
(1926) 06 PAT CK 0011
In the Patna High Court

East Indian Railway Co. Ltd.

APPELLANT

Vs

Kedarnath Seth and Another

RESPONDENT

Date of Decision : 29-06-1926

Acts Referred:

Railways Act, 1890 — Section 80

Citation : AIR 1927 Patna 344

Hon'ble Judges : Adami, J

Bench : Division Bench

Judgement

Adami, J.—The respondents in this second appeal are merchants in Daltonganj and had a bale of cloth consigned from the Victoria Terminus, Bombay, to their firm at Daltonganj, The bale of cloth was never delivered and the respondents, therefore, instituted a suit joining the G.I.P. Ry. Co. and the E.I. Ry. Co. as defendants since part of the route from Bombay to Daltonganj would lie over the B.I. Ry.

2. In the plaint the plaintiffs stated that the defendant companies had failed to give them delivery of the bale, which was worth Rs. 793 and that the non-delivery was due to the wilful negligence and misconduct on the part of the employees of the railways. They asked that the defendants should be required to deliver to them the bale of cloth with compensation or that they should be ordered to pay to the plaintiffs the sum of Rs. 793 with interest.

3. The two railway companies put in a joint written statement in which they pleaded that they were not liable for any loss as the consignment was booked and carried at a reduced rate of freight under risk note form B. They denied that there had been any wilful negligence or misconduct as alleged in the plaint.

4. The Munsif dismissed the plaintiff's suit, finding that a risk note in form B had been executed and that, there fore, the railway companies were not liable. He relied on oases decided by this Court on the points raised in the suit.

5. The plaintiffs then filed an appeal before the Subordinate Judge making the

E.I. Ry. Co. alone respondent to the appeal. The learned Subordinate Judge has reversed the finding of the Munsif and has relied on cases of the Allahabad High Court and also seems to have followed certain decisions of this Court. The learned Subordinate Judge found that though the plaintiffs denied that the risk note had been signed with their authority it had in fact been so signed.

6. The point on which this appeal must succeed is that the plaintiffs appellants in the lower appellate Court failed to join as respondents the G.I.P. Ry. Co. and directed their appeal only against the E.I. Ry. Co.

7. The goods were consigned under contract with the G.I.P. Ry. Co. There is no finding or allegation that the bale was in fact lost in course of transit on the E.I. Ry. or that the non-delivery was by the E.I. Ry. Co. The contract being with the G.I.P. Ry. Co. and the complaint being that the goods had not been delivered, the E.I. Ry. Co. alone could not be made liable or be made liable at all. Section 80, Indian Railways Act makes this quite clear.

8. The suit as framed by the plaintiffs should have been brought against the G.I.P. Ry. Co. and it was as against the G.I.P. Ry. Co., that the appeal should have been filed. It is unnecessary to enter into the question as to the liability of the railway companies for the loss or non-delivery or even the question of wilful neglect in this case. The decree of the lower appellate Court against the present respondents, the E.I. Ry. Co. must plainly be set aside, because the E.I. Ry. Co. could not be liable alone for the non-delivery of the goods.

9. This appeal is allowed, the decree of the lower appellate Court set aside and the suit dismissed with costs throughout.