
(1931) 11 AHC CK 0009
In the Allahabad High Court

E.I. Ry. Co. and Another

APPELLANT

Vs

Narain Das Ganga Saran

RESPONDENT

Date of Decision : 13-11-1931

Acts Referred:

Citation : (1931) 11 AHC CK 0009

Hon'ble Judges : Niamatullah, J; Mukerji, J

Bench : Division Bench

Judgement

Mukerji, J.—The question to be determined in this appeal is whether in the circumstances found by the Court below, it may be properly said that misconduct on the part of the railway administration or its servants can be fairly inferred.

2. The plaintiffs-respondents, who are a firm, consigned, for being sent to Hathras, a bale of dhotis weighing nine and half maunds. The bale was handed over to the E. I. Ry. adminfstraiion at Howrah. The bale never reached its destination and it was found missing when the train arrived. As required by the risk note H, "Under which the bale was consigned, the railway administration gave evidence as to how the bale had been dealt with in the course of its transit. The learned Judge found that the wagon in which the goods were placed was secured on one side by a look described as "Ellis" patent lock" and was secured on the other side by an ordinary lock. The Ellis patent lock is very secure, and it was found that it was used on that side of the wagon which did not appear on the station side. It was found that one of the rings to which the other lock was attached was broken, and the bale was missing. On the evidence the learned Judge came to the conclusion as follows:

The truth seems to be that while the train was standing at some intervening station, on the platform side, some man managed to wrench off the ring and open the look and removed the bale. It is difficult to imagine that one man could remove from the wagon a bale weighing nine and half maunds as the railway receipt shows.

3. As I have stated, the question is whether from this fact we are prepared to draw the inference that there was misconduct on the part of some servant of the railway administration. Murray, in his dictionary, gives two meanings of the word "misconduct." The primary meaning is "bad management," mismanagement and "malfeasance or culpable neglect of an official in regard to his office." The second meaning is adultery" with which we are not concerned. Giving this usual meaning to the word misconduct" there seems to be no escape from the conclusion that the bale was removed owing] either to deliberate misconduct of the railway servants, in the shape of standing by or helping in the theft or at any rate in so neglecting the wagon that it was possible for several men to arrive at the place to wrench off the ring" arid to remove a heavy load like the bale in question. The neglect, in the latter case, is surely culpable and the whole affair is mismanaged. I am therefore prepared to hold that the lower appellate Court was right in decreeing the claim against the appellants.

4. In Secy. of State v. Allah Ditta Mohammad Amin AIR 1930 Lah. 120 an opinion has been expressed that misconduct involves some degree of moral obliquity. In the result however the learned Judges found that where a goods wagon had been unnecessarily detained for thirty hours, there was misconduct on the part of the servants of the railway and this is in keeping with the meaning to be found in Murray's English Dictionary.

5. A few other cases have also been cited. Some of these interpret the words "wilful neglect." These cases are, in my opinion, irrelevant, because we are not concerned with that expression. In (Rai) Jagdish Prasad Vs. Jamuna Prasad, the word "misconduct" was interpreted as being equal to wilful neglect, or failure of duty towards the consignor. I am prepared to accept the second meaning. Misconduct need not be wilful, if Murray be right in interpreting it as bad management, or mismanagement, or culpable neglect of an official in regard to his office. The word "wilful" is not there and I would not use it in explaining the word "misconduct."

6. In Secretary of State Vs. Bhagwan Das and Another the word misconduct" was considered, and it was held that

a railway servant, who is placed as a kind of guardian over the goods of the public in transit, is guilty of misconduct if he allows a trespasser to obtain access to such goods.

7. This is in general agreement with the meaning of the word misconduct" to be found in Murray's English Dictionary.

8. In the result I would dismiss the appeal with costs, including counsel's fees in this Court on the higher scale.

Niamatullah, J.

9. I concur.

10. The appeal is dismissed with costs including counsel's fees in this Court on the higher scale.