(1955) 10 AP CK 0037

In the Andhra Pradesh High Court

Case No : Civil Revision No''s. 247/4 of 1954

Balkishan APPELLANT

Vs

The Union of India (UOI) RESPONDENT

Date of Decision : 05-10-1955

Acts Referred:
Evidence Act, 1872 — Section 106, 72(2)

Citation : (1955) 10 AP CK 0037

Hon'ble Judges : Bilgrami, J

Bench : Single Bench

Advocate : Bishambar Dayal and Girja Pershad Sangi, for the Appellant; S.P. Shrivastava, for the Respondent

Judgement

Bilgrami, J.—This revision petition is directed against the judgment and decree of the Subordinate Judge of Secunderabad, dated 17-12-1953, dismissing the suit of the revision Petitioner against the Respondent, Central Railway, through the Union of India, for recovery of Rs. 220/- damages occasioned through the Railway transit of a consignment of 2 drums of mustard oil consigned from Cawnpore to Hyderabad. The Plaintiff''s case is that this consignment was booked from Cawnpore on 26-11-1949. It should have normally reached Hyderabad on 16-12- 1949, but it was not delivered till 18-1-50.

At die time of delivery, 2 mds., 4 srs. of the mustard oil was found short and the drums appeared to be cut and broken and were in a damaged condition. The Railway company denies negligence, but admits leakage and shortage. It is pleaded on its behalf that the execution of Risk-note (A) by the consignor protects it from any liability for the damages claimed by the Plaintiff. The lower Court found that the leakage was caused by defective packing and dismissed the suit; hence this revision petition.

2. If no risk-note is signed, then u/s 106, Evidence Act, it is for the bailee to whom the goods have been entrusted for delivery to prove that the loss caused was not through its negligence, as the matter lies especially within its knowledge

and it is not possible for the Plaintiff to prove what occurred during the transit to cause this loss. The authorities on this point are numerous. See in this regard - Jankidas Marwari Vs. Governor-General of India in Council and Another, and Secy. of State Vs. Kesho Prasad Sheo Prasad Belanganj (B).

The risk-note in this case has not been admitted by the Plaintiff and the Defendant did not adduce any evidence to prove it, therefore it cannot be taken into account for affecting the burden of proof, and liability of the Defendant. The learned advocate of the Railway relies on - Secy, of State v. Shibdayal Murliram AIR 1929 Lah 887(C); - Kundanlal v. Secy, of State AIR 1929 Lah 698(D) and - The East Indian Railway Co. Ltd. Vs. Ram Chabila Prasad, (E), and argues that if it is endorsed on the railway receipt that a certain risk-note has been executed, and if the charges of the Railway show that the goods have been consigned under that risk- note, it is not necessary to prove by any further evidence, the execution of such a risk-note.

These rulings undoubtedly lend support to the proposition on which reliance is placed by tile learned advocate of the Respondent, but I am unable, to agree with the opinion expressed in these rulings, in view of some later decisions of different High Courts in this country.

A Division Bench of the Patna High Court in Ram Das Ram and Others Vs. Dominion of India, (F), held that the mere charging of a lower rate would not take away the liability of the Railway company, unless the company brings itself within the provision of Sub-section (2) of Section 72. And further that an execution of a note of this nature is an exception to the ordinary responsibility of the Railway company, and the risk-note must be proved to have been duly executed.

A Single Bench of the Calcutta High Court in Bengal and North Western Railway Co. Ltd. Vs. Sobrati Mia and Others, (G), has held, that the endorsement on the railway receipt, and the fact that it was booked at a lower rate, are not sufficient to prove that the goods were consigned under a particular risk-note. The execution of the risk-note must be proved by independent evidence. The former decision of the same-High Court in The East Indian Railway Co. Ltd. Vs. Ram Chabila Prasad, (E), relied upon by the learned Advocate of the Respondent was dissented from.

Another case on the point is - Dominion of India v. Firm of Chhaganlal Premji AIR 1951 Nag 357 (2)(H), it was held that to establish that the goods have been consigned under a risk-note, a mere entry in the railway receipt would not be sufficient if the risk-note was available, because the risk-note would have been die best evidence of the contract. In this, case however the risk-note was not produced at all.

In a recent decision in - Hiralal v. Union of India AIR 1954 Ajm 67(I), it has also been held that the mere fact that a low rate was charged, does not take away the liability of the Railway company, unless the execution of the risk-note is proved. The railway receipts it was further held, are merely an evidence of die fact that certain goods were placed with the Railway and certain amount was paid as freight. A reference therein to any risk-note cannot be considered as a sufficient proof thereof. In view of these authorities I am not prepared to agree with the view taken in some of the cases relied upon by the learned Advocate of the Railway.

I am of opinion that when a direct evidence is available of any matter, it cannot be held as proved by indirect evidence. The railway receipt is merely an evidence that certain goods were consigned to the charge of the Railway for transit. Any endorsement thereon cannot be taken as a conclusive proof of the execution of any risk-note reducing the liability or the Railway and increasing the risks of the consignee.

I think that the principle on which these rulings relied upon by the counsel of the revision Petitioner proceed is sound and the correctness of it cannot be questioned. Since the risk-note is not proved and the Railway has produced no evidence to show that it was not due to its neglect that the loss was caused, I think, the suit of the Plaintiff should be decreed.

3. In the result, this revision petition is allowed and the suit of the Plaintiff is decreed to the extent of Rs. 220/- with 8 annas per cent per mensem interest from the date of the decree to the date of realisation and with costs throughout.

