway administration and it was due to misconduct, negligence and carelessness on the part of the railway administration. Consequently, the suit was filed for Rs. 77,000 and odd along with interest upto the date of the suit and interest pendente lite and future interest.

In the other suit there was one consignment of 45 bales of cotton yarn. This consignment was booked from Belangunj to Morar Road Railway Station on February 22, 1943 and the railway receipt relating to this consignment was endorsed in favour of Ishwara Nand Sarswat who filed the suit. This consignment arrived at Morar Road Railway Station on February 23, 1943. Ishwara Nand Sarswat went to take delivery of this consignment on March 10, 1943, his case being that be had received the railway receipt on March 9, 1943. He then came to know that the consignment was involved in a fire which had taken place on March 8, 1943 and severe damage had been done to the consignment. Ishwara Nand Sarswat therefore filed the suit on the ground that damage and loss was due entirely to the gross-negligence of the railway administration. He claimed Rs. 72,000,/- and odd as damages and also claimed interest upto the date of the suit and pendente lite and future interest.

The suits were resisted by the Government of India. In the first suit by the Factory, it was pleaded that the Factory could not sue as-, the goods in five of the receipts had been consigned to the J. C. Mills; secondly, it was pleaded that delivery had been given of atleast five of the consignments to the J.C. Mills before the fire broke out and the railway administration was not therefore responsible for the damage done by the fire, for it was the fault of the J. C. Mills not to have removed the - goods immediately after the delivery; thirdly, it was pleaded that damages should have been granted at the rate of Rs. 38/- per bale, which was the price contracted for between the buyer and the seller and not at the market rate on the date of the damage as was done by the courts below-, fourthly, it was pleaded that no interest should have been allowed for the period before the suit; and lastly, it was pleaded that the conduct of the railway administration was not -negligent and there- fore the railway was not bound to make good the loss. On these pleas, five main issues relating to each of them were framed by the trial court. The trial court found that the Factory could maintain the suit and decided accordingly. It also found that in the case of five consignments by the Factory, delivery had been given before the fire broke Out and therefore the railway was not responsible; in the case of the sixth consignment it held that there was no proof that delivery bad been given before the fire broke out and that the railway would be responsible if negligence was proved. On the quantum of damages, the trial court held that the damages had to be calculated at the market price on the date of the fire and not at the contract price between the buyer and seller. On the question of interest, the trial court held that interest before the date of the suit should be allowed on equitable ,-rounds. Finally, on the question of negligence, the trial court held that there was negligence by the railway and it was therefore liable for loss and damage caused by the fire which broke out on L7Sup./65-9 March 8, 1943. As however, the trial court had held that delivery had been given in the case of five consignments, though the goods had not been removed, the railway was not responsible for the loss. It therefore decreed the suit in part with respect to the sixth consignment about which it had found that there had been no delivery.

The same issues were raised in the suit by Ishwara Nand Saraswat. But there was one additional issue in that suit based on the contention of the Government of India that it had given notice to Ishwara Nand that the consignment had arrived on February 23, 1943, Ishwara Nand however did not come to remove the goods till March 8, 1943 when the fire broke out; therefore it was urged that the liability of the railway administration as carrier had ceased after the lapse of reasonable time after arrival of the consignment at the railway station. This reasonable time could not be beyond three days in any case and therefore the railway administration was not bound to make good the loss even if it had been occasioned on account of the negligence of the administration. As Ishwara Nand should have removed the consignment within three days of February 23, it was his failure to do so which resulted in the damage and loss. The issues which were common to this suit and the suit by the Factory were decided on the same lines by the trial court as in the suit by the Factory. On the further issue which arose in this suit as to the delay in the removal of goods after notice to Ishwara Nand, the trial court held after reference to certain rules made by the railway administration that even if the railway administration's responsibility as carrier had ceased after the lapse of reasonable time, it was still liable as a bailee either as a warehouseman or as a gratuitous bailee. It therefore gave a decree for Rs. 76,000 and odd to Ishwara Nand. Then followed three appeals to the High Court two in the suit by the Factory and one in the suit of Ishwara Nand. The appeal in the suit by Ishwara Nand was by the Government of India; one appeal in the suit by the Factory was by the

factory with respect to that part of the claim which had been dismissed, and the case of the Factory was that in fact no delivery had been made to it and it was entitled to the entire sum claimed as damages. The other appeal was by the Government of India with respect to the amount decreed by the trial court and it raised all the contentions which had been raised before the trial court.

