
(1947) 04 CAL CK 0018
In the Calcutta High Court

Governor-General of India in Council	Vs	APPELLANT
Dedraj Bajuria		RESPONDENT

Date of Decision : 22-04-1947

Acts Referred:

Citation : AIR 1948 Cal 168

Hon'ble Judges : Lodge, J

Bench : Division Bench

Judgement

Lodge, J.—This rule arises on of a suit decided by the Subordinate Judge of Bankura in Small Cause Court jurisdiction. The material facts were as follows:

2. On 10-7-1944, one Sioprasad booked 250 bags of rape seeds from Sahadal Railway Station to Bankura. On 18th July, the Railway receipt was endorsed by the consignor to Dedraj Bajuria alias. Thetraj Bajoria The consignment arrived at the Bankura station and was anlodod on 17-7-1944. The consignes went to take delivery on 21-7-1944. It was then found that 22 bags were damaged and some of the contents at least were missing. According the consignee took delivery of the undamaged bags and the damaged 22 bags were left with the Railway authorities for assessment of shortage. The assistant Commercial Inspector subsequently assessed the loss to be 26 maunds 17 seers. The Plaintiff claimed the value of 26 maunds 17 seers of rape seeds at Rs. 20 per maund and he also claimed 8 annas per bag as the price of the bags which had been damaged.

3. The railway authorities defended the suit and denied that the loss of the rape seeds was due in any way to misconduct on the part of the railway or its servants. "They asserted that the bags in which the rape seeds were packed were old, weak and partly wet by rain, that they were placed in a wagon at Sabadal which was sealed and riveted, that the seals and rivets were found intact at Bankura, but when the wagon was opened it was found that 11 bags had been torn and some of their contents were missing. The railway authorities disclaimed all responsibility.

4. The learned Subordinate Judge on a review of the evidence came to the conclusion that the rape seeds could not have leaked out from the bags, or have been taken from the bags from the time they were sealed in the wagon at, Sahadal to the time the wagon was unsealed at Bankura. The learned Subordinate Judge was satisfied that the wagon was sealed and riveted at Sahadal and that the seals and rivets were found intact at Bankura. The learned Subordinate Judge therefore came to the conclusion that 11 bags had been cut open and pilfered at the station of origin before the wagon was sealed and riveted and that 11 bags were cut open and the contents pilfered after unloading at Bankura. He held, therefore, that it was proved by the evidence that the shortage of rape seed and the damage to the bags were due to theft by somebody while the bags were in the custody and control of the railway administration and that it was not a case of loss due to leakage of old bugs during transit. He, therefore, gave a decree for Rs. 534 in favour of the plaintiff. The defendant the railway administration has obtained this rule.

5. On behalf of the petitioner, Mr. Lahiri has drawn my attention, to the fact that the goods were booked on Risk Notes A and Z, and he has argued further that the learned Subordinate judge in the Court below has not found that the loss arose from misconduct on the part of the railway administration or its servants. It is argued that accordingly the suit ought to have been dismissed. Mr. Lahiri has further contended that in view of the fact that Risk Note A was executed as well as Risk Note %, the proviso to Risk note % is not applicable and that there was no necessity for the railway administration in the circumstances-of the present case to disclose to the consignor how the consignment was dealt with during the time it was in the possession and control of the railway administration and that it was not necessary for them to give evidence thereof. He contended that it was for the consignor to prove misconduct on the part of the railway administration, or its servants, and on the failure of the consignor to do so, the suit ought to be dismissed. Mr. Lahiri drew my attention to the evidence adduced on behalf of the plaintiff which consisted of the evidence of one witness only and which contains no statement whatever to the effect "that there had been misconduct on the part either of the railway administration or its servants. In these circumstances, Mr. Lahiri contended that the suit ought to have been dismissed.

6. On the other hand, Mr. Mukherjee has contended that the proviso to Risk Note 2 is applicable, that the railway administration was bound to disclose to the consignor how the consignment was dealt with throughout the time it was in the possession or control of the railway company and it was necessary to give evidence thereof. He has argued further that from the evidence adduced by the railway company it can fairly be inferred that the loss was due to the misconduct on the part of the railway administration or its servants.

7. Risk Note Z provides for the booking of certain articles at a reduced rate on the consignor agreeing and undertaking to hold the railway administration harmless and free from all responsibility for any loss, destruction or deterioration

of or damage of all or any of the consignment from any causes whatever, except upon proof that such loss, destruction, deterioration or damage arose from the misconduct on the part of the railway administration or its servants. But there is a proviso in two cases. We are concerned, according to the finding of the Court below, with the second of these two cases. The proviso is in the case of

pilferage from a package or packages forming part of a consignment properly packed as in (a) when such pilferage is pointed out to the servants of the Railway Administration on or before delivery the railway administration should be bound to disclose to the consignor how the consignment was dealt with throughout the time it was in its possession or control and if necessary to give evidence thereof before the consignor is called upon to prove misconduct. But if misconduct on the part of the railway administration or its servants cannot be fairly inferred from such evidence, the burden of proving such misconduct shall lie upon the consignor.

