

---

**(1954) 09 P&H CK 0011**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Second Appeal No. 1084 of 1947**

Gordhan Dass

APPELLANT

Vs

Governor General in Council

RESPONDENT

---

**Date of Decision :** 21-09-1954

**Acts Referred:**

Railways Act, 1890 — Section 72

**Citation :** AIR 1957 P&H 196

**Hon'ble Judges :** Kapur, J;Falshaw, J

**Bench :** Division Bench

**Advocate :** F.C. Mittal, for the Appellant; N.L. Salloja, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

Falshaw, J.—These two appeals arise out of a suit instituted by the appellant firm Gordhan Dass-Baldeo Dass of Delhi as long ago as 1944 claiming Rs. 3,500/- as damages from the Governor-General-in-Council, though five other firms of Delhi were also impleaded as defendants. The plaintiff was granted a decree by the trial Court for Rs. 2,681/1/- subject to certain conditions regarding the goods which were lying with the plaintiff. Two appeals were preferred in the Court of the District Judge, one by the Government against the above decree and one by the plaintiff for the balance of Rs. 818/15/- which had been dis-allowed by the trial Court out of the plaintiff's claim. The learned District Judge dismissed the plaintiff's appeal and accepted that of the Government with the result that the plaintiff's suit was dismissed in toto. The plaintiff filed two separate appeals in the High Court at Lahore. Apparently these appeals were filed on different dates and one of them, namely No, 1204 of 1947, which challenged the dismissal of the plaintiff's appeal for the disallowed portion of his claim, was clearly barred by time, and is liable to be dismissed on that ground alone.

2. Briefly the facts of the case are that on the 22nd of February 1943 the Arvind Mills of Ahmedabad despatched by rail two consignments of cloth each consisting of two bales to two different firms at Delhi. One of the consignments was

covered by Railway Receipt No. 21296 and the Railway Mark given to the consignment was 7238/2 while the other consignment was covered by Railway Receipt No. 21295 and the Railway Mark 7236/2. By mistake on the part of the Assistant Goods Clerk at Ahmedabad the Railway Mark 7238 was entered in both the Railway Receipts. The plaintiff firm purchased the consignment covered by Railway Receipt No. 21296 of which the Railway Mark was really 7238/2 from the consignee before delivery was taken.

However, before representative of the plaintiff firm went to the Goods Office to take delivery of the consignment thus purchased the consignment marked 7238/2 had already been delivered to the consignee of the consignment really marked 7236/2 but wrongly entered in the relevant receipt under the former number. There was some difficulty about removing the consignment by the plaintiff's representative, but according to the evidence he insisted that the consignment which had remained undelivered was the proper one, and the difficulty was surmounted by altering the number in the Railway Receipt to 7236/2.

3. The suit was instituted in January 1944 by the plaintiff against the Government as representing the B. B. and C. I. Railway and against the firm which had wrongly taken delivery of the consignment actually purchased by the plaintiff, and also the firms through whom the plaintiff had purchased the consignment. The plaintiff claimed the full value of the consignment purchased by him and wrongly delivered to the firm Messrs. A. R. Sethna. According to the terms of the risk note under which the consignment purchased by the plaintiff was carried by the railway, the plaintiff was only entitled to claim damages against the railway on proof of misconduct by any servant of the railway. The trial Court held that the mistake of the Goods Clerk in wrongly entering the Railway Mark of one of the consignments in the Railway Receipt amounted to misconduct, and granted the plaintiff firm a decree for the price of the goods consigned to him as shown in the invoice, subject to certain adjustment as regards the goods lying with the plaintiff which were really consigned to the firm Messrs. A. R. Sethna. The learned District Judge held that the clerk's mistake did not amount to misconduct and therefore held that the plaintiff's suit was liable to be dismissed altogether.

4. The only question before us is whether the trial Court or the learned District Judge took the correct view regarding the meaning of the word "misconduct". In the absence of any authority, I should certainly not be inclined to hold that a mere clerical error of this kind could possibly amount to misconduct, which in my opinion implies some degree of mens rea on the part of the person concerned or at any rate a very grave degree of negligence or serious failure to carry out instructions or comply with regulations. I can see no reason for not believing the evidence in the present case that the mistake was due to a mere slip of the pen committed under pressure of work and it is obviously the sort of mistake which anybody might have made in the circumstances.

5. The nearest approach to an authority in his favour which the learned counsel for the appellant could produce was Secy. of State Vs. Madhuri Das-Narain Das, a decision by Niamatullah J., which deals with a case in which the number of a consignment had been wrongly entered in the Railway Receipt. The trial Court had held that the mistake of the clerk concerned amounted to misconduct but in deciding the case Niamatullah J. held that under the particular risk note involved in that case it was not necessary for the plaintiff to establish misconduct, and whatever he said on this point was therefore obiter. He observed:

"I have taken a different view of the risk note B and do not think it necessary to hold that the mistake amounted to a misconduct. I may, however, note that the word "misconduct" occurring in risk note B is of wider import than the popular sense in which that word is used. Want of proper care and caution may amount to misconduct within the meaning of the risk note B. A mistake in the preparation of the railway receipt which throws doubt on the identity of the consignment to which it relates is a "misconduct in the above sense."

6. With the utmost respect, I cannot see what is the justification for the view" that the word "misconduct" in this context has any wider meaning than that ordinarily ascribed to it, and on this point I am inclined to agree with the view expressed by Hilton J. in the case Secretary of State v. Allah Ditta Mohammad Amin AIR 1930 Lah 120 (B), as follows:

""In my judgment the phrase "misconduct of the Railway Administration"s servants" can only have the second meaning, which involves the passing of a moral judgment on the conduct of the person concerned, however slight may be the lapse from rectitude which provokes it. I do not, therefore, accept the view of the Courts below that misconduct and mismanagement are synonymous terms for the purposes of the risk note."

7. The other cases which deal with the meaning of the word "misconduct\* do not appear to me to be very helpful since they deal, generally speaking, with cases as negligence in the actual handling of goods, and I would certainly agree that in some circumstances negligence in handling goods can amount to misconduct. I do not, however, consider that a mere clerical mistake by a clerk of the kind involved in the present case can be held to amount to misconduct, and I would accordingly dismiss these appeals but leave the parties to bear their own costs.

Kapur, J.

8. I agree.