The High Court dealt with the three appeals together. In all appeals the High Court confirmed the finding of the trial court that there had been negligence on the part of the railway which resulted in damage to the goods. On the question whether the suit could be maintained by the plaintiffs, the High Court affirmed the finding of the trial court that both the suits were maintainable. The High Court also affirmed the finding of the trial court with respect to the rate at which damages should be calculated and on the question of interest before the date of the suit. Further in the suit by Ishwara Nand, the High Court held that even if the railway administration ceased to be responsible as a carrier after a reasonable time had elapsed after the arrival of the goods at Morar Road Railway Station, it was still responsible as a warehouseman. The appeal therefore of the Government of India in Ishwara Nand's suit was dismissed. On the question of delivery in the Factory'& suit the High Court disagreed with the finding of the trial court that there had been delivery of five consignments. It held that there was no effective delivery even of these five consignments. In consequence, the appeal of the Factory was allowed while that of the Government of India was dismissed. Then followed applications to the High Court for leave to appeal to this Court in the Factory's suit. 'Me High Court granted the certificate as the judgment was one of variance and the amount involved was over rupees twenty thousand. However, in the suit of Ishwara Nand, the High Court refused to grant a certificate as the judgment was one of affirmance and no substantial question of law arose. Thereupon the Government of India applied to this Court for special leave in Ishwara Nand's suit and that was granted. The three appeals have been consolidated in this Court for as will be seen from what we have said above, the principal points in- volved in them are common.

Learned counsel for the appellant has not and could not challenge the concurrent finding of the trial court and of the High Court that the fire which caused the damage was due to the negligence of the railway administration. But the learned counsel has pressed the other four points which were raised in the courts below. He contends-(i) that the suits as filed were not maintainable, (ii) that the High Court was in error in reversing the finding of the trial court that the delivery had been given with respect to five of the consignments in the Factory's suit, (iii) that damages should have been awarded at Rs. 38/- per bale which was the contract price between the buyer and seller and not at the market price on the date on which the damage took place, and

(iv) that interest could not be awarded for the period before the suit on the amount of damages decreed.

Re. (i).

The contention of the appellant with respect to five of the consignments in the suit of the Factory was that as the consignee of the five railway receipts was the J.C. Mills, the consignor (namely, the Factory) could not bring the suit with respect thereto and only the J.C. Mills could maintain the suit. Ordinarily, it is the consignor who can sue if there is damage to the consignment, for the contract of

carriage is between the consignor and the railway administration. Where the property in the goods carried has passed from the consignor to some-one-else, that other person may be able to sue. Whether in such a case the consignor can also sue does not arise on the facts in the present case and as to that we say nothing. The argument on behalf of the appellant is that the railway receipt is a document of title to goods [see S. 2(4)] of the Indian Sale of Goods Act, No. 3 of 1930), and as such it is the consignee who has title to the goods where the consignor and consignee are different. It is true that a railway receipt is a document of title to goods covered by it, but from that alone it does not follow, where the consignor and consignee are different, that the consignee is necessarily the owner of goods and the consignor in such circumstances can never be the owner of the goods. The mere fact that the consignee is different from the consignor does not necessarily pass title to the goods from the consignor to the consignee, and the question whether title to goods has passed to the consignee will have to be decided on other evidence. It is quite possible for the consignor to retain title in the goods, himself while the consignment is booked in the name of another person. Take a simple case where a consignment is booked by the owner and the consignee is the owner's servant, the intention being that the servant will take delivery at the place of destination. In such a case the title to the goods would not pass from the owner to the consignee and would still remain. with the owner, the consignee being merely a servant or agent of the owner or consignor for purposes of taking delivery at the place of destination. It cannot therefore be accepted simply because a consignee in a railway receipt is different from a consignor that the consignee must be held to be the owner of the goods and he alone can sue and not the consignor. As we have said already, ordinarily, the consignor is the person who has contracted with the railway for the carriage of goods and he can sue; and it is only where title to the goods has passed that the consignee may be able to sue. Whether title to goods has passed from the consignor to the consignee will depend upon the facts of each case and so we have to look at the evidence produced in this case to decide whether in the case of five con-

