

(1909) 09 MAD CK 0042
In the Madras High Court

A.A.A.R. Arunachellam Chettyar and Others

APPELLANT

Vs

The Madras Railway Company

RESPONDENT

Date of Decision : 22-09-1909

Acts Referred:

Citation : (1910) ILR (Mad) 120 : 3 Ind. Cas. 931

Hon'ble Judges : Sankaran Nair, J;Ralph Benson, J

Bench : Division Bench

Judgement

1. In this case the defendants, the Madras Railway Company, contracted to carry a consignment of cotton for the plaintiffs from Erode Station to

Kallai Station. The Company carried the cotton in an iron-covered goods wagon. When the train reached Kallai Station the wagon was not

detached but was, carried on a couple of miles to the next station (Calicut) where it was kept in the station-yard during the night to be sent back to

Kallai by another train in the morning. Smoke was seen to be issuing from the wagon and water had to be poured on it to quench the fire. When

the cotton, was delivered to the plaintiffs part of it was damaged by the fire and water. The plaintiffs' suit was for the compensation for this

damage. The defendants alleged that they were protected by the terms of the risk note, Exhibit-1, which is signed by the plaintiffs' consignor, and

formed part of the contract. The Courts below have found that there was no negligence on the part of the defendants. The argument urged by the

plaintiffs' Vakil before us is that the contract was to carry the goods from Erode to Kallai, and that as the defendants carried them, further, viz., to

Calicut, for their own convenience, that was done at their own risk, and they were not protected by the terms of the risk note. Both Courts have

found that the cotton was taken by the usual route adopted and publicly notified (Exhibit-IV) by the defendants as that by which goods booked

from Erode to Kallai are taken and that the defendants are protected by the terms of the risk note.

2. We think that the decision of the Courts below is right. In the risk note the plaintiffs' consignor says I the undersigned do, in consideration of

such lower charge, agree and undertake to hold the said Railway Administration and all other Railway Administrations working in connection,

therewith, and also all other transport agents or carriers employed by them respectively, over whose railways or by or through whose transport

agency or agencies the said goods or animals may be earned in transit from Erode Station to Kallai Station harmless and free from all responsibility

for any loss, destruction-or-deterioration of, or damage to, the said consignment from any cause whatever before, during and after transit over the

said railway or other railway lines working in connection therewith or by any other transport agency or agencies employed by them respectively for

the carriage of the whole or any part of the said consignment." Under the risk note the defendants are protected from damages caused "before,

during and after transit.

3. Having regard to the finding that the cotton was carried by the usual route adopted by the railway, we think that it must be: held that the damage

occurred "during" transit from Erode to Kallai within the meaning of the risk note. Even if it could be held that as the damage occurred after the

wagon first reached Kallai and had been carried beyond that station to Calicut the damage did not occur during" transit to Kallai, it would not be

possible to hold. that it did not in that view occur "after" transit to Kallai.

4. The words "before, during and after transit" seem to cover the whole period from, the time the goods were delivered to the defendants at Erode

up to the time of delivery to plaintiffs at Kallai.

5. The plaintiffs' Vakil has relied on the case of Sleat v. Fagg 24 R.R. 407 but we do not think that the case is on all fours with the present, case.

With reference to the plaintiffs' plea that they were not aware of the Railway Companies' arrangement that goods should be sent to Kallai via

Calicut, and that it was an. unreasonable arrangement imposing an extra, risk on them against which the risk note: would not protect the

defendants, we may refer to the observations of Mr. Justice Gibson in the case of *Tahiti v. London and North Western Railway Company*. 2 Ir.R.

22 where it was held that the consignor is bound to enquire as to trains and hour of arrival, and cannot, by omitting to do so, enhance the obligation

of the carrier, or submit the reasonableness of their ordinary traffic arrangements to the review of a jury. Juries would, of course, take different

views, according to the train service of their locality, and if the management of goods traffic depended on their decision, it would become a chads,

resulting in the ruin of the Company under an avalanche of litigation. Whether he enquire or not, every customer dealing with a Company is bound

not only by the ordinary route *Hales v. London North-Western Hail-way Company* 4 B.k 66 but also by the ordinary train arrangement and hours

of arrival according to which they profess to carry. This is distinctly laid down in the judgment in *Bollands*" Case 15 C.L.R. 560 and my own

decision in *M. Natty*'s Case 26 L.T.R. 138 is to the same effect."" On the ground that the defendants are protected by the terms of the risk note,

we dismiss the second appeal with costs.