
(1915) 03 CAL CK 0055
In the Calcutta High Court

Akhil Chandra Shaha and Others

APPELLANT

Vs

India General Navigation and Railway Co., Ltd., and Rivers
Steam Navigation Co., Ltd.

RESPONDENT

Date of Decision : 04-03-1915

Acts Referred:

Citation : 29 Ind. Cas. 260

Hon'ble Judges : Richardson, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is an appeal by the plaintiffs in a suit for damages. On the 7th April 1910, the plaintiffs made over to the defendants, who are common carriers, sixty bags of sugar for carriage from Calcutta to Jhalakati. The goods were received in the ordinary course of business and were placed on a flotilla for conveyance to the place of destination. On the 12th April, between 2-30 and 3 in the morning the flat, which carried the goods, struck a snag; the vessel thus sprang a leak and the sugar in the bags was spoiled by the water. The plaintiffs accordingly claim as damages the price of the sugar. The defendants plead non-liability by virtue of the condition printed on the back of the forwarding note. The Munsif decreed the suit, but on appeal the District Judge has dismissed it. On behalf of the plaintiffs the decision of the District Judge has been assailed as erroneous in law, and reference has been made to the provisions of the Indian Carriers Act, 1865, and to judicial decisions thereon.

2. Two principles applicable to cases of this description must now be accepted as firmly settled. The first principle is that a common carrier in this country is liable as an insurer, that is, he is responsible for the safety of the goods entrusted to him, in all events, except when loss or injury arises from act of God or King's enemies. But his liability for loss or injury in respect of the goods carried may be varied by contract. This is clear from the decision of a Full Bench of this Court in Moothora Kant Shaw v. India General Steam Navigation Co. 10 C. 166 : 13 C.L.E. 342 : 8 Ind. Jur. 247 as also from the decision of the Judicial Committee in

Irrawaddy Flotilla Co. v. Bhuwan Das v18 C. 620 : 18 L A. 121 and a recent decision of this Court in British and Foreign Marine Insurance Co. v. India General Navigation and Railway Co. 9 Ind. Cas. 364 : 38 C. 28 : 15 C.W.N. 226. The second principle is that the burden of proof of absence of negligence is upon the common carrier, on the theory that the loss or damage to the goods is prima facie proof of negligence. On this point it is sufficient to refer to the cases of Choutmull Doogttr v. Hirer Steam Navigation Co. 24 C. 786 : 1 C.W.N. 201 affirmed on appeal to the Judicial Committee in the River Steam Navigation Co. v. Choutmull Doogar 26 C. 3P8 : 26 I.A. 1 : 3 C.W.N. 145; Sesham Patter v. Moss 17 M. 445 and India General Steam Navigation Co. v. Bhagwan Chandra Pal 19 Ind. Cas. 245 : 40 C. 716 : 17 C.W.N. 632 17 L.J. 639.

3. Now, the fifth Clause of the conditions printed on the back of the forwarding note in the present case is in these terms: The Company will not be liable for the loss or damage to any property delivered to be carried, caused by the act of God, stress of weather, difficulties and casualties of navigation, or any accident of the rivers or navigation, or any other loss or damage of whatever nature or kind soever, unless such loss or damage shall have arisen from the negligence or criminal act of their servants or agents." The burden of proof is upon the defendants, carriers, to establish that the loss did not arise from negligence on their part. This point of view was apparently not fully appreciated by the District Judge, when he stated that in his opinion there was not sufficient evidence from which he could reasonably infer such negligence on the part of the servants of the defendants as would entitle the plaintiffs to damages. No question of burden of proof, however, really arises in this case, for as, was pointed out in the case of Central Oacliar Tea Co. v. River Steam Navigation Co. 24 C. 787 where evidence has been given on both sides of the circumstances under which the loss took place, and the Court has arrived at a finding upon the whole of such evidence, the question of burden of proof ceases to have any practical importance. Consequently, the ultimate point for consideration in the present case is whether the defendants have established absence of negligence on their part. This question requires consideration from two points of view, viz., in the first place, was the injury to the flat due to negligence of the servants of the carriers, and secondly, after the collision had taken place, was there any negligence on their part in their attempt to save the goods? As regards the first branch of this question, the District Judge has found that there was no evidence to show that the snag was visible at the time of the night the flotilla passed, and he has drawn the inference that the accident was not attributable to careless navigation. As regards the second branch, he has found that as soon as the collision had taken place, the serangs went into the port hole and found the water waist deep there. They at once not to work with the pumps and reduced the accumulation of water. This was clearly their first duty, and by the time this was done, a good deal of damage would necessarily have been caused to the sugar. Reference, however, has been made to the circumstance that the bags of sugar had been placed alongside some bags of soda and that the water which had passed through the

soda did greater damage to the sugar than might otherwise have happened. But we are unable to hold that this was an act of negligence on the part of the carriers; they were under no obligation to keep the bags of different articles in distinct compartments in anticipation of a possible accident. The conclusion follows that the finding of the District Judge that there was no negligence on the part of the carriers, does not involve any error of law.

4. It has been finally argued that the question whether there was or was not negligence on the part of the carriers under given circumstances, is always a question of law which can be determined by this Court in second appeal. We are unable to accept this contention as well founded on principle. The rule applicable to cases of this description was enunciated by Lord Cairn in the case of *Metropolitan Railway Co. v. Jackson* (1877) 3 A.C. 193 : 47 L.J.C.P. 303 : 37 L.T. 679 : 36 W.E. 175 in these terms: "It is indeed impossible to lay down any rule except that which at the outset I referred to, namely, that from any given state of facts the Judge must say whether negligence can legitimately be inferred and the Jury, whether it ought to be inferred." In other words, if the contention is that there is no evidence of negligence, the question is one of law for the Judge to decide; on the other hand, the question, whether the evidence is sufficient to justify the inference of negligence, is one of fact. The present case is clearly of the latter description.

5. The result is that the decree of the District Judge is affirmed and this appeal dismissed with costs.