

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-1634-1998 (O&M)****Reserved on: 01.03.2025****Pronounced on: 06.03.2025****UNION OF INDIA AND ANOTHER****. . . .APPELLANTS****Vs.****FOOD CORPORATION OF INDIA****. . . . RESPONDENT****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

Argued by:- Ms. Vibha Dhiman, Sr. Panel Counsel for the appellants.

Mr. H.S. Dhandi, Advocate, for the respondent.

DEEPAK GUPTA, J.

Suit for recovery of ₹2,27,556/- filed by plaintiff-Food Corporation of India (*respondent herein*) against defendants-Union of India and another (*appellants herein*) was dismissed by the trial Court of Ld. Sub Judge 1st Class, Amritsar vide judgment dated 14.10.1995. However, the appeal filed by the said plaintiff was accepted by the First Appellate Court of Ld. District Judge, Amritsar, who vide his judgment dated 31.01.1998 decreed the suit for recovery of ₹2,27,556/- along with interest @ 12% per annum from the date of institution of suit till its realization.

2. Against the aforesaid reversal, the defendants of the case have approached this Court by way of present Regular Second Appeal. In order to avoid confusion, parties shall be referred as per their status before the trial Court.

3. Reconstructed photocopy of the trial Court record has been received, in which some of the documents are missing. However, it has been agreed by counsels for both the sides that all the necessary relevant evidence has been referred by the Courts below in their respective judgments.

4. Plaintiff (*respondent herein*) is admittedly the consignee in respect of gunny bags covered by the following Railway Receipts:

Ex.	R.R. No.	Dated	From -Station –To	Wagon No.	Quantity
P-1	478509/Inv.-3	30.04.1981	Howrah to Majitha	SC 4195	65 bales
P-2	C.477242/Inv.-1	29.04.1981	Howrah to Majitha	ER 21390	65 bales

Consignor M/s Alliance Mills Pvt. Limited, Calcutta had sent the said consignments covered by the aforesaid RRs through the Railways. The goods duly inspected and accepted by the defendants (*appellants herein*) reached the destination i.e., Majitha Railway Station on 15.05.1981 as covered the aforesaid railway receipts and the same were unloaded on 16.05.1981. As the Railway Station does not have any covered goods shed so, the gunny bags were unloaded and stored in the open for delivery to the plaintiff.

5.1 The case of the plaintiff is that on 17.05.1981, as the gunny bags were still lying at the Railway Station, Train No.4-AB coming from Dera Baba Nanak, steamed off to Amritsar and at the time of starting of the train, some sparks of the fire emitted by the steam engine fell on the gunny bag causing fire. Plaintiff calculated and claimed following losses:-

	Amount in ₹
Loss of Gunny Bags (covered by Ex.P1)	1,57,385
Cost of Gunny Bags	1,51,125
Freight Charges	6860
Loss of Gunny Bags (covered by Ex.P2)	69,571
Cost of 27 Bales of Gunny bags	62775
Freight charges	6769
Total Loss:	2,27,556

5.2 It was claimed by the plaintiff that loss was suffered to it because of the negligence of the defendants. Intimation in this regard was sent to them. FIR was also lodged with G.R.P., Amritsar. Claim in respect of the said loss was lodged with defendant No.2. Defendants through Station Master, Majitha and A.T.S., Amritsar had also assessed the loss and report of

the assessment was forwarded to defendant No.2 along with the claim, but no action was taken.

5.3 It was further contended by the plaintiff that it was the responsibility of the defendants to protect the goods lying in the open at the Railway Station and so, the defendants are liable to make up for the loss. Notice under Section 80 of the Code of Civil Procedure as well as under Section 78B of the Indian Railways Act, 1961 were given to the defendants, but they failed to make any payment and hence the suit.

