
(1922) 12 PAT CK 0008
In the Patna High Court
Case No : Civil Rev. No. 212 of 1922

Badri Das

APPELLANT

Vs

The East Indian Railway Co.

RESPONDENT

Date of Decision : 04-12-1922

Acts Referred:

Citation : (1922) 12 PAT CK 0008

Final Decision : Dismissed

Judgement

Adami, J.—The petitioner sued the opposite party, the East India Railway Co., in the Court of the Small Causes to recover possession for the loss of three bags of sugar and portion of another big which had been consigned from Howrah to Patna to the address of the petitioner.

2. It appears that 125 bags of sugar were delivered to the Railway Co., at Howrah and a risk-note in form B was signed to cover the consignment. It is admitted that the bags were delivered to the Railway Co., and it is also admitted that on arrival of the consignment at Patna three bags were found to be missing and one bag had been cut and some of the contents abstracted.

3. In the trial Court the suit was dismissed as the Court found that under the terms of the risk-note the Railway Co. were not liable. The learned Vakil for the petitioner argues that as three complete bags were lost, the Railway Co. would be responsible for the loss and would be bound to pay compensation. The terms of the risk-note form B. are well known; they excuse the Railway Co. from all responsibility for any loss, destruction or deterioration of, or damage to a consignment from any cause whatever except for the loss of a complete consignment of one or more complete packages forming part of a consignment due either to wilful neglect of the Railway Administration, or to theft by or to the wilful neglect of its servants, transport agents or carriers.

4. Now in the present case it is quite true that there were three complete packages missing, but even so, the Railway Co. under the terms of the risk-note,

would not be responsible for the loss, unless the Court were satisfied that such loss was due to the wilful neglect of the servants of the Company, or to theft by its servants, or to wilful neglect of the Railway Administration. It fell, as has been settled by many decisions, on the petitioner to prove that the theft was due to wilful neglect or to theft by the servants of the Railway Administration, or wilful neglect of the Railway Administration. It is argued that the petitioner produced all the evidence that was possible for him to produce to show that the loss must have occurred during the time which the Railway Co had the consignment in its custody, and it is not denied by the Railway Co, that the loss must have occurred while the bags were in its custody, but this was not sufficient, the petitioner had to prove either wilful neglect or theft by the Railway servants. It is true that it is almost impossible in a case like this for a plaintiff to prove wilful neglect, but while the terms of the risk-note are such as they are, the Railway Co. will be absolved unless wilful neglect or theft by its servants is proved, and in this case the petitioner failed to prove wilful neglect. It has to be remembered that the goods were consigned at a cheaper rate in consideration of the risk-note, so that the petitioner must be held to have entered into the bargain with his eyes open.

5. It is then contended that, the terms of the risk-note cannot apply because there is no satisfactory evidence that the man who signed the risk note form was authorised by the petitioner to sign it. I do not think that this argument can affect the matter at all. It is not necessary for a Railway Co. when a person comes to consign goods, to enquire whether that person has been authorised to make the consignment. If a man comes forward and delivers goods for carriage and signs a risk-note, it cannot afterwards be complained by the owner of the goods that the man had no authority to sign the risk-note, and that the Railway Co. must be, therefore, held liable for any loss in spite of the terms of the risk note. If it was not one of the petitioners who consigned the goods under the risk-note, then it seems difficult to understand how the petitioners can claim that the goods were theirs and that the liability of the Railway Co. was to them. Such cases as these are hard on the consignee, but while the risk-notes remain in their present form, the hardship must still endure. The application must be rejected. Hearing fee two gold mohurs.