

(1957) 01 PAT CK 0004
In the Patna High Court
Case No : A.F.A.D. No. 2177 of 1950

Choa Mahton

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-01-1957

Acts Referred:

Railways Act, 1890 — Section 72, 76

Citation : AIR 1957 Patna 475 : (1957) 5 BLJR 222

Hon'ble Judges : Ramaswami, C.J.; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : Lal Nrain Sinha and Rajendra Narain Sinha, for the Appellant; P.K. Bose, for the Respondent

Final Decision : Dismissed

Judgement

1. In this case the plaintiff, Choa Mahton, brought the suit on the allegation that on the 30th of October, 1946, a consignment of 69 bags of onions was despatched from Digha Ghat for being taken to Bhagalpur. The wagon in which the consignment was despatched happened to reach Patna on the same date, but owing to negligence on the part of the Railway Administration the wagon was delayed at Patna from the 30th October, 1946, to the 11th November, 1946. On the 12th November, 1946, the consignment reached Mikamah and on the 19th November, 1946, the consignment reached Bhagalpur. On the 21st November, 1946, the consignee refused to take delivery on the ground that the entire quantity of onions became decomposed and unfit for human consumption. The defendant Railway Administration thereafter buried the onions underground. The claim of the plaintiff is based on the allegation that the delay in transit was due to the misconduct of the Railway Administration. The main ground of defence was that there was no misconduct or negligence on the part of the Railway Administration and it was asserted that there was communal disturbance in Bihar and railway traffic was delayed for that reason. Both the lower courts accepted the case of the defendant and held that there was no misconduct or negligence

on the part of the Railway Administration and, therefore, dismissed the suit.

2. In support of this appeal the argument is put forward that the duty of disclosure lay upon the Railway Administration as to how the consignment was dealt with throughout the relevant period. It was argued that this duty has not been discharged by the defendant and a presumption must be drawn that there was negligence and misconduct on the defendant's part. It was contended that for the period from the 12th of November, 1946, to the 19th of November, 1946, there was no explanation offered by the Railway authorities and the register of movement of wagons has not been produced by the defendant. It was conceded on behalf of the appellant that there is a finding of the lower Courts with regard to the delay at Patna Junction that is, for the period between the 30th October, 1946, to the 11th November, 1946. The finding of the lower courts is that there was communal disturbance and there was delay of Railway traffic for this reason.

Counsel for the appellant did not challenge the finding of the lower courts that there was sufficient explanation offered by the defendant with regard, to the delay which took place at Patna Junction. But the point taken was that there was no explanation with regard to the delay which occurred at Mokamah. On behalf of the respondent, Mr. Bose said that this was a case of deterioration and not of non-delivery and, therefore, there was no duty upon the Railway Administration to disclose how the consignment was dealt with during the relevant period. The relevant portion of Risk Note form B is in the following terms:--

"We, the undersigned, do, in consideration of such lower charge agree and undertake to hold the said Railway Administration harmless and free from all responsibility for any loss, destruction or deterioration of, or damage to the said consignment from any cause whatever except upon proof that such loss, destruction deterioration or damage arose from the misconduct on the part of the Railway Administration or its servants; provided that in the following cases:--

(a) Non-delivery of the whole of the said consignment or of the whole of one or more packages forming part of the said consignment packed in accordance with the instructions laid down in the Tariff or, where there are no such instructions, protected otherwise than by paper or other packing readily removable by hand and fully addressed, where such non-delivery is not due to accidents to trains or to fire.

(b) Pilferage from a package or packages forming part of the said consignment properly packed as in (a), when such pilferage is pointed out to the servants of the Railway Administration on or before delivery, the Railway Administration shall be bound to disclose to the consignor how the consignment was dealt with throughout the time it was in its possession or control and, if necessary, to give evidence thereof before the consignor is called upon to prove misconduct, but, if misconduct on the part of the Railway Administration or its servants cannot be fairly inferred from such evidence, the burden of proving such misconduct shall lie upon the consignor".

