

(1945) 09 AHC CK 0018
In the Allahabad High Court

Governor-General in Council

APPELLANT

Vs

Lala Debi Sahai

RESPONDENT

Date of Decision : 12-09-1945

Acts Referred:

Citation : AIR 1946 All 198 : (1945) 15 AWR 388

Hon'ble Judges : Bennett, J; Bennet, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Bennett, J.—This is a revision application against a decree passed by the Judge of the Small Cause Court, Meerut, in a suit brought by the opposite party, Lala Debi Sahai, against the Governor-General in Council to recover a sum of Rs. 700 for nondelivery of a parcel containing silver articles consigned by Lala Debi Sahai to the railway at Meerut for delivery at Benares. The defendant based his defence on the provisions of Sections 75 and 77, Railways Act, and also on Section 80, Civil P.C. It has been found by the Court below that notice was given u/s 80, and as regards Section 77 it has been held that no notice was required in view of the finding with regard to Section 75. The sole question which concerns us is whether the case is covered by Section 75, Railways Act. It appears that when Lala Debi Sahai sent the parcel to be booked through his servant the latter declared the value of the contents at RS. 600 but on being required to pay an additional amount by way of compensation for increased risk, he elected not to do so. This is shown by the risk-note Form X. Lala Debi Sahai would not, therefore, be able to recover the value if Section 75 applies, because it is provided by that section that the railway administration shall not be responsible for the loss, destruction or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the administration has caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for carriage by railway, and if so required by the administration has paid or engaged to pay a percentage on the value so declared

by way of compensation for increased risk.

2. The plaintiff, as stated, brought his suit because the parcel was not delivered to him at Benares by the railway administration. He did not allege that it had been lost, destroyed or had deteriorated and indeed, not knowing what had happened to it, he could not make such an allegation. The defendant in reply also did not expressly state that the parcel had been lost, destroyed or had deteriorated, though that might be considered implied by the reference to Section 75. This seems at any rate to be the view taken by the Court below from the issues framed. There were two issues on this point, namely:

(1) Whether the parcel was lost or destroyed? and (2) Whether the claim is barred by Section 75, Railways Act?

The two issues are clearly connected. The only party who could have adduced evidence to show that the parcel had been lost or had been destroyed was the defendant and no evidence to this effect was produced by the defendant. The Court below held that the plaintiff had proved non delivery, while the defendant had not proved that the parcel had been lost or destroyed. It concluded that Section 75 did not apply to the case. The learned Judge awarded damages of RS. 700 because the plaintiff's evidence showed that the value of the silver, though originally Rs. 600 had increased to Rs. 700 at the time of the institution of the suit. We have been referred to a number of authorities, on the point whether non-delivery of an article is equivalent to the loss of that article for the purpose of Section 75. The Court below referred to the case in Chandrabhan Prakashnath Vs. E.I. Ry. Co., where a learned Judge of this Court observed:

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, Railways Act. It is only when the articles have been lost by them that the respondents can claim protection u/s 75, Railways Act.

Learned Counsel for the applicant has referred to another observation in the same judgment that:

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.

We do not consider that this observation Supports the applicant because it was, in our opinion, incumbent upon the defendant to show that the whereabouts of the article were not known before the Court could hold in his favour that the parcel had been lost, lit seems to us that it was incumbent upon him to adduce some evidence to support the case which he impliedly put forward that the parcel had been lost. We are supported in this view by a case of the Calcutta High Court, East Indian Railway Co. Vs. Jogpat Singh, . It was held by a Bench of that Court that a railway company is not entitled to rely upon the provisions of the

risk note which pro tanto exempts it from liability, unless the plaintiff admits, or evidence has been adduced which satisfies the Court, that a loss has occurred. In the case before us there has been no admission by the plaintiff and the necessary evidence has not been adduced. We were referred by the learned Counsel for the applicant to the English case in *Millen v. Brasch* (1883) 10 Q.B. 142. In that case a trunk was sent from London to Liverpool by rail to be shipped to Italy. Through the negligence of the defendants' servants the trunk was placed in a vessel bound for America and was shipped to New York. Its whereabouts were not known for about a month and it was held that during this period it must be considered lost. The facts of this case are clearly quite different from those of the present case, for during the period of one month referred to there can be no doubt that the article could not be traced. In *East Indian Railway Co. Vs. Jogpat Singh*, , reference was made to that case and also to certain questions put to counsel in another English case, *Hearn v. L. & S.W. Railway Co.* (1875) 10 Ex. 793. One question put was:

Suppose a person delivered to a porter at a railway station a casket of jewels, and in consequence of his refusal to forward it the casket remained for some time at the station, would that be a loss within the Act.

Another question asked was:

Suppose the goods were known by the carrier to exist, but were not delivered by him for a month, would that be a loss within the Act?

The answer given by the learned Judge who delivered the judgment in the Calcutta case was

An affirmation that in such circumstances the goods have been "lost" surely involves a distortion of the meaning of the word so extravagant as to approach an abuse of the English language.

3. Learned Counsel for the applicant referred to certain other cases, including one of this Court, namely, *Narain Das v. E.I. Ry. Co.* ("12) 34 All. 656. In this case a parcel containing silver bars was consigned from Bombay to Allahabad and on arrival at Allahabad one of the bars was found missing. It was held that the circumstances justified the presumption that this bar had been stolen en route and that Section 75 was applicable. We do not think that this case is on a par with the present case because the fact that one bar was missing from the parcel clearly indicated theft. In the present case there is nothing whatever to show what has happened to the parcel, however probable it may seem that it has been stolen. Other cases cited are still less in point. In *Secy. of State Vs. Surjyamal Haribaksh*, it was clearly proved that the goods had been acquired by certain persons who wanted to defraud the consignor and that no one connected with the railway company was concerned. In *The Great Indian Peninsula Railway Vs. Ramchandra Jagannath*, the consignment consisted of account books valued at a considerable amount by the consignor. By mistake they were delivered to a jail, the Superintendent of which destroyed them. In all these cases, it was

clearly shown what had happened to the articles consigned. In the present case there is nothing whatever to show what has happened to the parcel of silver articles and it cannot be said that they are not still in the possession of the defendant. It was for the defendant to establish on the first issue that everything possible had been done to trace the missing articles or to adduce some other evidence from which it could be inferred that the parcel had been lost. For these reasons we are of opinion that the decision of the Court below on this point is perfectly correct. It is contended, however, that the Court below was not justified in decreeing the suit for Rs. 700 when the value of the articles at the time of booking was stated to be only Rs. 600. If the parcel had been delivered at Benares, say within a week, it is unlikely that the value of the silver would have increased to Rs. 700 the end of this period. The plaintiff's case was only that it had increased to Rs. 700 on the date when he brought the suit. We do not consider that this is the point of time which can be looked to, but that we have rather to see what would have been the value of the articles had they been delivered at Benares in the ordinary course. There is nothing on the record which would indicate that their value at that time would have been more than Rs. 600. We accordingly allow this application to the extent of reducing the amount decreed from Rs. 700 to Rs. 600 while maintaining the provision for future interest on the amount now decreed at three per cent. The parties will pay and receive costs in proportion to failure and success in both Courts. In other respects the application is dismissed.