

(1922) 07 AHC CK 0060
In the Allahabad High Court

Devi Deen and Sons

APPELLANT

Vs

Rohilkhand and Kumaun Railway

RESPONDENT

Date of Decision : 05-07-1922

Acts Referred:

Citation : AIR 1923 All 342 : 75 Ind. Cas. 669

Hon'ble Judges : Kanhaiya Lal, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Kanhaiya Lal, J.—The plaintiffs are a firm of drapers, carrying on business at Naini Tal. On the 7th of August 1918 a consignment of cloth, weighing 26 seers, was sent by the firm of Chandu Lal-Munna Lal from Meerut to Naini Tal. The parcel arrived at Naini Tal on the 10th of August 1918; but the plaintiffs found that it weighed only 10 seers. On the 16th August 1918 they wrote to the defendant Railway, Company to give them open delivery as early as practicable. The Station Master states that he told the consignee to write to his head office, as he was not authorised to give open delivery. About two or three weeks later Mr. Vaughan, the Manager of Messrs. Smith, Rodwell & Co., came to the Railway premises and, according to the Station Master, the parcel was opened in his presence and was found to contain two pieces of cloth. The consignee said that there ought to have been three pieces and wrote on the Railway Receipt that out of three pieces one piece was wanting, but Mr. Vaughan, who was acting for the defendant Railway Company, refused to deliver the parcel until a note was made to the effect that the package was in good condition. The consignee refused to make that note and the parcel remained undelivered. Subsequently, the parcel was sent by the Railway Authorities to the Lost Property Office at Bareilly. On the 3rd February 1919 the Traffic Superintendent of the defendant Railway wrote to the plaintiffs, asking them when they proposed to call at the Lost Property Office to take delivery of the parcel, suggesting at the same time that the parcel would be sent to Naini Tal, if they were willing to pay the freight. The parcel was sent

thereafter to Izzatnagar. On the 20th May 1919 the Traffic Superintendent of the Rohilkand and Kumaun. Railway again wrote to the plaintiffs, reminding them that they had not called at the Lost Property Office at Izzatnagar to take delivery, as arranged, nor intimated that they were willing to pay the freight charges for the despatch of the parcel to Naini Tal for delivery, and asking them to send the original sender's beejuk in a registered cover to enable them to check the contents prior to the despatch of the same to Naini Tal at their expense. The plaintiff states that they sent the original beeiuk thereafter to the defendant Railway Company and that, when the latter took no action in the matter, the present suit was filed for the recovery of the price of the goods consigned with damages.

2. The Courts below have dismissed the claim, holding that it was barred by limitation. There can be no question that the consignment weighed 36 seers, when originally consigned, for that is the weight given in the original Railway Receipt. The plaintiffs were willing to take delivery of the consignment after making a note on the Railway Receipt that they had received two pieces and that one piece, worth Rs. 35, was missing. In fact, a note to that effect exists on the Railway Receipt, which appears to have been presented on the 26th August 1918; but the Station Master, or the Agent of Messrs. Smith, Rodwell & Co., who was in charge of the Parcel Office, refused to deliver the same unless a clear receipt was granted stating that the parcel was not in a damaged condition. This is practically admitted in paragraph 2 of the written statement. After the parcel had been opened and its contents checked, there was no reason for the Railway Company to have refused delivery till the grant of a clear receipt as to its condition. The beeiuk filed shows that the consignment contained three pieces of Kashmira cloth and two dozen Jharans; but when the parcel was opened on the 26th August 1918 it was found to contain only two pieces of tweed and one dozen Jharans. One piece of Kashmira and one dozen Jharans were evidently found missing.

3. The question for consideration is, whether limitation should be computed in these circumstances from the 26th August 1918 when the plaintiff ascertained the loss and the delivery was not made, or from the 10th August 1918 when the parcel first arrived. The parcel was short in weight when it came; but the right to claim compensation for the loss of the goods accrued when, on the parcel being opened, it was found that certain articles were wanting. The occurrence of the loss could not have been definitely ascertained or brought home before the 26th of August 1918 and the claim of the plaintiff was, therefore, within time. As the suit was decided by the Courts below on a preliminary point, the appeal is allowed and the suit remanded to the Court of first instance with directions to reinstate, it under its original number and to dispose of it after determining the other points involved in the manner provided by law. The costs here and hitherto will abide the result.