6. Defendants opposed the claim by submitting that valid notice within the prescribed period of 6 months from the date of booking, as required under Section 78B of the Indian Railways Act, 1890 had not been given by the plaintiff and so, suit was not maintainable. Besides, suit was even otherwise barred by limitation. It was submitted further that wagons containing the consignment duly arrived at the destination station on 15.5.1981 and the plaintiff had unloaded the same on 16.5.1981. It was the responsibility of the consignee-plaintiff to unload the same. The goods after unloading, were left at the railway station by the consignee at its own risk and so, the defendants were not under any obligation to supervise the same. Defendants further denied that any spark from the engine had caused fire. It was submitted that all the engines are provided with spark arrestors and that spark was purely accidental and beyond the control of the defendants, being an act of God and so, railways are protected under the provisions of Section 73(1) of the Indian Railways Act. Denying any negligence on its part and that defendant-department was not liable to pay any loss, defendants prayed for dismissal of the suit.

7. Necessary issues were framed. Evidence of the parties was taken on record. Trial Court came to the conclusion that gunny bags of the plaintiffs were not destroyed due to negligence on the part of the Railways-defendant and as such, plaintiff was not entitled to recover any damages from the defendants. Suit was also found to be barred under Section 78B of the

Railways Act and also barred by limitation. Based on these findings on the material issues, the suit was dismissed on 14.10.1995.

8. However, in the appeal filed by the plaintiff, the Appellate Court held that suit was not barred under Section 78-B of the Indian Railways (Amendment) Act, 1961, as the claim had been put up before the defendants by the plaintiff within six months. As such, suit was held to be maintainable. Suit was further held by the Appellate Court to be within limitation. As such, findings of the lower Court to the contrary were reversed. Still further, though the Appellate Court concurred with the finding of the trial Court to the effect that there was no negligence on the part of the defendants in causing fire to the gunny bags lying at the Railway Station, but it was held that defendants were still liable to pay damages under Section 77 of the Railways Act. As such, findings of the trial Court in this regard were also reversed. Consequently, the appeal was accepted. By setting aside the judgment and decree passed by the Trial Court, the suit of recovery of ₹2,27,556/- was decreed with costs along with interest @ 12% per annum from the date of institution of the suit till its actual realization.

9.1 Assailing the abovesaid judgment of the First Appellate Court, it is contended by Id. counsel for the defendants - appellants that once it was found that there was no negligence on the part of the railways-defendants in causing loss occasioned by fire to the gunny bags lying at railway station, it was not the liability of the defendants to pay any damages to the plaintiff.

9.2 Still further by referring to the testimony of the witnesses examined by the plaintiff, it is argued that the goods had reached the destination on 15.05.1981 and same were unloaded by the labour of the plaintiff itself on 16.05.1981. Once the goods were handed over to the plaintiff as the same were unloaded by its own staff, it was no longer the duty of the defendants to take care of the same. It was for the plaintiff to lift the gunny bags from the railway station.

9.3 Learned counsel for the appellants has also drawn attention towards the inquiry report Ex.P3, which was conducted by the railways and

which has been produced in evidence by the plaintiff itself, as per which, the incident of fire took place and the gunny bags were engulfed in the said fire on account of the smoking of the bidi/cigarettes by the staff/labour employed by the plaintiff for unloading the gunny bags on 17.05.1981. It is pointed out that gunny bags were lying at the distance of at least 70-80 yards from the railway line, at which the train engine had come. Besides, as per the evidence on record, every steam engine is provided with the spark arrestor and therefore, there was no question of the gunny bags having caught fire due to emission of sparks by the steam engine.

9.4 Still further, it is pointed out that incident of fire took place on 17.05.1981, when the cause of action arose in favour of the plaintiff for the first time. However, suit has been filed on 17.07.1984 i.e. much beyond the period of three years and as such, suit was time barred and that Appellate Court has reversed the finding of the trial Court in this regard without giving any reasons.

9.5 With these submissions, Id. counsel for the appellants prayed for setting aside the judgment passed by the First Appellate Court and to restore that of the trial Court dismissing the suit.

10. Refuting the aforesaid contentions, Id. counsel for the respondent - plaintiff argued that First Appellate Court has taken into consideration all the relevant factors in decreeing the matter and that there is no scope for interference.

