

(1924) 04 AHC CK 0004
In the Allahabad High Court

Firm Raghunandan Ram-Gopi Ram

APPELLANT

Vs

The G.I.P. Railway

RESPONDENT

Date of Decision : 15-04-1924

Acts Referred:

Railways Act, 1890 — Section 72

Citation : 81 Ind. Cas. 1

Hon'ble Judges : Neave, J; Daniels, J

Bench : Division Bench

Judgement

1. This appeal arises out of a claim by the plaintiff against the G.I.P. Railway for the value of two bales of cloth sent by that Railway from Bombay to Rasra and not delivered. Three bales were consigned of which only one was delivered. The Railway pleaded in defence that they were protected by a Risk Note in form B under which the goods were consigned. The plaintiff denied the execution of the Risk Note. The Trial Court decreed the suit on a finding that execution of the Risk Note was not proved. The Risk Note form was signed on behalf of the plaintiff by one Shankar Balaji. It appears that this man signs a very large number of Risk Notes and his evidence is that when the details are being agreed upon he sometimes signs the printed form and leaves the details to be filled in by the Railway clerk afterwards. These details include the number of the rail receipt, the nature of the goods and the Stations from which and to which the goods are consigned. The Trial Court also held that loss of the goods was not proved and if there was loss it was due to the negligence of the Company and its servants.

2. The learned District Judge agreed with the Court below in holding that it was not proved that the form had been filled in when signed by Shankar Balaji. He held, however, that the parties certainly intended to enter into an agreement in the form of Exhibit B, the Risk Note in question and that on the strength of this agreement the Railway accepted the goods and conveyed them at the owner's risk rate. He held that, under these circumstances it was not open to the plaintiff to dispute the agreement. The issues which arise for decision in second appeal

are:

1. Whether on the finding of the District Judge it can be held that the Risk Note was executed by Shankar Balaji.
2. If not, whether the plaintiff is estopped from denying the agreement.
3. Whether the agreement is invalid because it was not attested by two witnesses in presence of Shankar Balaji.
3. The learned Counsel for the appellant has also attempted to challenge the findings of the Court below that loss of the goods is proved and that loss was due to theft from a running train, but these are findings of fact and we do not see our way to go behind them.
4. In so far as the learned Judge appears to hold that it does not matter whether the particulars were filled in before the agreement was signed or not we are unable to agree with him. Section 72 of the Indian Railways Act requires that an agreement limiting the responsibility of the Railway shall be in writing. To sign a blank paper on which an agreement is afterwards written is not the same thing as executing an agreement in writing. Neither is it sufficient to sign a printed form in which no details relating to the particular consignment are recorded.
5. We think, however, that the learned Judge was right on the second ground on which he has dismissed the suit. The appellant's agent certainly represented to the Railway that he was booking the goods at owner's risk subject to the conditions embodied in the contract in the form of Risk Note B. The Railway accepted the goods on the strength of this representation and upon it conveyed them for the plaintiff at a lower rate than that at which they would otherwise have conveyed them. Under these circumstances the principle of estoppel applies, and it is not now open to the plaintiff to deny that he agreed that the goods should be conveyed under the conditions contained in the Risk Note. It has been argued by the appellant that no plea of estoppel was raised in the Courts below. It may not have been taken distinctly in the written statement, but it was certainly raised before the learned District Judge and this is substantially the ground on which the learned Judge has decided the appeal. The learned Judge says that it is not open to the plaintiff to deny the terms of the agreement. This is another way of saying that he is estopped from doing so.
6. On the third question we agree with the learned District Judge. Section 72 of the Railways-Act requires that the agreement shall be in writing. It does not require that it shall be attested, and we are unable to read any such requirement owing to the mere fact that the agreement provides a space for the signature of attesting witnesses.
7. The result is that the appeal fails and we accordingly dismiss, it with costs including in this Court fees on the higher scale.