

(1925) 05 AHC CK 0013
In the Allahabad High Court

East Indian Railway

APPELLANT

Vs

Brij Kishore

RESPONDENT

Date of Decision : 25-05-1925

Acts Referred:

Citation : (1925) 05 AHC CK 0013

Final Decision : Dismissed

Judgement

1. This is a revision by the East Indian Railway Company from a decree for damages passed by the Court of Small Causes at Bareilly. The learned Judge has overruled the objection of the Railway Company that they were protected by the risk note, Form "B" on the ground that person who delivered the goods to the Company and signed the risk note was neither a consignor nor his authorized agent. There was a further defence by the Railway Company that the goods were lost in a running train robbery. The learned Judge has decided that issue in the negative.

2. It is impossible to uphold the view of the Court below that the risk note is not binding on the consignor merely because it was not signed by him or his authorized agent. Section 72, Sub-section (2) of the Indian Railways Act provides that such agreement should be in writing signed by or on behalf of the person sending or delivering to the Railway Administration. It is therefore, clear on the language of the section that the signature of the person who delivers the goods would be quite sufficient. This was the view held by a Bench of this Court of which one of us was a member in the case of Gopal Rai, Phul Chand Vs. The Great Indian Peninsula Railway Company, and subsequently followed by this very Bench in S.A. No. 1145 of 1924, decided on the 5th of November, 1924.

3. We, however, feel that it is impossible to interfere in revision in face of the finding that the defendant has failed to lead any evidence which would show that the consignment in question was contained in the wagon of which the seal was found broken. The learned Judge has commented on the paucity of the evidence and has finally remarked that if the defendant wanted to prove it, it should have

taken necessary steps to have the original report filed and to prove that the consignment belonging to the plaintiff was in the wagon which was broken open by thieves.

4. The plaint was framed as one for recovery of damages for short delivery. There was no admission in the plaint that loss to the Company had occurred. The loss referred to there clearly meant the loss to the plaintiff. It has been held in several cases, e.g., *The Secretary of State for India in Council Vs. Firm Jiwan and Abdullah*, and *East Indian Railway Company Vs. Firm Kishin Lal Tirkhamal* that the Company cannot claim exemption under the risk note unless it establishes that the goods have actually been lost to the Company. The revision is accordingly dismissed with costs.