
(1939) 01 CAL CK 0006
In the Calcutta High Court

Bengal Nagpur Railway Co. Ltd.

APPELLANT

Vs

Balabux Narasaria and Others

RESPONDENT

Date of Decision : 31-01-1939

Acts Referred:

Railways Act, 1890 — Section 80

Citation : AIR 1939 Cal 377

Hon'ble Judges : Edgley, J

Bench : Division Bench

Judgement

Edgley, J.—This rule is directed against the decision of the learned Small Cause Court Judge of Bankura, dated 25th June 1938, in which he decreed in favour of the plaintiffs a suit brought by them for the recovery of damages in respect of certain goods which had been carried by the E.I. Ry. Company and the B.N. Ry. Company from Cawnpur to Bankura. The case for the plaintiffs as set forth in their plaint was to the effect that damage had been caused to their consignment of flour on account of wilful negligence of the railway staff at the despatching station, that is at Cawnpore. They went on to say that the staff at the despatching station did not care to examine the van before loading but wilfully and carelessly loaded the goods in a van, the roof of which was leaky and the doors and windows of which were in a broken and damaged condition. The findings of the learned Small Cause Court Judge of Bankura were to the effect that it had not been proved that the roof of the wagon leaked and that its doors and windows were broken when the consignment was loaded by the sender at Cawnpore. He found however that wagon No. 3722 B.N. was found to be defective when it arrived at Bankura; and he held that the defendant's servants did not take proper care of the consignment during transit. He further considered that the railway staff had been so negligent as to enable the plaintiffs to recover the damages which they claimed.

2. Having regard to the provisions of Section 80, Railways Act, the suit was brought by the plaintiffs against the E.I. Ry. Company and also against the B.N.

Ry. Company. The former railway was the one to which goods were delivered by the consignor thereof within the meaning of Section 80, Railways Act, and presumably the B.N. Ry. was added as a co-defendant, having regard to the latter portion of Section 80 of the Act, which enables a plaintiff to institute a suit of this nature also against the Hallway Administration on whose railway the loss, injury, destruction or material deterioration occurred. As against the E.I. Ry. Company, the plaintiffs' suit was dismissed on certain technical grounds with which we are not now concerned. From the nature of the plaintiffs' case, one would have expected their plaint to have contained express allegations of misconduct sufficient prima facie to render each of the railways liable in respect of the damages claimed. As the things stand however, the allegations with regard to the misconduct which are set forth in para. (6) of the plaint are directed only against the East Indian Railway Company and the plaint contains no other allegations of misconduct or negligence as against the Bengal Nagpur Railway Company. Further, there is no express allegation in the plaint to the effect that the damages sustained by the plaintiffs actually occurred while the goods were in transit on the Bengal Nagpur Railway line.

3. It is admitted in this case that a risk-note in form H was executed in respect of the goods which were the subject-matter of the plaintiffs' suit. This risk-note renders a Railway Administration free from all liability for any loss, destruction or deterioration of, or damage to all or any of the goods carried by them on account of any cause whatever, except upon proof that such loss, destruction, deterioration or damage arose from the misconduct of the Railway Administration's servants. Having regard, to the clear terms of the risk-note, it is obvious that a very heavy onus lay upon the plaintiffs to prove that the damage to the goods consigned by them was due to misconduct on the part of the servants of the railway. As far as the East Indian Railway Company are concerned, there is a clear finding in the judgment of the learned Small Cause Court Judge to the effect that the plaintiffs had failed to prove the misconduct alleged by them in para. 6 of their plaint. With regard to the Bengal Nagpur Railway Company there are findings of a general nature to which reference has already been made. In a case of this nature, it was pointed out by Suhrawardy J. in B.N. Ry. Co. Vs. Moolji Sicka and Co., that

the plaintiffs should prove not only that the wagon was found defective at the arrival station, but also that it was on account of the misconduct of the servants of the railway company that it was or became defective.

4. The findings, such as they are, are not sufficient to indicate that it was due to the misconduct of the servants of the Bengal Nagpur Railway Company that the wagon in which the goods were carried became defective. The main difficulty of the plain, tiffs however lies in the fact that in the plaint there is no express allegation of misconduct against the servants of the Bengal Nagpur Railway Company. In a case of this sort, in which the Railway Administration is partially protected by a risk-note in form H, it is, in my opinion, essential; that the

plaintiffs should expressly state in their plaint that there has actually been misconduct on the part of the servants of the railway company concerned and they should also set forth in their plaint in as full detail as possible the nature of the misconduct. Unless this is done, the defendant railway company will be put to a serious disadvantage by not knowing the precise case which they are called upon to meet. Further, in the case with which we are now concerned, in view of the fact that the suit had failed as against the Best Indian Railway Company, the plaintiffs could only succeed against the Bengal Nagpur Railway Company if they were able to show that the goods were damaged while they were in transit on the line of the Bengal Nagpur Railway: see *E.I. Ry. Co. v. Nope Chand Magniram* AIR (1914) Cal. 623. This they have not done.

5. Having regard to the considerations set forth above, in my opinion, the learned Small Cause Court Judge wrongly decreed the plaintiffs' suit as against the Bengal Nagpur Railway Company. In the result, this rule is made absolute with costs. The order of the Court below decreeing the plaintiffs' suit as against the Bengal Nagpur Railway Company is set aside and the plaintiffs' suit is dismissed. The hearing fee in this Court is assessed at two gold mohurs.