11. I have considered submissions of both the sides and have appraised the record carefully.

12. It is not in dispute that goods in questions were booked for being carried from Howrah to Majitha vide Railways Receipts Ex.P1 and P2 issued on 29 & 30.04.1981. It is also undisputed that the goods reached at the destination station of Majitha on 15.05.1981 and the same were unloaded on 16.05.1981. It has not been disputed by the plaintiff-respondent that the unloading had taken place by the labours of the plaintiff itself on 16.05.1981

and then the said goods unloaded on 16.05.1981, were lying in the open area on the railway station. The incident took place on the next date i.e. 17.05.1981, when the goods lying at the railway station caught fire. Allegation of the plaintiff is that goods caught fire due to emission of some spark from the steam engine on 17.05.1981, which fact has been denied by the defendants.

13. It has been found by the Courts below that goods were lying at a distance of at least 70-80 yards from the railway line and so, it is just not possible that any spark from the steam engine could have fallen on the gunny bags of the plaintiff lying at the railway station and therefore, there was no scope of the said goods catching fire from any such spark. Plaintiff itself has placed on record the enquiry report Ex.P3, which was conducted by the railway administration, in which it has been found that fire incident took place due to throwing of some lighted bidis/cigarettes by the staff of the plaintiff itself.

14. In such circumstances, when both the Courts have found that there was no negligence on the part of the railway administration in causing the fire resulting in damage to the goods of the plaintiff, whether the defendants could be held responsible for paying any compensation?

15. Issue N: 3 before trial court pertained to validity of notice under Section 78B of the Railways Act; whereas, issue N: 6 pertained to limitation. Dealing with both these issues separately, Ld. Trial court held the suit to be bad for want of valid notice under Section 78B of the Railways Act and further held the suit to be barred by limitation. Both these issues were accordingly decided against the plaintiff. However, the appellate court dealt with both these issues together and reversed the findings.

16. It is noticed by this court that Section 78B of the Railway Act, 1890 and the issue pertaining to limitation fall in different spheres. Section 78B of the Railway Act, 1890 introduced by way of an amendment in 1961 reads as under: -

78B. *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, damage, deterioration or non-delivery 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-*

(a) to the railway administration to which the animals or goods were delivered to be carried by railway, or

(b) to the railway administration on whose railway the destination station lies, or the loss, destruction, damage or deterioration occurred, within six months from the date of the delivery of the animals or goods for carriage by railway:

Provided that any information demanded or inquiry made in writing from, or any complaint made in writing to, any of the railway administrations mentioned above by or on behalf of the person within the said period of six months regarding the non-delivery or delay in delivery of the animals or goods with particulars sufficient to identify the consignment of such animals or goods shall, for the purposes of this section, be deemed to be a claim to the refund or compensation."

17. Perusal of the aforesaid provision would reveal that a person will not be entitled for refund of overcharge or the compensation for the loss, destruction, damages, deterioration or non-delivery of the animals or goods delivered to be carried away, unless the claim is made in writing within six months. Meaning thereby, to seek overcharge or compensation, claim is to be made before specified railway authorities within 6 months from date of delivery of goods for carriage by railways. Unless compliance of this provision is made, any suit for recovery will not be maintainable.

18. In present case, goods were handed over by the plaintiff to the carrier i.e., railways on 29 & 30.4.1981 vide Ex.P1 & Ex.P2. It has not been disputed that claim in this case was submitted by the plaintiff to make good the loss on 01.07.1981 as per documents Ex.P2/1 and Ex.P2/4 i.e. within six months from the date of delivery. It is based upon this claim made by the

plaintiff that enquiry was conducted by the railway administration. Trial court only relied upon notice dated 9.4.1985 Ex.P5 sent to the defendants to hold the suit to be bad for want of valid notice under Section 78B of the Railways Act. Ld. Appellate court rightly held that for the purpose of Section 78B of the Act, relevant date is submission of claim to the specified authorities and not the date of serving the notice. As such, finding of appellate court on issue N: 3 to the effect that suit is not bad for want of notice under Section 78B of the Act, is upheld.

19. However, appellate court wrongly decided issue N: 6 pertaining to limitation alongwith issue N: 3. The period of six months as provided in Section 78B of the Act is only for maintaining the claim by a person, whose goods were booked by the Railway Administration for being carried away from one station to another. In case his claim for loss is not satisfied by the railway administration, such a person is required to file the suit for recovery of damages within limitation period.

