
(1922) 01 AHC CK 0067
In the Allahabad High Court

East Indian Railway and Another

APPELLANT

Vs

Firm Inderman Tulshi Ram

RESPONDENT

Date of Decision : 04-01-1922

Acts Referred:

Railways Act, 1890 — Section 72

Citation : (1922) 01 AHC CK 0067

Hon'ble Judges : P.C. Banerji, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.C. Banerji, J.—The admitted facts of this case are these, A consignment of 182 bags of maize was made at Barnala Railway Station on the North Western Railway for despatch to the plaintiffs at Aligarh, The goods were despatched from that station on the 5th of January 1920, the date on which the consignment was made. They had to be carried over a part of the East Indian Railway and the goods had to pass two junction stations, namely, Allal Junction and Delhi Junction. They arrived at Aligarh on the 30th of January and were delivered to the plaintiffs on the 4th of February 1920. In the meantime, the market had fallen and the plaintiffs state that by reason of the delay in the delivery of the goods they sustained loss and accordingly they claimed damages from both the Railway Companies. It was admitted on behalf of the Railway that, ordinarily, it takes from 7 to 10 days for any consignment delivered at Barnala to arrive at Aligarh. So that, admittedly, there was a delay of at least 15 days. It was urged in the Court below on behalf of the defendants" that there was no specific time agreed upon for the delivery of the goods, and that, therefore, the defendants were not responsible for any loss which may have accrued to the plaintiffs by reason of the delay in the delivery of the goods. It was also stated in the Court below that an axle had got heated and that for that reason the goods had to be detained at the Allal Junction Station and this was the cause of the delay in the arrival of the goods. On the point last mentioned no evidence was given in the Court below. That Court made a decree in the plaintiffs" favour for a part of the

claim. It is contended in this Court that the goods were consigned under a Risk Note, Form A; that paragraph 9 of that Note provided that the goods were to be carried by the Railway subject to the rules contained in the Goods Tariff Regulation; that paragraph 40 of those rules provides that the Railway was not responsible for the arrival of the goods within any definite time, and that, consequently, the defendants were not responsible to the plaintiffs for any loss sustained by reason of the delay in the delivery of the goods. There is nothing on the record to show that a Risk Note in Form A WAS signed by the consignor. No Risk Note was produced nor was the Railway receipt granted to the consignor filed by the defendants in the Court below. Therefore, there was no evidence before that Court to show that the goods were consigned subject to the notice alleged to be contained in Risk Note, Form A. If the goods were not despatched under a Risk Note of the description, the contract between the parties could not be said to be a contract under which goods were to be carried subject to Clause 40 of the Goods Tariff Regulation. In the absence of evidence to this effect the ordinary rule applicable to a bailee would be applicable to the present case, u/s 72 of the Railways Act, 1890, Section 161 of the Contract Act would govern the liability of the Railway. Under that section the Railway would be responsible for delay in the delivery of goods at the proper time. In the present case, according to the admission made on behalf of the Railway in the Court below, the proper lime for the delivery of the goods was seven to ten days from the date of the consignment of the goods. Therefore, there was a delay of about 15 days in the delivery of the goods, and if any loss was sustained by the plaintiffs by reason of this delay, the plaintiffs would be entitled to be compensated for the loss. Furthermore, u/s 46 of the Contract Act the contract had ordinarily to be performed within a reasonable time. It was, therefore, necessary for the defendants in this case to prove that there were valid reasons which prevented them from delivering the goods at a time when they would ordinarily have been delivered. No such evidence was adduced. Therefore, in the absence of the alleged Risk Note or of any proof to show that the goods were despatched at the risk of the consignor or consignee, or that any notice was given that the goods were to be carried subject to the rules contained in the Goods Tariff Regulations, the Court below was justified in making a decree in favour of the plaintiffs. This application must, therefore, fail and I dismiss it with costs.