

(1924) 02 CAL CK 0017
In the Calcutta High Court

Ganesh Lal and Another

APPELLANT

Vs

The East Indian Railway Co. Ltd.

RESPONDENT

Date of Decision : 04-02-1924

Acts Referred:

Citation : AIR 1925 Cal 299

Hon'ble Judges : Suhrawardy, J;Chotzner, J

Bench : Full Bench

Judgement

Suhrawardy, J.—The rule was issued on the ground that in view of the decision of the Bombay High Court in the case of Ghelabhai Punsu Vs. The East Indian Railway Company, the order of dismissal made by the Small Cause Court Judge should not have been made. It appears on a perusal of the plaint that the plaintiff admits that the goods were lost and further he makes a claim that the goods were lost on the E.I. Railway. The goods were originally consigned at a station on the E.B. Railway and the plaintiff wants to make the Company liable for the loss of the goods. The loss has been admitted but the plaintiff has not adduced any evidence that the loss was due to the neglect of the railway administration & c., in accordance with the terms of the Risk Note B under which the goods were consigned. The learned Small Cause Court Judge has dismissed the plaintiff's suit and I think he is right in so doing. In the case of the East Indian Railway Co. Vs. Jogpat Singh, , to which I was a party, we have held that when the loss is not admitted by the plaintiff the Railway Company must prove it. In this case, as I have said, the plaintiff has admitted the loss so that the defendant-Company is relieved of the necessity of proving it. In the Bombay case above referred to the same thing happened. From the report of that case it appears that the plaintiff never admitted the loss and he sued the defendant-Company first, for recovery of two bags of rice or secondly for the sum of Rs. 30 as compensation for the value thereof. The point that was decided in that case was whether it was sufficient for the defendant Company merely to admit the loss and not to adduce any evidence to show that the goods were as a matter of fact lost. That case, therefore, is distinguishable from the present case and the

ground upon which this Rule was issued must, therefore, fail. The rule is discharged with costs. One gold mohur.

Chotzner, J.

2. I agree.