

(1923) 05 PAT CK 0015

In the Patna High Court

East Indian Railway Company Ltd.

APPELLANT

Vs

Gopi Ram Gourishankar

RESPONDENT

Date of Decision : 30-05-1923

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25
Railways Act, 1890 — Section 77, 80

Citation : AIR 1924 Patna 315

Hon'ble Judges : Macpherson, J

Bench : Division Bench

Judgement

Macpherson, J.—In this case interference is sought by the East Indian Railway Company u/s 25 of the Provincial Small Cause Courts Act with the decision, dated the 11th July, 1922, of the Small Cause Court of Gaya, whereby that Court decreed the opposite party's suit against the petitioner Company for Rs. 541-8, being the value of loss of one bale of cloth Rs. 399-1, profit thereon, Rs. 25 in interest at 12 per cent, Es 41 with costs Rs. 64-6, or a total of Rs. 529-7, on the ground that it is not according to law.

2. The opposite party consigned by rail from Ahmadabad to Gaya thirteen bales of cloth of which twelve bales were delivered to the plaintiff by the petitioner Company at their Station at Gaya on the 30th April, 1921, and one bale has never been delivered. The suit was framed as one for non-delivery of that bale, which was alleged to be due to the unlawful negligence of the Bombay Baroda and South Indian Railway, and/or the East Indian Railway or their servants or theft by their servants; advisedly, loss was not alleged and no evidence of negligence of theft was adduced. The defence was, first, that the claim was barred by Sections 77, 80 and 140 of the Railway s Act; secondly, that the bale in suit was lost, and that the loss was not due to the wilful negligence of or theft by the servants of the Company and, finally, that the consignment was booked under Eisk Note, Form B, on condition of a specially reduced rate of freight so that the Railway Company was not liable for loss or non-delivery. The suit was decreed against the petitioner Company only.

3. The Judge, relying upon a dictum in *East Indian Railway Co. v. Kali Charan-Ram Prashad* 1922 Pat. 106 held that no notice u/s 77 of the Railways Act was necessary, a suit on the ground of non-delivery only not being barred by that provision. The evidence on behalf of the East Indian Railway Company was that the full consignment started safely from Moghul Sarai by night train and that when the train arrived at Majhwar, the next stop, the Guard found the doors of the wagon open, the seal thereon broken and some goods missing therefrom, including the bale not delivered to the opposite party, but the Judge held that the defendants would not escape liability even if this story were accepted because the wagon was not looked and the seal put on it was a nominal one and did not secure the safety of the goods. He found accordingly that the petitioner Company "did not exercise due diligence which can be expected from a carrier for the safe arrival of goods at their destination, it being proved that the wagons were not locked; further that the Eisk Note had not been properly proved since it had not been shown "that the man who signed it had any authority from the consignor to execute such a document on his behalf," and finally that the loss contemplated by the Eisk Note had not been established by the evidence and there was reason to think that the loss was caused by negligence of the Railway servants."

4. The first contention on behalf of the petitioner Company is that the provisions of Section 77 of the Railways Act apply and render inadmissible in law the claim to compensation for the loss of the bale since it was not preferred in writing to the Railway Administration within the period allowed by the section. In view of the decision of a Bench of this Court in *G.I.P. Ry. v. Man Ram* 1923 Pat. 285, Mr. Shiveshwar Dayal on behalf of the opposite party concedes, that this contention of law cannot here be successfully met.

5. This would appear to conclude the matter, but Mr. Shiveshwar Dayal urges that the decree under examination should not be set aside since two important considerations which he advances, should be regarded as disentitling the petitioner Company to relief. The first of these is the delay, extending from the 11th July till the 24th November, which occurred in filing the application for revision. Now, in this regard each case must be examined with reference to its own circumstances, and as it appears that in the present instance nearly eight weeks were, owing to defective arrangements in the Copying Department at Gaya, taken up in securing a copy of the judgment and decree, and as even an appeal, if it had lain, would have been in time, the delay is to my mind certainly not so culpable that on that account the Court should in the exercise of its discretion refrain from interference when there has been a serious error of law.

6. In the second place, it is contended that this Court should not interfere with a decision of the Small Cause Court when the defence is, as in this instance, only a technical one: the petitioner Company, it is argued, have no grievance on the merits inasmuch as it has been found that the loss of one bale was due to the wilful negligence of their servants.

7. Now the judgment is obscure in places and generally does not inspire

confidence: in particular, it is impossible not to feel that the finding is distorted by a further important error of law and by mis-appreciation of the evidence arising from the learned Judge's misapprehension already referred to of the legal significance of the term "loss." In the first place, it is not definitely found that the defence story as to the time and manner of loss of the bale is not true, as indeed it seems to be. Again, the finding that the Risk Note has not been properly proved, since it has not been shown "that the man who signed it had any authority from the consignor to execute such a document on his behalf" is palpably a mistake of law since u/s 72 it is sufficient if the person who delivers the goods to the Railway Administration, signs the Risk Note. Not only did the karpardaz of the consignor who delivered the goods sign the Risk Note, but he did so in circumstances which would imply his principal's authority to do so. There can be no doubt, therefore, that the Risk Note is valid against the opposite party.

8. There remains only the question of wilful negligence. Now, the Risk Note being valid and the petitioner Company having proved loss, the burden was on the opposite party to establish that the loss of the package was due either to the wilful neglect of the Railway Administration or to theft by or to the wilful neglect of its servants, and if the loss was due to robbery from a running train, it is specifically excluded from the category of wilful neglect. The findings which have been already quoted fall far short of wilful neglect and indeed as the opposite party offered no evidence on the point a finding even of neglect could only be based on the admission that the Railway wagon was not locked. Such a finding would not take the case out of the Risk Note and moreover, as the wagon was sealed an inference even of neglect would not be safe in the absence of evidence of the ordinary course of business in such matters. As the opposite party has failed altogether to prove wilful neglect on the part of the petitioner Company or its servants the suit in view of the Risk Note also falls on the merits.

9. But, even if the case on the merits had been considerably more favourable to the opposite party, this Court would have felt constrained to give full effect to Section 77 of the Railways Act in a case where the opposite party deliberately attempted to evade its operation.

10. The application is allowed with costs. The decree of the Small Cause Court is set aside and the suit is dismissed with costs.