
(1925) 12 CAL CK 0066
In the Calcutta High Court

Barada Chandra Dhar

APPELLANT

Vs

Assam Bengal Ry.

RESPONDENT

Date of Decision : 15-12-1925

Acts Referred:

Railways Act, 1890 — Section 72

Citation : AIR 1926 Cal 983

Judgement

1. This is an action against Defendant No. 1 (A.B. Railway Coy. Ltd.) and two others for recovery of compensation or price of two bales of cloth out of 8 bales delivered by the plaintiff to Defendant No. 1 for carriage to Chittagong. The plaintiff states, and it is not disputed, that he received 6 bales instead of 8 bales. The defence of the defendants is that they are not liable as the bales were sent from Chandpur in a sealed van and were stolen between stations Gunabati and Feni while the train was in motion. They deny any negligence or carelessness on their part. On these pleadings and the evidence the trial Court decreed the suit as against Defendant No. 1 alone who appealed to the District Judge who set aside the judgment of the trial Court and dismissed the plaintiff's suit with costs.

2. The plaintiff appeals and several grounds have been urged on his behalf, the most important being that the learned Judge has not found all the facts which it would be necessary to find before dismissing the plaintiff's suit. In our judgment there is great force in this contention. u/s 72 of the Railways Act the Railway Company have to take such care of the goods entrusted to them for carriage as would a bailee under the provisions of Sections 151 and 152 of the Indian Contract Act unless the consignment is made under a risk note which is not the case here. The bailee is required under Sections 151 and 152 of the Contract Act 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. There can be no question that as soon as the plaintiff proves that he consigned goods with the defendants for carriage and that a portion of them was lost in transit, the defendant company has to prove that they took such care as is defined in Section 151 of the Contract Act for the

goods bailed. Section 76 of the Railways Act is a statutory recognition of the principle which casts a burden upon the railway administration to account for such loss of goods; and it has also been judicially recognised that as soon as the plaintiff proves the consignment and the loss--and these facts are admitted in the present case--the onus of proving facts which would absolve the defendant company u/s 152 of the Contract Act is on the company. In *Hirji Khatsey & Co. v. B.B. & C.I. Ry. Co.*, [1915] 39 Bom. 191, Beaman, J., has observed that when anyone has entrusted goods to a Railway Company and those goods are lost, damaged or destroyed while in possession and under the control of the Railway Company, the fact of the loss, damage or destruction is enough to cast upon the company the burden of proving that that loss was not due to any negligence on its part. To the same effect is the observation in *Surendra Lal Chaudhury v. Secretary of State* [1917] Cri.L.J. 37, Mookerjee, J., observes that it is also clear that when goods have not been delivered to the consignee at the place of destination, the plaintiff need not prove how the loss occurred, the burden lies upon the bailee to prove the existence of circumstances which exonerated him from liability for the loss; and reliance was placed for this view on the decision of the Madras High Court in the cases of *Trustees of the Madras Harbour v. Best & Co.*, [1899] 22 Mad. 524 and *Sesham Patter v. Moss* [1894] 17 Mad. 445. The same view has also been taken by the Allahabad High Court in the case of *Nankuram v. Indian Midland Railway Company* [1900] 22 All. 361 where it is said that where goods are delivered to a Railway Company for carriage not at the owner's risk, and such goods are lost or destroyed while in the custody of the company it is not for the owner suing for compensation for such loss or destruction to prove negligence on the part of the company; but when the owner has proved delivery to the company, it is for the company to prove that they have exercised the care required by the Indian Contract Act of a bailee for hire. That being the law, we have to examine the judgment of the learned District Judge to find whether it is in conformity with the principles laid down above. The learned Subordinate Judge in the trial Court has found that the evidence adduced by the company was not adequate to discharge the onus cast upon them by law. The learned District Judge in the appellate Court has not come to any findings on that issue. All he finds is that it is not important to determine the question as to whether the wagon was sealed or not as it afforded no precaution against theft. Then he proceeds to meet the argument of the respondent, namely that the negligence of the company was proved by the fact that there was no padlock put on the doors of the wagon. This contention, the learned Judge meets by saying that it was not the practice of the Railway Company to put padlocks on the doors of wagons and that there is no evidence as to the frequency of running train thefts on the A.-B. Railway and he is not prepared to hold that the regular practice of the Railway Company of not putting padlocks on the doors of wagons amounts to negligence. This, in our opinion, does not sufficiently meet the demands of the present case. It may not be habit of the company to put padlocks on the doors of wagons but this fact alone does not necessarily show want of negligence on the part of the company. The observation that running

train theft cases are not frequent on the Railway lines may be one of the circumstances which may excuse absence of padlocks on the doors of wagons; but at the same time if there was any train theft on the line it may be presumed that the company should take precaution for such recurrence in future. This is a question of fact which the learned Judge was entitled to take into account. But he must find that the company was not negligent and that finding should be based on the evidence and the circumstances of this case. We are told that there is evidence that the wagon doors were bolted. No reference is made to this fact in the learned Judge's judgment and we do not know whether the bolting of the door was any security against theft. In order to non-suit the plaintiff and to absolve the defendants from legal liability to the consignor for lost goods it is necessary to find distinctly in the terms of Section 151 of the Contract Act that the company took all precautions which a prudent man would have done in respect of his own goods. This finding is wanting in the judgment of the learned Judge.

3. We are, therefore, of opinion that the decree of the lower appellate Court should be set aside and the case sent back to it so that the appeal may be reheard in the light of the above observation on the entire evidence on the record and we order accordingly. Costs will abide the result.