We are of the opinion that the argument of the respondents is right and in the circumstances of this case there was no "non-delivery" within the meaning of proviso (a) to Risk Note form B. On the special facts of this case, therefore, there was no duty lying upon the Railway Administration to make disclosure as to the manner in which the consignment was dealt with. This legal position is supported by two authorities, (Hazi) Tilloin Mahammad Umar Buksh Vs. B.N. Ry. Co. Ltd., and Tilak Mahto Vs. Akhil Kishore and Others, . On behalf of the appellant reliance was placed upon the decision of the Nagpur High Court in S. Mohammad Nathoo v. Governor-General in Council AIR 1954 Nag. 337 (C). But that case must be distinguished for the reason that the goods were not actually delivered to the consignee by the Railway Administration and the consignment was dumped away as being rotten and unfit for human consumption. There was no offer on the part of the Railway Administration to deliver the goods to the consignee, and that is a material circumstance which distinguishes the Nagpur case from the present case. In our opinion, the present case falls within the principle of the decision of the Calcutta case (Hazi) Tilloin Mahammad Umar Buksh Vs. B.N. Ry. Co. Ltd., , which is a decision of Rankin, C. J. and C. C. Ghose, J., and we hold that this is not a case of "non-delivery" within the meaning of proviso (a) to the Risk Note form B. It follows therefore, that there was no duty cast upon the Railway Administration to make a full disclosure of the manner in which the consignment was dealt with throughout the time of the transit.

3. Even assuming in favour of the appellant that this is a case of non-delivery and not merely of deterioration and there was a duty cast upon the Railway Administration to make a disclosure, we are satisfied that in the circumstances of this case the duty has been discharged by the defendant. We have already said that for the period from the 30th October, 1946, to the 11th November, 1946, the Railway Administration explained that there was communal disturbance and, therefore, there was delay in despatching the consignment from Patna. With regard to the delay at Mokamah Ghat from the 12th November 1946, to the 19th November, 1946 documentary and oral evidence was produced on behalf of the Railway Administration. The Railway Administration examined witnesses like D. W.'s 3, 4, 5 and 6, to prove how the consignment was dealt with at Mokamah. D. W. 5 proved the entries, Exhibits E(3) and E(4), entries in the Number Taker's book, to show when the wagon reached Mokamah station and when the wagon was despatched from Mokamah station. The evidence on this point has been accepted by the lower appellate court and there is a finding of the lower appellate court that there is no misconduct on the part of the Railway Administration with regard to the delay which occurred either at Patna Junction or at Mokamah. It was argued on behalf of the appellant that the Railway Administration should have produced the register of movement of wagons in order to support their case. But it does not appear that the appellant made a request to the trial court or to the lower appellate court calling upon the Railway Administration to produce this register. It is, therefore, not open to the appellant

to make a grievance of this in the High Court at the stage of the second appeal. The procedure in a case of this description has been laid down by the Judicial Committee in AIR 1937 152 (Privy Council) . In the course of the judgment in that case Lord Thankerton stated on pages 153-154:--

"At the close of the evidence for the administration two questions may be said to arise, which it is important to keep distinct. The first question is not a mere question of procedure, but is whether they have discharged their obligation of disclosure, and, in regard to this, their Lordships are of opinion that the terms of the Risk-note require a step in procedure, which may be said to be unfamiliar in the practice of the Court, if the consignor is not satisfied with the disclosure made, their Lordships are already of opinion that it is for him to say so, and to call on the Administration to fulfil their obligation under the contract, and that the Administration should then have the opportunity to meet the demand of the consignor before their case is closed; any question as to whether the consignor's demands go beyond the obligation should be then determined by the Court. If the Administration fails to take the opportunity to satisfy the demands of the consignor so far as endorsed by the court, they will be in breach of their contractual obligation of disclosure".

We are satisfied, therefore, that in the circumstances of the present case the Railway Administration had satisfied the duty which lay upon them under proviso (a) to Risk Note form B and that the finding of the lower appellate court that there was no misconduct or negligence on the part of the Railway Administration is not vitiated by any error of law.

4. For these reasons we hold that there is no merit in this second appeal and we dismiss it with costs.