
(1961) 08 MP CK 0011
In the Madhya Pradesh High Court
Case No : S.A. No. 120 of 1960

Chhedilal Phoolchand

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 05-08-1961

Acts Referred:

Citation : (1961) J LJ 1339

Hon'ble Judges : P.R. Sharma, J

Bench : Single Bench

Advocate : K.S. Agarwal, for the Appellant; P.N. Bhargava, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Sharma, J.—This appeal arises out of a suit for recovery of the price of undelivered goods by the defendant-railways.

2. A bale of cloth was delivered to the Western Railway at Kalal for despatch to Gwalior. The consignment was in the name of the plaintiff. The evidence on record has established that the consignment was in fact loaded in a goods train which left Ajmer for Kishangarh. It did not stop anywhere after its departure from Ajmer till it reached a cutting near the Kishangarh Railway Station. A Watch and Ward man posted at this place noticed that the door of one of the wagons was lying open. He, therefore, informed the Guard. The wagon in question was sealed at Kishangarh and was checked when it arrived at Fulera railway-station. The consignment to the plaintiff was then found to be missing. These facts have been held as proved by the Courts below and it is not permissible for the appellant to challenge these findings of fact in second appeal.

3. The learned counsel for the appellant argued that the defendants had pleaded in their written statement that the bale in question was stolen between Gangdkheri and Kishangarh, while the train was in motion; whereas the evidence led by the defendants was to the effect that the goods train did not stop at any station between Ajmer and Kishangarh. This according to the learned counsel

amounts to an attempt to prove a case different from the one set up in the pleadings. I am afraid this contention of the learned counsel cannot be accepted. In the first place no objection was taken at the time when the defendants led evidence in order to show that the theft took place at some place between Ajmer and Kishangarh. None of the railway officials who were examined in this case were questioned as to the grounds on which the railway company had pleaded that the theft had taken place between Gangalkheri and Kishangarh. Had the goods train in fact stopped at Gengalkheri perhaps different considerations might have arisen and the matter would have called for some inquiry, but the evidence of the defendants is clear on the point that after the goods train left Ajmer railway station it stopped only at a cutting near Kishangarh. That being so the theft could have taken place anywhere between Ajmer and Kishangarh and the fact that someone entertained the idea that it took place between Kishangarh and the last previous station namely Gangalkheri cannot be a matter of much significance.

4. In the case of AIR 1937 152 (Privy Council) the Guard of the train was not examined. It was in this context that their Lordships observed that the railway-company was bound to disclose to the consignor "how the consignment was dealt with throughout the time it was in its possession or control." Evidently, their Lordships never intended to lay down that even when a train is in motion the railway-company must lead evidence to show how a particular consignment was dealt with.

In the present case the Guard has been examined and he has deposed that the train did not stop at any place till it reached the cutting at Kishangarh railway-station. This I believe to be sufficient evidence on the part of the railway to show that the consignment was dealt with till it was found to be missing.

5. The next point raised by the learned counsel for the appellant was that the railway company was bound to padlock the wagons in which the consignment was loaded and failure, on its part to do so amounts to misconduct, Reliance was placed by the learned counsel in support of this argument on *Bikramkishore Manikya Vs. Ali Ahmad*, .

6. In the present case the evidence goes to show that the wagon was sealed and revetted. It was observed in AIR 1935 206 (Lahore) that where the doors of the wagon are sealed and revetted the Railway Company shall be deemed to have taken all necessary precautions. Much water has flown under the bridge since the Calcutta case was decided and I am told the system of padlocking the wagons having been found to be unpracticable has in a large measure been abandoned. There is no evidence in the present case to show that the waggon in question had arrangements provided in it for a padlock or that the other wagons were similarly provided. In this context it is not possible on the basis of this fact alone to draw an inference that there was misconduct on the part of the railway administration. This fact does not seem to have presented itself to the mind of the plaintiff while cross examining the defence witnesses. This contention also of

the learned counsel cannot, therefore, be accepted.

No other contention was advanced in support of this appeal.

7. The result is that this appeal has no force. It is hereby dismissed with costs. Counsel's fee as certified or according to scale whichever is less.