
(1925) 12 AHC CK 0055
In the Allahabad High Court

Firm Chandrabhan Prakashnath

APPELLANT

Vs

East Indian Railway Company

RESPONDENT

Date of Decision : 02-12-1925

Acts Referred:

Railways Act, 1890 — Section 75, 80

Citation : 92 Ind. Cas. 622

Hon'ble Judges : Mukerji, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mukerji, J.—This is an application in revision by a plaintiff firm whose suit against the East Indian Railway Company has been dismissed by a learned Judge of the Small Cause Court.

2. It appears that a consignment of glass bangles consisting of six bundles was sent to the address of the plaintiff from Wadi Bunder in Bombay for delivery at Ferozabad. Out of the six bundles only four were delivered. It was with respect to the two bundles not delivered that the suit was brought for compensation.

3. The learned Judge found that at the Tundla Railway Station, the goods had been handed over to the East Indian Railway Company and that, therefore, the East Indian Railway Company would be responsible for the compensation. He, however, held that glass bangles of the value consigned were, under the law liable to be insured for their safe conveyance and that there being no insurance and there being no declaration of the value and the contents of the bundles the defendants were not liable.

4. No evidence has been adduced by the respondents to prove that the two bundles out of six were actually lost by them. That being the case, the learned Counsel for the applicants contends that it is quite possible that the two bundles are still in the custody and possession of the respondents and that unless and until they prove that the bundles have been lost, they cannot take advantage of

the rule that they are not responsible for the loss of those articles which should have been insured, but which have not been insured. There can be no doubt that if the articles be still in the possession of the Railway Administration and if they have failed to deliver the articles in their possession they cannot take, advantage of Section 75 of the Railways Act. It is only when the articles have been lost by them that the respondents can claim protection u/s 75 of the Railways Act.

5. In answer to this contention the learned Counsel for the respondents has pointed out that it must be taken that the goods have been lost while in transit on the Railway of the defendants as otherwise, he contends, the suit would not at all be maintainable against the respondents. It is conceded on behalf of the applicant that the plaint was wrong in the statements it contained, viz., the goods had been handed over to the East Indian Railway Administration at Bombay. As a matter of fact, the Railway Administration to whom the goods were handed over was the Great Indian Peninsula Railway. East Indian Railway were, therefore, not a contracting party with the plaintiff firm. u/s 80 of the Railways Act a suit can be brought for compensation for loss of goods against either the party to whom they were delivered for conveyance or the party on whose Railway the loss occurred. East Indian Railway not being the contracting party can be held responsible only on the ground that it was on their Railway that the loss of the goods occurred. It is urged that if the respondents are to be held liable they can be held liable only on the assumption that the goods were lost while on their Railway. The case of *C.I.P. Railway v. Sham Manohar* 14 Ind. Cas. 803 : 34 A. 422 : 9 A.L.J. 492 has been cited in support of this view.

6. In my opinion, the contention of the learned Counsel for the respondents is sound. On behalf of the applicants it has been urged that supposing there was a misdelivery of the goods by the East Indian Railway at Ferozabad, that Administration could be held liable u/s 80 of the Railways Act. I am not prepared to express any opinion on the hypothetical case put before me by the learned Counsel for the applicants. It may be that mis-delivery of property by East Indian Railway would make them liable u/s 80 of the Railways Act. But even then the loss would be loss by the Railway Company although it would also be a loss to the owner. To give the word "loss" its plain meaning, when a certain article delivered to the Railway Company is not forthcoming for delivery at the destination and its whereabouts are not known one would say that the article has been lost. In order to make East Indian Railway Company liable the plaintiffs must allege that the goods were lost by something done by or by some neglect of the East Indian Railway Administration. If that be so, the loss is equally a loss within the meaning of Section 75 of the Railways Act. The loss was of a part of goods of the value of over Rs. 100 and of a kind which was liable to be insured. The result is that non-insurance makes the claim unmaintainable.

7. I hold that the revision has no substance and must fail and is hereby dismissed with costs which will include Counsel's fees in this Court on the higher scale.