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**(1948) 08 AHC CK 0029**  
**In the Allahabad High Court**

Governor-General in Council

APPELLANT

Vs

Mohammad Badr-i-alam and Another

RESPONDENT

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**Date of Decision :** 05-08-1948

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 80  
Railways Act, 1890 — Section 75

**Citation :** AIR 1949 All 223 : (1948) 18 AWR 308

**Hon'ble Judges :** Mushtaq Ahmad, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Mushtaq Ahmad, J.—This is a defendant's application in revision against a decree of the Small Cause Court Judge of Meerut allowing Rs. 1000 as damages to the plaintiff opposite party in a suit brought by the latter on the basis of non-delivery of goods carried by the defendant rail-way company.

2. On 8th November 1945, the plaintiffs handed over a tin box containing printed and manuscript books at Bhawalnagar railway station to be carried via Lahore to Meerut by the defendant company. Plaintiff 1 is the father of (plaintiff 2 and the box was despatched by the former in the name of the latter. The box was placed in the luggage van at Bhawalnagar for carriage, the plaintiffs themselves travelling to Meerut. When the plaintiffs arrived at Meerut, they tried to take delivery of the box but in spite of their efforts they failed to receive it from the railway authorities and it is On account of this non-delivery of the box that they subsequently filed the suit giving rise to this application.

3. The defendant inter alia pleaded want of valid notice u/s 80, Civil P.C., and also the bar of Section 75, Railways Act. The learned Judge, having rejected both these pleas, decreed the suit for Rs. 1000 and costs in favour of plaintiff 1 alone who really was the owner of the consignment.

4. So far as the question of the validity of the notice is concerned, Mr. Gopalji

Mehrotra has been admirably frank before me and did not occupy me over it for any appreciable time. As regards the other question, viz., the bar of Section 75, Railways Act, he has addressed to me an able and lucid argument. He contended that the plaintiffs not having made a declaration at the time of despatching the books, as required by Section 75 (1), Railways Act, the value of the goods being admittedly in excess of Rs. 100, they were not entitled to any damages in the present case as the damage suffered by them was due to a loss of the books in transit. The argument turned upon the meaning of the word "loss" as we find it in this section for if it only meant loss to the owner and nothing else, the case would obviously come within the purview of this section and would provide a complete protection to the defendant applicant against the present claim. On the other hand, if the word was generic enough to include a loss by the company, then, if in the present case the defendant company did not lose the goods, the case would not be one of a loss within the meaning of that word in the said section of the Railways Act. Now, the context in which the word "loss" occurs in this section as also in Section 72 of the Act followed by the words "destruction and deterioration", clearly shows that something must have happened which not only caused damage to the owner of the goods but was also outside the control of the railway company. Such a position cannot be denied in the case of destruction or deterioration and, in my opinion, we should put such a meaning on the word "loss" as would be ejusdem generis in its effect with the implication of the words "destruction or deterioration". Where, for instance, the goods were lying in a godown of a railway somewhere on the line or have been deliberately removed or stolen by some employee of the railway, that would not be a case of a "loss" by the railway company. Surely the railway company could not be deemed to "lose" what a servant of the company is all the time keeping for his own enjoyment.

5. Mr. Mehrotra has relied on *Chandrabhan Prakashnath Vs. E.I. Ry. Co.*, and *Narain Das v. E.I. Ry. Co.* 34 All. 656. In the former case *Mukerji J.*, while explaining the meaning of the word "loss" in Section 75, Railways Act, took care to exclude cases in which the whereabouts of the goods were not known, thereby meaning that if a particular consignment, being in possession of a railway servant or lying neglected or unnoticed in an office of a railway company, could not be delivered to the owner, it would not be a case of a loss within the meaning of this section. The learned Judge observed as follows:

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.

In the latter case it was found that part of the consignment was missing somewhere between Jubbulpur and Allahabad, the place of destination, and the Court rightly held that it was a case of loss in transit. This case was referred to in

a later Bench decision of this Court in Governor-General in Council Vs. Lala Debi Sahai, in which the facts were more or less similar to those in the present case and in which the Bench concerned pointed out that the case in Narain Das v. E.I. Ry. Co. 34 All. 656 might be one of loss by theft by railway servant. In the present case, however the Court below has found in effect that consignment reached the Delhi railway station intact but that it was not in all probability put into the train at Delhi to be despatched to Meerut. That I take to be the effect and the meaning of the finding recorded by the learned Judge although the learned Counsel for the applicant wants me to put a somewhat less effective interpretation on the language used by him. This being so, in my opinion, it is obvious that the defendant railway company failed to prove that the present was a case of a loss of goods in transit within the meaning of Section 75 (1), Railways Act. I, therefore, hold that the railway company; failed to discharge its burden of making out a case under this section so as to deprive the plaintiff of a right to claim compensation in the present case.

6. For the above reasons, I dismiss this application in revision with costs.