

(1925) 07 PAT CK 0007
In the Patna High Court

G.I. P, Ry. Co.

APPELLANT

Vs

Rameshwar Prasad and Another

RESPONDENT

Date of Decision : 01-07-1925

Acts Referred:

Citation : AIR 1926 Patna 190

Hon'ble Judges : Bucknill, J;Adami, J

Bench : Full Bench

Judgement

Bucknill, J.—This is a second appeal. The appeal is from a decision of the District Judge of Saran, dated 27th November 1922, by which he reversed a decision of the Munsif of Chapra, dated the 20th January of the same year.

2. The appellants are the Great Indian Peninsula Railway Company through their Agent at Bombay; the respondents are Rameshwar Prasad and another. The suit was one of the type with which all the Courts in India are sufficiently familiar; it was for recovery of a sum of money from the Great Indian Peninsula Railway for the price of a bale of cotton goods which should have been delivered to the plaintiffs but which was never delivered to them.

3. The plaintiffs, in their plaint, after setting out the fact, alleged that they believed that the bale (which was a portion of a consignment of bales) had been lost in transit on account of the gross negligence of the defendants and they claimed that the defendants were bound to indemnify them for the loss. There was no doubt that the consignment of bales of goods was sent from some merchants in Bombay to the plaintiffs who were cloth dealers in Chapra; there is equally no doubt that the goods were delivered to the appellants at Victoria Terminus, Bombay, for carriage under the well-known Risk Note B. It is also a fact which is common ground that when the goods arrived at Chapra, one whole bale was found missing. Now in answer to the plaintiff's claim the appellants pleaded firstly that they admitted the loss but that the loss did not occur on their line of Railway; they alleged that they had handed, over the goods intact to the East Indian Railway Company which had not been made a party to the suit; in

any case they stated further that the loss was not due to the negligence of Railway servants.

4. Now when the case came before the Munsif, he came to the conclusion that the plaintiffs had entirely failed to prove negligence on the part of the Railway Administration and he therefore held that on that view of the case, the suit must be dismissed. In this decision he was of course, following the numerous cases which have been decided in the Courts in India and which are substantially all of one tenor, namely that in a suit brought under such circumstances as this suit was brought, it is necessary that the plaintiff should show that the Railway Company is responsible for the loss of goods. The Munsif however considers a somewhat curious question which does not seem to have been raised in the pleadings but which appears to have been put forward in the course of the trial before him. It was suggested by the plaintiffs that the Risk Note was not binding on the parties because it had been in fact signed by some person who had no authority so to do from the consignors in Bombay. The Munsif was of the opinion that the individual who in fact signed the Risk Note had no authority so to do given to him by the consignors. He therefore came to the conclusion that, as the Risk Note had not been signed by any person who had authority to do so on behalf of the consignors, it did not bind the parties and that, therefore, presumably the appellant Company was not able to avail itself of any of the exceptions in the Risk Note which purport to exempt the appellant Company from liability under the conditions therein specified.

5. Now when the case went on appeal to the District Judge, the District Judge came to the conclusions precisely opposite on both those points to those at which the Munsif had arrived. He was satisfied in the first place that the person who did sign the Risk Note clearly had authority from the consignors so to do; although that authority was not an express but an implied one. He therefore held that the plaintiffs were bound by it. I might, however, point out that there would still be another objection to the endeavour of the plaintiffs successfully to raise this question. It is quite clear that with regard to the consignment as a whole, the plaintiffs, by accepting a large portion of the consignment, adopted the contract which is contained in the Risk Note "B"; they are, therefore, bound by that contract; and whether or not the person who signed it had the consignors' authority the plaintiffs would not be able now to contend that they were, or are, not bound by the terms of the special contract embodied in that Risk Note. Apart from that however, there is here also the finding of fact by the District Judge that the individual who signed the Risk Note did have authority from the consignors. This finding is based upon the evidence which was given in the case on behalf of the plaintiffs themselves.