signments booked to the J.C. Mills, the title to the goods had passed to the Mills before the fire broke out on March 8, 1943. We may add that both the courts have found that title to the goods had not passed to the J. C. Mills by that date and that it was still in the consignor and therefore the Factory was entitled to sue. We may in this connection refer briefly to the evidence on this point. The contract between the Factory and the J. C. Mills was that delivery would be made by the seller at the godowns of the J. C. Mills. The contract also provided that the goods would be dispatched by railway on the seller's risk up to the point named above (namely, the godowns of the J. C. Mills). Therefore the property in the goods would only pass to the J. C. Mills when delivery was made at the godown and till then the consignor would be the owner of the goods and the goods would be at its risk. Ordinarily, the consignments would have been booked in the name of "self" but it seems that there was some legal difficulty in booking the consignments in the name of self and therefore the J. C. Mills agreed that the consignments might be booked in the Mills' name as consignee; but it was made clear by the J. C. Mills that the contract would stand unaffected by this method of consignment and all risk, responsibility and liability regarding these cotton consignments would be of the Factory till they were delivered to the J. C. Mills in its godowns as already agreed upon under the contract and all losses arising from whatever cause to the cotton thus consigned would be borne by the Factory till its delivery as indicated above. This being, the nature of the contract between the consignor and the consignee in the present case we have no hesitation in agreeing with the courts

below that the property in the goods was still with the Factory when the fire broke out on March 8, 1943. Therefore the ordinary rule that it is the consignor who can sue will prevail here because it is not proved that the consignor had parted with the property in the goods, even though the consignments were booked in the name of the J. C. Mills. We are therefore of opinion that the suit of the Factory was in view of these circumstances maintainable.

As to the suit by Ishwara Nand, he relies on two circumstances in support of his right to maintain the suit. In the first place, he contended that he was the owner of the goods and that was why the railway receipt was endorsed in his favour by the consignor though it was booked to "self". In the second place, it was contended that as an endorse to a document of title he was in any case entitled to maintain the suit. The trial court found on the evidence that it had been proved satisfactorily that Ishwara Nand was the owner of the goods. It also held that as an endorse of a document of title he was entitled to sue. These findings of the trial court on the evidence were accepted by the High Court in these words :-

> "It was not contended before us that the finding arrived at by the learned court below that the plaintiff had the right to sue was wrong, nor could, in view of the overwhelming evidence, such an issue be raised. The evidence on the point has already been carefully analysed by the court below. We accept the finding and confirm it. It was also pointed out that Ishwara Nand was the endorsed consignee and in that capacity he had in any case a right to bring the suit. The correctness of this statement was not challenged before us."

Thus there are concurrent findings of the two courts below that Ishwara Nand was the owner of the goods and that was why the railway receipt was endorsed in his favour. In these circumstances he is certainly entitled to maintain the suit. The contention that the plaintiffs in the two suits could not maintain them. must therefore be rejected. Re. (ii).

The contention under this head is that five of the consignments had been delivered to the J. C. Mills before March 8, 1943 and therefore the railway was not responsible for any loss caused by the fire which broke out after the consignments had been delivered on March 6 and 7, 1943. It was urged that it was the fault of the J. C. Mills that it did not remove the consignments from the railway station by March 7 and the liability for the loss due to fire on March 8 must remain on the J. C. Mills. The trial court had held in favour of the appellant with respect to these five consignments. But the High Court reversed that finding holding that there was no real delivery on March 6 and 7, though the delivery book had been signed on behalf of the J. C. Mills and the railway receipts had been handed over to the railway in token of delivery having been taken. It was not disputed that the delivery book had been signed and the railway receipts had been delivered to the railway; but the evidence was that it was the practice at that railway station, so far as the J. C. Mills was concerned, to sign the delivery book and hand over the railway receipts and give credit vouchers in respect of the freight of the consignment even before the goods had been unloaded from wagons. It appeared from the evidence that what used to happen was that as soon the wagons arrived and they were identified as being wagons containing consignments in favour of the J. C. Mills, the consignee, namely, the J. C. Mills, used to surrender the railway receipts., sign the delivery book and give credit

