

(1917) 03 AHC CK 0012
In the Allahabad High Court

East Indian Railway Company

APPELLANT

Vs

Messrs Nathmall Behari Lal

RESPONDENT

Date of Decision : 12-03-1917

Acts Referred:

Railways Act, 1890 — Section 72(a)

Citation : 39 Ind. Cas. 130

Hon'ble Judges : Henry Richards, C.J.; P.C. Banerji, J

Bench : Division Bench

Judgement

1. This is an application for revision seeking to set aside the decision of the Small Cause Court Judge at Cawnpore. The only facts before the Court are admitted. A consignment of sugar was sent from Dehri on the Soan to Cawnpore; apparently after the waggon was loaded the doors were duly sealed in such a way that the Railway servants would be able to see whether or not the waggon was entered in the course of transit. From time to time during the journey this waggon and the other waggons composing the train were examined and the seals found intact. The examination continued until the last station but one before the arrival of the train at Cawnpore. At this last examination the seals were still found intact but on the arrival of the train in Cawnpore the seals of the doors on five waggons were found to have been broken and six of the bags of sugar consigned by the plaintiff were found missing. The plaintiff had entered into a contract with the Railway at the time the goods were consigned in. what is called "Risk Note, Form H." By this contract the plaintiff in consideration of payment of freight at a lower rate agreed to hold the Railway harmless and free from all responsibility for any loss, destruction or deterioration of, or damage to, all or any of such consignments from any cause whatever, except for the loss of a complete consignment Or one or more complete packages forming part of the consignment due either to the wilful neglect of the Railway Administration or to theft or to the wilful neglect of its servants, transport agents or carriers employed by them before, during and after transit over the Railway. This contract is admittedly a valid contract within the meaning of Section 72 of the Indian Railways Act,

Clauses (a) and (b). The plaintiff brought the present suit claiming Rs. 175-11-0 compensation for loss of the sugar. The Railway relied on the terms of the special contract entered into. The learned Judge of the Small Cause Court decided in favour of the plaintiff, chiefly relying on an unreported decision of a single Judge of this Court in which under very similar circumstances it was held that the Railway was liable. It seems to us that unless it could be shown in the present case either that the loss was caused by the theft by one or more of the Railway servants, or unless it could be shown that the loss was caused by their wilful neglect, the Railway were not liable, having regard to the contract entered into with them by the plaintiff. It is said that the onus of showing that the loss was not so caused lay on the defendants. We think that this contention is not well founded, on the contrary that the Railway were not liable unless the plaintiff could show that the loss was occasioned, by the theft or wilful neglect of the Railway servants. The respondents' Vakil has cited the case of *Bengal and North-Western Railway Company v. Haji Mutsaddi* 7 Ind. Cas. 160 ; 7 A.L.J. 833. That was the case of a second appeal in which there had been a finding by the lower Appellate Court that the Railway were guilty of wilful neglect in the manner in which they secured the doors of the wagons. This was a finding of fact which was binding on this Court in second appeal. The case, therefore, affords us no help in the decision of the present case. On the other hand the appellants rely on the case of *Sheo Barat Ram v. Bengal and North-Western Railway Company* 15 Ind. Cas. 56 ; 16 C.W.N. 766, in which it was held that in a case where the consignor has entered into a special contract like the present the onus lies on him of bringing the case within the proviso mentioned in the contract. The learned Small Cause Court Judge has thought that the expression robbery from a running train" did not mean an ordinary theft in a running train, but had reference to "robbery" as defined in the Penal Code. It is perhaps unnecessary for the decision in the present case, but we doubt very much whether the expression "robbery from a running train" in the contract means anything else than an ordinary theft. Under the circumstances of the present case as proved in the Court below, we consider that no Court could hold that the loss was due either to a theft by the Railway servants or to their wilful neglect. We allow the application, set aside the decree of the Court below and dismiss the plaintiffs' suit. The parties will abide their own costs in both Courts.