

(1922) 11 AHC CK 0082
In the Allahabad High Court

Dukhi Ram Barai

APPELLANT

Vs

B.N.W. Railway

RESPONDENT

Date of Decision : 23-11-1922

Acts Referred:

Railways Act, 1890 — Section 77

Citation : AIR 1923 All 145 : 73 Ind. Cas. 440

Hon'ble Judges : Ryves, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Ryves, J.—This is an application in civil revision filed by the plaintiff to set aside the decree of the Judge of the Small Cause Court at Azamgarh. Two consignments of betel leaves were delivered to the Bengal Nagpnr Railway at their station of Danton in the Midnapur District to be conveyed to the plaintiffs who are pan sellers at Mau in the Azamgarh District. The consignments travelled from Danton to Howrah over the B.N. Railway, a distance of 104 miles. From Howrah they were sent to Moghal Sarai on the E.I. Railway 418 miles. From Moghal Sarai to Benares they were carried for a distance of 10 miles over the O. and R. Railway and from Benares to Mau they were carried by the B. and N.-W. Railway, a distance of 58 miles. There was considerable delay in transit and when the goods arrived at Mau they were found to be in a rotten condition and the plaintiff refused to take delivery. He then entered into correspondence with the authorities of the B.N. Railway, the E. I. Railway Company and the B. and N.-W. Railway, but failing to get redress he brought this suit in the Court of Small Causes at Azamgarh against the B.N. Railway, E.I. Railway Company and B. and N.-W. Railway claiming Rs. 204 damages. All three defendant Companies contested the suit. The learned Judge has held that the goods were delivered to the B. N. Railway at. Danton as alleged and that when they arrived at Mau they were rotten. He has also held that it is not proved that the damage was caused to the goods while they were being carried either by the E.I. Railway or the B. and N.W. Railway. He, however, has dismissed the suit on technical grounds

which seems to me to be wrong. He has held, in the first place, that no notice such as is required by Section 77 of the Indian Railways Act was served on the defendants. There was evidence of the plaintiff's son that notices were sent by registered post to the Agents of all three Railways. There is on the record the registered receipt of the Agent of the B.N. Railway. The Judge holds that it is not proved that registered receipt was for the notice sent by the plaintiff. If it was not for that notice, it is hard to conceive for what it was. The plaintiffs swear that it was and it seems to me almost farcical to hold that any further proof was required as there was no cross examination, besides which there are letters on the record from the B. and N.-W. Railway actually making an admission that they were prepared to pay a small sum in full satisfaction of the plaintiff's claim. In the face of letters on the record it seems to me impossible to hold that notice was not sent within the meaning of Section 77 of the Act. Another ground on which the learned Judge has dismissed the suit is that the amount of the damages is not proved. The plaintiff sought to prove it by producing the invoices sent to him by the consignors showing that the value of the goods amounted to Rs. 204. The Judge holds that this is not legally admissible evidence of the value. It is prima facie evidence of what the plaintiff was charged for the goods and what presumably he would have to pay for them and in the absence of cross-examination, in my opinion, it is perfectly admissible evidence and it would not be necessary to call the consignors and put them into the box to prove what was the actual value of the goods sent. It has been found that the goods were irretrievably damaged and, therefore, I think the plaintiff is entitled to a decree. I hold that the amount of the damage was, as sworn by the plaintiff, and corroborated by, the invoices, Rs. 204. On the finding that it has not been proved that the damage was caused during transit over the lines of the first and second defendant I think that u/s 80 the B.N. Railway are liable. I, therefore, allow this application. I dismiss the suit as against the B. and N.W. Railway and the E.I. Railway but I decree it against the B.N. Railway with costs in both Courts.