vouchers in respect of the receipt of freight due even before the goods were unloaded from wagons. This practice was proved from the evidence of Har Prashad (D.W. 6) who was the Assistant Goods Clerk at Morar Road at the relevant time. He was in-charge of making delivery of such goods, there being no Goods Clerk there. He admitted that signature of Ishwara Nand as agent of the J. C. Mills was taken as soon as the consignments were received and identified by Ishwara Nand without being unloaded. He further admitted that there had been no actual delivery to Ishwara Nand of the consignments and this happened with respect to all the five consignments. Ishwara Nand signed the delivery book in token of having received the delivery and surrendered the railway receipts though when he did so the wagons were not even unloaded. On this evidence the High Court held that it could not be said that there was any effective delivery of the goods to the J. C. Mills through Ishwara Nand, though token delivery was made inasmuch as the delivery book had been signed and the railway receipts surrendered. It also appears from the evidence of Har Prashad that before the goods were actually removed, Ishwara Nand used to take the permission of Har Prashad to remove them. This shows that though there might be token delivery in the form of signing the delivery book and surrendering the railway receipts, actual delivery used to take place later and the removal of goods took place with the permission of Har Prashad. On this state of evidence the High Court was of the view that the so-called delivery by signing delivery book and sur- rendering the railway receipts was no delivery at all for till then the goods had not been unloaded. The unloading of goods is the duty of the railway and there can be no delivery by the railway till the railway has unloaded the goods. It is also clear from the evidence that even after token delivery had been made in the manner indicated above, the consignee was not authorised to remove the goods from the wagons and that it was the railway which unloaded the wagons and it was thereafter that the consignee was permitted to remove such goods with his permission as stated by Har Prashad in his evidence. The High Court therefore held that there was no clear evidence that delivery of goods had been made over to the consignee in these cases. Further there was no evidence to show that the consignee could remove the goods from the wagons without further reference to the railway, on the other hand it appeared that after such token delivery permission of Har Prashad was taken for actual removal of goods. There fore, the High Court came to the conclusion that real delivery had not been made when the fire took place on March 8, for the goods were till then in wagons and the railway was the only authority entitled to unload the same. Till they were unloaded by the railway, they must be in the custody of the railway and no delivery could be said to have taken place merely by signing the delivery book and surrendering the railway receipts. We are of opinion that on the evidence the view taken by the High Court is correct. Though there was a token delivery as appears from the fact that railway receipts had been surrendered and the delivery book had been signed, there was no real delivery by the railway to the consignee, for the goods had not been unloaded and were still under the control and custody of the railway and Har Prashad's evidence is that his permission had still to be taken before the goods could be actually removed by the consignee. The contention that the delivery had been made to the consignee before March 8, 1943 must therefore in the peculiar circumstances of this case fail. Re. (iii).

It is next contended that damages should have been awarded at the rate of Rs. 38/- per bale which was tile contract price between the factory and the J. C. Mills. This contract was made in November 1942. The contract price is in our opinion no measure of damages to be awarded in a case like the present. It is well-settled that it is the market price at the time the damage occurred which is the

measure of damages to be awarded. It is not in dispute that the trial court has calculated damages on the basis of the market price prevalent on March 8. In these circumstances this contention must also be rejected.

Re. (iv).

The next contention is that no interest could be awarded for the period before the suit on the amount of damages decreed. Legal position with respect to this is well-settled : (see Bengal Nagpur Railway Co. Limited v. Ruttanki Ramji and Others) (1). That decision of the Judicial Committee was relied upon by this Court in Seth Thawardas Pherumal v. The Union of India(2). The same view was expressed by this Court in Union of India v. A. L. Rallia Ram(3). In the absence of any usage or contract, express or implied, or of any provision of law to justify the award of interest, it is not possible to award interest by way of damages. Also see (1) 65 I.A. 66.

(2) [1955] 2 S.C.R. 48.

(3) [1964] 3 S.C.R. 164.

