

## REVISIONAL CIVIL.

Before Mr. Justice Mukerji.

BHAGWAN DAS LACHMI NARAIN (PLAINTIFF) v.  
BENGAL-NAGPUR RAILWAY (DEFENDANT).\*

1929  
April, 8.

Act No. IX of 1890 (Railways Act), section 77—Notice of claim—"Deterioration"—Delay in delivery—Fall in market rate.

The word "deterioration" in section 77 of the Railways Act includes loss in value owing to delay in delivery and a fall in the market value of the goods consigned. Hence, a suit for the recovery of such loss is not maintainable without the notice required by the section.

Mr. *Ambika Prasad Pandey*, for the applicant.

Mr. *B. Malik*, for the opposite party.

MUKERJI, J. :—This is an application in revision against the decree of the Judge, Small Cause Court, and arises under the following circumstances.

The applicant firm indented some rice from a place called Burdaura, served by the Bengal-Nagpur railway. The goods were consigned to where the applicant lived, namely Deoria, in the district of Gorakhpur. Unluckily, the railway receipt was made out to show that the goods were sent to a place called Jalalpur. In spite of this fact, a part of the consignment arrived at Deoria, nobody could tell how, on the 14th of April, 1927. It was not till the 8th of May, 1927, that the remaining portion of the consignment was received in Deoria and handed over to the plaintiff. The plaintiff applicant, thereupon, brought his suit, out of which this application has arisen, to recover certain amounts of money including a sum of Rs. 230 as damages. The claim for damages was based on the allegation that by the time the goods arrived, the market for the goods (rice) fell and the plaintiff suffered a loss.

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The claim on this point was met on two grounds, namely there was in fact no loss, there being no fall in the market value and that, in any case, the plaintiff was bound to give a notice under section 77 of the Railways Act before instituting a suit.

This part of the claim has been dismissed on both the grounds.

If I had thought that the suit could be maintained without a notice, I would have sent back the case for a retrial on the ground that the learned Judge was prejudiced by the fact that the plaintiff had not furnished any particulars of his claim for damages along with the plaint. Nobody had asked the plaintiff to furnish particulars and this omission on the plaintiff's part should not have been the cause of dismissal.

Section 77 of the Railways Act requires that "where a person claims compensation for . . . deterioration . . . of goods delivered to be carried . . .", the would-be plaintiff shall prefer a claim in writing within six months of the date of the delivery of the goods for carriage by the railway. The contention of the respondents is that the deterioration would cover the fall in the market value of the goods concerned. There seems to be a conflict of opinion among the authorities on this point. A Madras case, viz. *Madras Railway Company v. Govinda Rau* (1) and a Lahore case, *India General Navigation and Railway Co. v. Harcharan Das* (2), held that the word "deterioration" would include a loss in the market value of the property and not only a depreciation in the quality of the goods. In a more recent case, *East Indian Railway Company Ltd. v. Diana Mal Gulab Singh* (3) the Lahore High Court held a contrary view, but it does not appear that the previous case in the same court had been brought to its notice.

(1) (1898) I. L. R., 21 Mad., 172. (2) (1912) 15 Indian Cases., 12.

(3) (1924) I. L. R., 5 Lah., 523

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A surer guide to the meaning of the word is furnished by the New English Dictionary of Murray. There, the word "deterioration" is shown as bearing the import of impairment of quality or value.

It appears to me that cases of late delivery must be occurring very often with the railways, and in such circumstances parties to the consignment would be prone to claim compensation. If the authors of the Railways Act were anxious to provide for loss, destruction, etc of the goods in transit, there was no reason why they should forget to provide for the loss of the value of goods owing to delay in delivery. I am of opinion that "deterioration" does include a loss in the value of the goods consigned owing to a delay in delivery.

The result is that the application fails and it is hereby dismissed with costs.

Before Mr. Justice Dalal.

POKHPAL AND ANOTHER (DEFENDANTS) v. MADHO RAM  
(PLAINTIFF).\*

1929  
April, 25.

*Jurisdiction—Civil and revenue courts—Suit to recover amount of revenue paid by a person wrongly recorded as lambardar—Act (Local) No. II of 1901 (Agra Tenancy Act), sections 159 and 160—Payment not voluntary—Payment lawfully made—Act No. IX of 1872 (Contract Act), section 70.*

The plaintiff, who was recorded as lambardar of a certain property, paid a certain sum of money as Government revenue on citation being issued to him by the revenue authorities. At that time, though recorded as lambardar, he had sold his property to the defendants, who were really liable to pay the revenue. He then sued the defendants in the court of Small Causes for recovery of the sum. He was then no longer lambardar or co-sharer. The defence was that such a suit

\* Civil Revision No. 76 of 1929.

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