6. With regard to the other question, that is to say, whether the plaintiffs had proved (what they were bound to prove if they were to be successful) negligence on the part of the appellant, the District Judge again differed from the Munsif. He came to the conclusion, for certain reasons to which I will refer seriatim, that the

plaintiffs had satisfied him that the loss was really due to the negligence of the appellants. These reasons are three in number: one is that the Company produced no evidence of any kind. I need hardly point out that, according to the authorities both in India and in England and notably in the case decided by the House of Lords in *Smith Limited v. Great Western Railway Company* (1922) 1 AC 178, it is not necessary for the defendant Railway Company in a case such as this to produce any evidence at all. Where a special contract is sued upon by a plaintiff (such as in this suit was sued upon) it is for the plaintiff to show that the Railway Company is liable to him for loss occasioned to the goods which had been carried by the Railway Company on his behalf. This reason, therefore, given by the learned District Judge is not a reason which could be properly held by him as being in any way evidential of negligence on the part of the appellant here. The second reason which he gives is what he refers to as "the admitted facts" in the case. The only admitted facts in the case which are really material were the facts that the consignment was actually made, that the goods were entrusted into the care of the appellants, and that they were lost; there were no other material facts admitted in the case and, from these facts alone, again the law is clear as laid down in this country and in England that no inference evidential of negligence on the part of the appellant here could possibly be drawn. The third, and undoubtedly the most important, reason which he gives is what he refers to as the "plaintiffs own evidence." Now if the plaintiffs had produced any witness who had been able to prove in any way that there had been any negligence of any kind on the part of the appellant or by their agents or servants, (for a corporate body can only after all act through its agents or servants) there is little doubt but that the plaintiffs might have succeeded. It is sufficient, however, I think for this Court to hold that, merely because the District Judge states that having regard to the plaintiffs' own evidence no other reasonable conclusion can be come together than that the loss was due to the negligence of the Company's servants, the matter is by such a statement precluded from being considered in second appeal. In a case such as this it is important to see what in fact was said in evidence by any witness who appeared for the plaintiffs. In this case I fear that what was said by the only witness who appeared for the plaintiff's was in no sense any proof of negligence but only an assertion thereof. The only witness who was called by the plaintiffs merely stated as follows:--"Because the bale has not been delivered to me so I say that it has been lost on account of the negligence of the Railway Companies. (I may say that in the suit as originally brought the Bengal and North Western Railway Company through its Agent at Gorakhpur was a second defendant). I need hardly, I think, point out that a mere assertion of this kind is of no evidential value whatever as proof of negligence on the part of the appellant. If one was to hold that it was, all the difficulties which surround plaintiffs in bringing a suit of this kind, would at once disappear, for all that would be necessary for them to do, in order to throw the whole of the onus upon the defendant Company of bringing itself within the exceptions in the Risk Note "B" which purport to exempt him from liability, would be to make a mere assertion by a witness on behalf of the plaintiffs that he believed that the loss

which was admitted was due to the negligence of the Railway Company's servants. I think that it is obvious that such a statement as this is as of little evidential value in this case as are the other two reasons which have been given in the decision of the District Judge. The judicial comments which have been passed not only in this country but also in England upon the difficulties which a plaintiff, who has entered into a contract of the nature of Risk Note "B", encounters, have been severe, and if I may say so, well founded. But such strictures on a Railway Company hardly properly lie within the domain of the Courts; for it is, I take it, always open to a person, who wishes to consign his goods for carriage by a Railway, not to enter into a contract such as is set out in the Risk Note "B" which entails upon him such immense difficulties in the event of his wishing to recover from the Railway Company for loss or damage of the goods which he has consigned to it to take to their destination. By this time I think it ought to be publicly known that it would appear that the onus of proving wilful negligence lies upon the plaintiff who brings the suit for recovery of what has been lost on a Railway Company's lines if he sues upon the special contract which is embodied in the Risk Note "B." It has been suggested that in this particular case the mere admission by the Railway Company of the loss is not sufficient to prove that loss and reference was made to a case decided by a Bench of the Bombay High Court, *Ghelabhai Punsli Vs. The East Indian Railway Company*, , in which their Lordships thought that a mere admission by a Railway Company in their favour that the goods were lost was not sufficient to prove that the goods had been in fact lost. I need only point out that this case was decided before the case in the House of Lords to which I have already referred. There the matter is fully dealt with and I think that an admission of loss must be regarded as a position which it is open to the defendant Railway Company to take up. After all it does not appear to me that it is necessary for a person to give strict proof of what he himself admits. All the points in the present appeal have been recently dealt with by Mullick, J., and myself in the case of *G.I.P. Railway Co. v. Jitan Ram Nirmal Ram* AIR 1923 Pat 825.

7. Under these circumstances, and I must confess with some sympathy for the respondents, I feel that the only possible course in this case is that the appeal must be allowed and the suit dismissed.

8. There will be no order as to costs.

Adami, J.

9. I agree.