

(1925) 03 AHC CK 0010
In the Allahabad High Court

Firm Balram Das-Fakir Chand

APPELLANT

Vs

G.I.P. Railway Company

RESPONDENT

Date of Decision : 27-03-1925

Acts Referred:

Citation : (1925) 03 AHC CK 0010

Hon'ble Judges : Boys, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Boys, J.—In this case a firm called Balram Dag Fakir Chand carrying on business at; Basra in the District of Ballia sued the Great Indian Peninsula Railway Company for compensation to the amount of Rs. 1,271-8-0 on account of the price of two bales of yarn with interest thereon on the allegation that they delivered these goods to the Great Indian Peninsula Railway Company at Victoria Terminus at; Bombay to be transported to and delivered at Basra in the district of Ballia and that the Railway Company failed to deliver the goods in accordance with their contract.

2. It is admitted that the goods were sent under the owner's Risk-Note B, That Risk-Note is no longer in current use but with that act we are not concerned; nor with the question of what may be the effect of our interpretation of the old rules on any new Risk-Notes that may now be in force.

3. It is clear that prima facie the plaintiff was entitled to recover damages against the Railway Company and the Railway Company could only escape by proving that they are freed from responsibility to the Risk-Note Form B. Next it is clear that it is for the Railway Company to establish "loss".

4. The first Court held that no loss was established. The lower Appellate Court" held that the Railway had succeeded in proving loss. On this point we are inclined to agree with the lower Court though not for the reasons stated by it.

5. It appears established by the evidence of Mahadeo, a foreman at Victoria Terminus that he put these bales into a waggon No. 7552 and sealed it; that the waggon was sealed for transit to Allahabad city which means that it was a complete waggon which would not except under very exceptional circumstances be opened in the ordinary course of railway business until it arrived at Allahabad city. The waggon was then sent to Wadi Junction and attached to a train which was there made up for Allahabad. Mahadeo, the foreman further states that in that waggon he placed 43 packages.

6. The next information we have is that at a station called Pachora on the Great Indian Peninsula Railway the guard noticed that the doors of the waggon were open and of course the seals broken. As to the nature of these seals we shall have something to say presently. He drew the attention of this to a Railway servant, Chintaman Gopal, who is described as a number taker. Apparently this was not the only waggon of which the seal had been broken because Chintaman⁸ received instructions from the guard to re-seal a number of waggons including this particular waggon. Chintaman says in his evidence that the ticket on the waggon indicated that there were only 38 packages in the waggon, but we think that there is no doubt that the evidence of Mahadeo the loading foreman at Victoria Terminus to the effect that he put in 43 packages, evidence which is supported by his registers, should be accepted.

7. Nothing further appears to have been done at Pachora at all, but later at Allahabad the packages were counted and it was found that there were only 38. They were recounted at Allahabad because of the transshipment that was necessary if they were to go by the Bengal North-Western Railway to Basra. It is further established that at Allahabad amongst the 38 packages found in the waggon there were not to be found the two bales belonging to the plaintiff which Mahadeo had put in at Bombay.

8. The railway's case, therefore, is a case of "loss"; that having established that they put the bales into a waggon that was sealed at Victoria Terminus for Allahabad and having established that those packages were not in the van at Allahabad and that the seals had been found to be broken at Pachora and the door open they have proved that the packages have been lost.

9. It was suggested to us at one time that there was nothing to show how the waggon might have been handled or the packages handled at Wadi junction or anywhere else en route; that the packages might have been taken out inadvertently and possibly sold by the Railway Company as unclaimed property in which case the price would still be in their hands but we do not think that this would be a justifiable assumption against the Railway. They could not be expected to produce a witness from every station to say that the packages had not been handled at the station or the seals broken.

10. We hold, therefore, that the inference which the Railway asks us to draw that they have established "loss" is an inference which we ought to draw, though, as

we have said, for reasons other than those stated by the lower Appellate Court.

11. But we feel that we cannot and should not leave this part of the case without expressing the strongest disapproval of the way in which the Railway Company treated the claim of the plaintiff at the outset. The Company deliberately replied to the plaintiff that they had duly delivered his goods to the East Indian Railway and this statement they made not merely by inadvertence once but deliberately repeated a second and a third time. We have neither been shown nor have we found any evidence to justify these letters and even if the statement was not known by the Company's servants to be false, it was at least made without any proper inquiry and with the most reckless disregard of the truth. If the intention of it was not deliberately to direct the plaintiff on to the wrong track, it was almost certain to have that result. Such conduct of the negotiations upon a claim calls for the strongest condemnation.

12. The next question is whether the plaintiff has established wilful neglect by the Railway administration or by its servants so as to justify him in claiming that the Railway Company are not free even under the terms of the Risk Note from responsibility. This plea of wilful neglect has been taken all through and we may refer to Clause 8 of the grounds of appeal to the lower Appellate Court. The lower Court appears not to have dealt with this plea at all but it is open to us to deal with it as we have all the materials before us.

13. It is in the evidence of the guard that some two or three days before as is shown by an entry in his journal the seals of waggons on his train were found to be broken in very similar circumstances. It is also clear from cases to which we will refer that the finding of broken seals is, to put it at the lowest at least, not an uncommon incident.

14. The question therefore, arises whether the railway were not guilty of wilful neglect in sending a waggon hundreds of miles during which the train would have to travel at night and stop at all sorts of sidings, sealed only, as we have it established in the evidence of Mahadeo, the loading foreman, with paper string and wax.

15. Even if a finding in similar circumstances had not previously been arrive at by this Court we should have been inclined to hold that this was wilful neglect on the part of the Railway. In support of this view we need only refer to Bengal North-Western Railway Vs. Firm Manorath Bhagat-Dhian Ram and B.B. and C.I. Railway, We hold, therefore, that there was "wilful neglect" by the company and that this appeal should be allowed and we accordingly allow it with costs on the higher scale.