recent decision of this Court in Union of India v. Watkins Mayer & Company(1). In view of these decisions no interest could be awarded for the period upto the date of the suit and the decretal amount in the two suits will have to be reduced by the amount of such interest awarded. We now come to the additional point raised in Ishwara Nand's suit. It is urged that Ishwara Nand's consignment had reached Morar Road Railway Station on February 23, 1943 and Ishwara Nand should have taken delivery within three days which is the period during which under the rules no wharfage is charged. The responsibility of the railway is Linder s. 72 of the Indian Railways Act (No. 9 of 1890) and that responsibility cannot be cut down by any rule. It may be that the railway may not charge wharfage for three days and it is expected that a consignee would take away the goods within three days. It is however urged that the railway is a carrier and its responsibility as a carrier must come to an end within a reasonable time after the arrival of goods at the destination, and thereafter there can be no responsibility whatsoever of the railway. It is further urged that three days during which the railway keeps goods without charging wharfage should be taken as reasonable time when its responsibility as a carrier ends; thereafter it has no responsibility whatsoever. Under s. 7 2 of the Indian Railways Act, the responsibility of the railway administra- tion for the loss, destruction or deterioration of animals or goods delivered to the administration to be carried by railway is, subject to the other provisions of the Act, that of a bailee under ss. 151, 152 and 161 of the Indian Contract Act, (No. 9 of 1872). This responsibility in our opinion continues until terminated in accordance with ss. 55 and 56 of the Railways Act. The railway has framed rules in this connection which lay down that unclaimed goods are kept at the railway station to which they are booked for a period of not less than one month during which time the notice prescribed under s. 56 of the Railways Act is issued if the owner of the goods or person entitled thereto is known. If delivery is not taken within this period, the unclaimed goods are sent to the unclaimed goods office where if they are not of dangerous, perishable or offensive character they are retained in the possession of the railway. Thereafter public sales by auction can be held of unclaimed goods which remain with the railway for over six months. This being the position under the rules so far as the application of ss. 55 and 56 is

concerned, it follows that even though the res- ponsibility of the railway as a carrier may come to an end within (1) C. As. 43 & 44 of 1963 decided on March 10, 1965.

a reasonable time after the goods have reached the destinationstation, its responsibility as a warehouseman continues and that responsibility is also the same as that of a bailee. Reference in this connection is made to Chapman v. The Great Western Railway Company(1). In that case what had happened was that certain goods had arrived on March 24 and 25. On the morning of March 27, a fire accidentally broke out and the goods were consumed by the fire. The consignor then sued the railway as common carrier on the ground that liability still subsisted when the goods were destroyed. The question in that case was whether the liability of the railways was still as common carrier, on March 27 or was that of warehousemen. The question was of importance in English law, for a common carrier under the English law is an insurer and is liable for the loss even though not arising from any default on his part while a warehouseman was only liable where there was want of proper care. It was held that the liability as a common carrier would come to end not immediately on the arrival of the goods at the destination but sometime must elapse between the arrival of goods and its delivery. This interval how- ever must be reasonable and it was held in that case that reasonable time had elapsed when the fire broke out on March 27 and therefore the railway's responsibility was not that of a carrier but only as warehouseman. The position of law in India is slightly different from that in England, for here the railway is only a bailee in the absence of any special contract and it is only when it is proved that the railway did not take such care of the goods as a man of ordinary prudence would under similar circumstance take of his own goods of the same bulk, quality and value as the goods bailed, that the railway's responsibility arises. A warehouseman is also a bailee and therefore the railway will continue to be a warehouseman under the bailment, even if its responsibility as a carrier after the lapse of a reasonable time after arrival of goods at the destination comes to an end. But in both cases the responsibility in India is the same, namely, that of a bailee, and negligence has to be proved. In view of the rules to which we have already referred it is clear that the railway's responsibility as a warehouseman continues even if its responsibility as a carrier comes to end after the lapse of a reasonable time after the arrival of goods at the destination. The responsibility as a warehouseman can only come to end in the manner provided by ss. 55 and 56 of the Railways Act and the Rules which have been framed and to which we have already referred as to the disposal of unclaimed goods. In the present case under the Rules the goods had to remain at Morar (1) (1880) 5Q.B.D.278.

Road Railway Station for a period of one month after their arrival there and Ishwara Nand came to take delivery of them on March 10-well within that period. It may be that as he did not come within three days he has to pay wharfage or what is called demurrage in railway parlance, but the responsibility of the railway as a warehouseman certainly continued till March 10 when Ishwara Nand went to take delivery of the goods. As it has been found that there had been negligence within the meaning of ss. 151 and 152 of the Indian Contract Act, the railway would be liable to make good the loss caused by the fire.

The appeals therefore fail with this modification that the decretal amount would be reduced by the amount of interest awarded for the period before the date of each suit. The rest of the decree will stand. The appellant will pay the respondents' costs-one set of hearing fee. In CA 603/63 interest

will be calculated from 6-8-62 in accordance with that order.

Appeal dismissed and decree modified.