

(1946) 06 CAL CK 0032
In the Calcutta High Court

Governor-General in Council

APPELLANT

Vs

Tarak Nath Das and Another

RESPONDENT

Date of Decision : 07-06-1946

Acts Referred:

Railways Act, 1890 — Section 75, 75(1), 75(2)

Citation : AIR 1947 Cal 182

Hon'ble Judges : Lodge, J

Bench : Division Bench

Judgement

Lodge, J.—The facts of this case briefly are as follows: The plaintiff Tarak Nath Das booked certain articles for despatch by the B. and A. Railway from Dacca Station to Sealdah. The goods consisted of seven transformers, one power unit for a Philco set and one complete vibra portion of a radio set. The contents of the parcel were declared and at the request of the railway authorities the plaintiff gave the value of the consignment stating it to be Rs. 99 only. The consignment was lost. Thereupon the plaintiff instituted a suit for recovery of Rs. 110 as damages for goods delivered to the B and A Railway and lost in transit. The case was heard by the Munsif, First Court at Dacca in Small Cause Court jurisdiction. It was contended on behalf of the defence that the defendants were protected by Section 75, Railways Act, inasmuch as the intrinsic value of the goods consigned exceeded Rs. 300 and the goods consigned were articles of the nature mentioned in Schedule 2 to the Railways Act. The learned Munsif held that Section 75 was inapplicable inasmuch as the value of any article for purposes of Section 75 is the value which the consignor puts upon the article and not the intrinsic value of the article. The learned Munsif decreed the suit in part holding that the plaintiff was entitled to recover only a sum of Rs. 99 as damages.

2. This rule has been obtained by the defendants. It is contended that for purposes of Section 75(1), Railways Act the value of the goods is the intrinsic value and not any special value which the consignor chooses to put upon the goods and that consequently where the intrinsic value of the goods despatched

exceeds Rs. 100 and the declared value of the goods does not exceed Rs. 100 the consignor is not entitled to recover anything from the railway administration on account of the loss, destruction or deterioration of the parcel or package. Section 75(1) reads as follows:

When any articles mentioned in Schedule 2 are contained in any parcel or package delivered to a railway administration for carriage by railway and the value of such articles in the parcel or package exceeds rupees one hundred 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 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, paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk.

3. It has been contended that this sub-section applies in all cases where the intrinsic value of the articles exceeds Rs. 100 and reliance has been placed upon the decision in *The Great Indian Peninsula Railway Vs. Ramchandra Jagannath*, . I have no doubt whatever that the sub-section is applicable in all cases where the articles are of the kind mentioned in Schedule 2 and their intrinsic value exceeds Rs. 100. But I am not satisfied that the consequence follows that the railway company shall not be responsible for the loss, destruction or deterioration of the parcel or package where the value has been declared at, a figure less than Rs. 100. Sub-section (2) of Section 75, Railways Act, safeguards the railway company against an over-estimation of the value by the consignor and also against an under estimation of the value by the consignor; and it is perfectly clear from this sub-section that the only consequence of an inaccurate declaration by a consignor is that the compensation to be awarded shall not exceed the amount declared if the value has been under-estimated and shall not exceed the true value if the value has been overestimated. This seems to me to indicate that the consignor is not bound u/s 75(1) to give the true value. If the intrinsic value exceeds Rs. 100 he must declare a value and he must declare the contents. If the value exceeds Rs. 100 and he declares no value at all he can recover nothing. If he declares too small a value then under Sub-section (2) he is limited in his claim for compensation to the value which he has declared. It is obvious that if goods to the value of Rs. 500 were despatched and the declared value was given as Rs. 105 and the goods were lost the consignor could claim compensation to the extent of Rs. 105 and the railway administration would not be able to plead Section 75 as a bar.

4. It has been suggested on behalf of the petitioners that where the declaration of value is a declaration of an amount less than Rs. 100, the declaration has not been made under Sub-section (1) and consequently Sub-section (2) would have no application. I cannot accept this view. If the actual value of the goods exceeds Rs. 100 and the contents are declared and a value is given it seems to me that

the value is declared under Sub-section (1) even if declared wrongly and the position is the same in respect of an under-estimate below Rs. 100 as in the case of an under-estimate exceeding Rs. 100 provided that the contents of the parcel have been declared and a value has been given to it. In this view it seems to me that there was compliance by the consignor with the provisions of Section 73(1), Railways Act, even though he gave an estimate of the value which was less than Rs. 100. In this view Section 75(2) was applicable. The consignor was entitled to compensation for the loss of the articles and Section 75(1) was no defence but u/s 75(2) the consignor was not entitled to recover more than the declared value. I am of opinion that the decision of the learned Munsif was correct though not exactly for the reasons given by him. In this view this rule must be discharged with costs. Hearing-fee one gold mohur.