

(1928) 12 BOM CK 0014

In the Bombay High Court

Case No : Civil Revision Application No. 35 of 1928

B.B. and C.I. Railway

APPELLANT

Vs

Mahmadbhai Rahimbhai

RESPONDENT

Date of Decision : 14-12-1928

Acts Referred:

Citation : (1929) 31 BOMLR 616

Hon'ble Judges : Murphy, J; Amberson Marten, J

Bench : Division Bench

Judgement

Amberson Marten, Kt., C.J.—The plaintiff trader in this case having to send certain oranges over the G.I.P., and B.B. & C.I., Railways to Ahmedabad paid a special rate in order to ensure them being sent by a passenger or by a parcel train. The goods came over the G.I.P. Railway, and reached Surat on the B.B. & C.I. Railway. There the waggon containing the plaintiff's goods was detached, and was forwarded not by a parcel train, but by a goods train, and that goods train arrived at Ahmedabad, the final destination, some fourteen hours after the time at which the next parcel train would have arrived. Further, if the company had forwarded the goods from Surat by the next passenger train, then they would have arrived even earlier than by the next parcel train. The railway company rely in their defence on the risk note in form "H," and say they are thereby protected because there was no wilful neglect on their part.

2. Now, the learned Judge has taken the view that in forwarding these goods by goods train the railway company broke their contract, and that it was a material term of the contract that the goods being perishable goods should go by passenger or parcel-train. In this finding, he is clearly supported by the English authority of *Gunyon v. South Eastern and Chatham Railway Companies* Managing Committee [1915] 2 K.B. 370. There, there was a special contract to send cherries from Sittingbourne in Kent to Glasgow in Scotland by passenger train, for which a special rate was paid. The goods reached London by passenger train, but in transit to Glasgow they were sent by goods train owing, it was said,

to the loss of the consignment note. Deterioration resulted, and the Court held that the railway company were not protected by the risk-note in question, as it was a breach of their contract to send the goods forward by goods train.

3. There the terms of the risk-note purported to protect the railway company except against wilful misconduct on their part. Here, the terms of the suit risk-note do not protect the company against wilful neglect. But, as in the English case, it is not necessary to determine whether there was wilful neglect because there was a breach of the contract in sending the goods on by goods train, If the railway company had shown that no damage resulted to the plaintiff by this breach of contract (for instance, that the goods train containing his goods was one Railway which arrived before the next available passenger or parcel train would have arrived) then, it may be that the plaintiff would not be able to recover any damages, but the evidence as found by the learned Judge is to the contrary effect, viz., that the plaintiff's goods were damaged by arriving at least fourteen hours later than they otherwise would have done, if not more.

4. We have been referred to another case on the other side of the line in *Foster v. Great Western Railway* [1904] 2 K.B. 306 There, a consignment of fish was despatched from Brixham to Jersey via Southampton and, by mistake, the goods were not taken out at Exeter, but were allowed to go on to Taunton, where the mistake was discovered. The railway company with a view to minimise the loss, sent the goods forward by the alternative route to Jersey, viz., via Weymouth instead of via Southampton. Accordingly, although the goods did not arrive as quickly as they would have done by the Southampton route, yet the Court held that the mistake at Exeter was not due to wilful misconduct on the part of the railway company. And one can understand that the mere omission to take out the goods at Exeter would not necessarily amount to wilful misconduct within the terms of that particular risk-note.

5. But, the case here is different, for the railway company broke its contract by sending the goods by goods train, when they contracted to send them by passenger train or parcel train.

6. Under those circumstances, we think that in law there was evidence on which the learned Judge could find in favour of the plaintiff, and that in revision we ought not to interfere with his decision. The result will be that the rule will be discharged with costs as against the plaintiff. We have already held that defendant No. 2 (the G.I.P. Railway) was unnecessarily made a party to this application and that the rule must be discharged against defendant No. 2 with costs.

Murphy, J.

7. The railway administration rely on the argument that the risk-note, which was in form H, protects them; and on the contention that the sending of the goods, which had been booked by parcel or passenger train, by goods train from Surat to Ahmedabad with the good intention of saving time, is also a ground on which

the suit should not have been decreed against them. Actually the goods arrived at Ahmedabad on the morning of March 11, 1924, while had the waggon been kept at Surat and sent by the next parcel train, they would have arrived at Ahmedabad on the evening of the 10th.

8. I think that since the conditions of the contract as to the manner in which the goods were to be carried were not complied MAHMAPBHAI with, the goods are not covered by the risk-note in form H, and that this does not protect the railway administration. The delay was clearly due to the course adopted by the Station authorities at Surat, and, on the facts, it seems to me that the Small cause Court's decree is correct, that we should not interfere with it, and that the rule must be discharged with costs.