20. In the present case, the fire incident took place on 17.05.1981 causing loss to the plaintiff and thus, cause of action for first time had arisen in favour of the plaintiff on 17.05.1981. Suit has been filed on 17.07.1984 i.e. beyond the period of three years. Ld. trial Court rightly held the suit to be time barred, but without looking into this aspect and by confusing with Section 78B of the Railways Act, the Appellate Court has drawn wrong conclusion that suit was within limitation. The said finding of the Appellate Court on issue N: 6 is hereby reversed and that of the trial Court is restored by holding the suit to be barred by limitation.

21. Proceeding further, the Appellate Court has held that even if there was no negligence on part of railways in causing fire resulting in loss to the goods of plaintiff, the railways cannot escape from its liability in view of Section 77 of the Act, which reads as under:

“77. (1) A railway administration shall be responsible as a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872, for the loss,

destruction, damage, deterioration or non-9 delivery of goods carried by railway within a period of thirty days after the termination of transit:

Provided that where the goods are carried at owner's risk rate, the railway administration shall not be responsible for such loss, destruction, damage, deterioration or non-delivery except on proof of negligence or misconduct on the part of the railway administration or of any of its servants.

(2) The railway administration shall not be responsible in any case for the loss, destruction, damage, deterioration or non- delivery of goods carried by railway, arising after the expiry of the period of thirty days after the termination of transit.

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22. As per aforesaid provision, as a normal rule, railway administration shall be responsible as a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872, for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway within a period of thirty days after the termination of transit. However, in case the goods are carried at owner's risk rate, the railway administration shall not be responsible for such loss, destruction, damage, deterioration or non-delivery except on proof of negligence or misconduct on the part of the railway administration or of any of its servants.

23. Sections 151, 152 and 161 of the Indian Contract Act, 1872 read as under:

***“151. Care to be taken by bailee.—**In all cases of bailment the 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.*

***152.Bailee when not liable for loss, etc., of thing bailed.—**The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.*

161. Bailee's responsibility when goods are not duly returned.—*If, by the default of 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."*

24. Section 77 of the Railways Act to be read with Section 151, 152 & 161 of the Contract Act would reveal that railways, as a carrier of goods entrusted to it by a party, is bound to take care of such goods like a bailee as a man of ordinary prudence would, under similar circumstances, take care of his own goods. However, in case the railways, as a bailee, has taken proper care of the goods as per Section 151 of the Contract Act, then it is not responsible for the loss, destruction or deterioration of the goods, unless there is a special contract to the contrary. The railways as a bailee is responsible for loss, destruction or deterioration of the goods only in case due to default of the railways, the goods are not returned, delivered or tendered at the appropriate time.

25. In the present case, factual position is not in dispute that the goods of the plaintiff - FCI reached the destination station-Majitha on 15.05.1981. The same were delivered to the plaintiff on the next date i.e. 16.05.1981, as plaintiffs through its labourers unloaded the goods, though left the same at the railway station itself. Once the goods were delivered to the plaintiff by the railways, Section 161 of the Contract Act to be read with Section 77 of the Railways Act, is not applicable.

26. Plaintiff has failed to produce or prove on record any special contract, due to which railways can be held responsible for the loss, destruction or deterioration of the goods, despite taking proper care. As has been held by both the Courts below, plaintiff failed to prove any negligence on the part of the railways in causing fire resulting in damage to the goods of the plaintiff.

27. Further, even as per proviso to Section 77 of the Railways Act, Railway Administration is not responsible for the loss, destruction or

deterioration or non-delivery except on the proof of negligence or misconduct on the part of Railway Administration.

28. Once it has been found that there was no negligence on the part of the railways, the defendants cannot be held to be liable for compensating the plaintiff for loss caused to the goods on account of incident of fire.

29. Consequent of aforesaid discussion, it is held that plaintiff-respondent is not entitled for any damages/compensation from the defendants-appellants. Even otherwise, suit filed by the plaintiff is barred by limitation and on this ground also, suit deserved to be dismissed.

30. In view of the aforesaid discussion, the present appeal is hereby accepted. The judgment passed by the First Appellate Court is hereby set aside and that of the trial Court is restored. Suit of the plaintiff-respondent is accordingly dismissed with cost. Decree sheet be prepared accordingly.

06.03.2025

Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>Yes</i>