8. Now it is clear that this is a case, according to the findings of facts in the Court below, of pilferage from packages forming part of consignment. The proviso will apply if the consignment was properly packed as in (a). Mr. Lahiri has contended that the very fact that the Risk Note A was executed is proof that the consignment was not properly packed as in (a), that is to say.

packed in accordance with the instructions laid down in the Tariff or, where there are no such instructions, protected otherwise than by paper or other packing readily removable by hand and fully addressed,...

Risk Note A shows that the consignment was accepted in.

bad condition and/or liable to damage, leakage or wastage in transit as follows:?
Bags old weak and partly wet by rain. Contents liable to drop out and damage in transit.

9. There can be no doubt that the consignor is bound by the statement in the Risk Note A as to the condition of the package. But whether the fact that the consignment was in bad condition means that it was not properly packed in accordance with the instruction laid down in the Tariff I have no means of saying. The Tariff is not before me. There is no evidence on record and I have simply no materials to show whether the fact that the consignment was in a bad condition as indicated in Risk Note A is sufficient to show that the consignment was not properly packed in accordance with the instructions laid down in the Tariff. If the mere execution of Risk Note A is sufficient to show that it was not properly packed, then of course the proviso in Risk Note Z would not apply and the plaintiff would not be entitled to succeed in the suit except on proof that the loss was due to misconduct on the part of the railway administration or its servants. In the present case, there is no such proof. If, therefore, the consignment was not properly packed, the present suit ought to have been dismissed. But as I have stated above, I am unable to say from the evidence on record that the consignment was not properly packed in accordance with the instructions laid

down in the Tariff as I have no knowledge as to what are the instructions laid down in the Tariff. Therefore, I must assume for the present that the proviso in Risk Note Z does apply. That being so, the railway administration was bound to disclose to the consignor how the consignment was dealt with throughout the time it was in its possession or control and if necessary to give evidence thereof before the consignor was called upon to prove misconduct. It was pointed out in AIR 1937 152 (Privy Council) that in such a case the railway administration ought to lead evidence first and show how the consignment had been dealt with and the Court should then consider whether from the evidence it could be fairly inferred that the loss was due to misconduct of the railway administration or its servants. In the present case, the railway administration was not called upon to lead evidence. Evidence was given by the plaintiff in the first instance and subsequently evidence was given by the defendant railway administration. The railway administration gave evidence and examined the booking clerk who booked the consignment at Sahadal. They examined the persons who opened the wagon at Bankura and proved that the rivets and the feals were intact, and they gave evidence regarding the custody of the property at Bankura. There is nothing to indicate that the consignor was dissatisfied with the evidence given as to how the consignment was dealt with. But the learned Subordinate Judge does not seem to have taken into consideration the terms of Risk Note Z at all and he has not apparently applied his mind to the consideration of the question whether the evidence given by the railway administration as to the manner in which the consignment was dealt with was adequate or was not adequate, whether they have given all the evidence which they ought to have given on this question and whether from that evidence it can be fairly inferred that the loss was due to the misconduct on the part of the railway administration or its servants. The learned Subordinate Judge seems to have held that if the loss has occurred while the goods were in the custody of the railway administration, the railway administration was necessarily liable. In my opinion, it is essential that the trial Court should decide in a case like this whether the evidence given by the railway administration as to the manner in which they dealt with the consignment is adequate and whether from that evidence it can be fairly inferred that the loss was due to misconduct on the part of the railway administration or its servants. If the Court of first instance considers that the railway administration has not given the necessary evidence it may fairly decree the suit. If the Court is of opinion that from the evidence given misconduct on the part of the railway administration can be fairly inferred, it can reasonably decree the suit. But if the Court is satisfied that the necessary evidence has been given and if the Court is not able fairly to infer from the evidence that loss was due to misconduct on the part of the railway administration or its servants, the Court is not entitled to decree the suit in the absence of positive evidence given by the consignor proving the misconduct of the railway administration or its servants. In the present case, there was no such positive evidence.

10. In my opinion, therefore, the decision of the learned Subordinate Judge

cannot be upheld. But at the same time I am not in a position to hold that the suit should be dismissed. In my opinion, the suit must be remanded to the Court of first instance to be dealt with in view of the condition in Bisk Note Z. The learned Subordinate Judge will consider whether the railway administration has given all the evidence they may reasonably be required to give as to the manner in which the consignment was dealt with and will then consider whether from that evidence it can fairly be inferred that the loss was due to the misconduct of the railway administration or its servants. If the learned Subordinate Judge is not able to draw such an inference, the suit shall be dismissed. If, on the other hand, the learned Subordinate Judge is able to hold or does hold that it can fairly be inferred that the loss was due to the misconduct of the railway administration or its servants, the suit shall be decreed.

11. The Rule is, therefore, made absolute. The judgment and decree of the learned Subordinate Judge is set aside and the suit is remanded to the lower Court for further hearing and disposal on the lines indicated above. The costs of this Rule will be costs of the suit, hearing-fee is assessed at one gold-mohur.