

accept the appeal and dismiss the plaintiff's suit with costs throughout.

A. N. C.

Appeal accepted.

APPELLATE CIVIL.

Before Mr. Justice LeRossignol and Mr. Justice Zafar Ali.

BOMBAY, BARODA AND CENTRAL INDIA
RAILWAY, BOMBAY (DEFENDANT) *Appellant,*

versus

MANOHAR LAL-PARWIN CHAND (PLAINTIFF)
Respondent.

Civil Appeal No. 1094 of 1921.

Indian Railways Act, IX of 1890, sections 5 (6) 77, 140—Claim for compensation against a Railway administered by a Railway Company—whether notice to the General Traffic Manager is sufficient.

Held, that in the case of a railway administered by a Company notice of a claim for compensation under section 77 of the Indian Railways Act, may be given to the Agent of the Railway Company in India, but notice to a subordinate of the Agent is not the notice contemplated by that section.

Great Indian Peninsula Railway Company v. Chandra Bai (1), Great Indian Peninsula Railway Company v. Dewasi (2), Nadiar Chand v. Wood (3), and Seshachellam Chetty v. The Nizam's Guaranteed State Railway Company (4), distinguished.

Miscellaneous appeal from the order of J. Coldstream, Esquire, District Judge, Delhi, dated the 8th March 1921, reversing the decree of Lala Dwarka Parshad, Subordinate Judge, 2nd Class, Delhi, dated the 29th November 1920, and remanding the case.

M. L. PURI, for Appellant.

SARDHA RAM, for Respondent.

(1) (1906) I. L. R. 28 All. 552.

2) (1907) I. L. R. 31 Bom. 534.

(3) (1907) I. L. R. 35 Cal. 194.

(4) (1911) I. L. R. 36 Mad. 55.

The judgment of the Court was delivered by—

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LE ROSSIGNOL J.—This second appeal arises out of a suit brought by the plaintiff against the Bombay, Baroda and Central India Railway for compensation for loss of a consignment of goods, and the only question calling for decision by us is whether notice under section 77, Indian Railways Act, was given to the Railway Administration. The learned District Judge has held that the Railway Administration had notice of the plaintiff's claim, inasmuch as the General Traffic Manager of the Railway had notice of it.

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Under section 77 of the Indian Railways Act a claim for compensation must be preferred in writing to the Railway Administration within six months from the date of the delivery of the goods to the railway, and the words "Railway Administration" are defined in section 3 clause (6) to be, in the case of a railway administered by a company, that railway company. The normal method of serving notice upon a railway company is by delivering notice at its head office, but in the case of a railway administered by a Railway Company service upon its Agent in India is sufficient service (section 140 of the Indian Railways Act). That section further gives instances of methods by which the Agent may be served with notice of a claim, but it is argued that that section is not exhaustive and that if it can be established that as a matter of fact the Agent has received notice of the claim in a way not mentioned by that section, such notice is sufficient for the purposes of section 77 of the Act.

With this contention we have no quarrel but the question in this case is whether the Agent received notice of the plaintiff's claim. We have been referred to *Great Indian Peninsula Railway Company v. Chandra Bai* (1), *Great Indian Peninsula Railway Company v. Dewasi* (2), *Nadiar Chand v. Wood* (3), and *Seshachellam Chetty v. The Nizam's Guaranteed State Railway* (4), but none of these rulings is an authority for the view that service on a subordinate of the Agent of the Railway is service upon the Agent. If it could

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be shown by evidence that the Agent had invested some subordinate with authority to receive service on his account, he would no doubt be estopped from pleading that notice had not been served upon him personally. But in this case there is no evidence that the Agent has given any such authority to the General Traffic Manager, and it is no reply to the Agent's objection that in practice the Agent entrusts the disposal of such claims to his General Traffic Manager. There is in this case no evidence that notice sent to a General Traffic Manager reaches the Agent automatically, so that we have no ground for holding that as a fact the Agent was informed of this claim by his General Traffic Manager. Section 77 of the Railways Act insists that notice shall be given in writing to the Agent of the Railway Company in India and we must hold that notice to a subordinate of the Agent is not a notice contemplated by the section.

We accordingly accept the appeal and dismiss the plaintiff's suit with costs throughout.

A. N. C.

Appeal accepted.