

(1947) 12 PAT CK 0010
In the Patna High Court

Hari Prasad Agarwala

APPELLANT

Vs

Governor-General-in-Council

RESPONDENT

Date of Decision : 23-12-1947

Acts Referred:

Citation : AIR 1948 Patna 242

Hon'ble Judges : Mukharji, J; Manohar Lall, J

Bench : Full Bench

Judgement

Mukharji, J.—In this second appeal the plaintiff is the appellant. The judgment under appeal is one of reversal. So far as the facts are concerned, they are practically all admitted. Plaintiff Hari Prasad Agarwala is a man of business at Jharia, On 8th August 1942 two consignments, one containing 200 bags of masur and the other 260 bags of gram, were despatched from Sasaram to Jharia under invoice Nos. 19 and 18 respectively, the consignee in each case being the plaintiff. On 17th August 1912 the plaintiff's representative went to Jharia Bail way-Station, paid the requisite railway freight in respect of the two consignments but for want of time could take delivery of only 30 bags of masur and 3 bags of gram. The goodshed in which the bags of masur and gram were kept was closed at 5 P.M. and so the representative of the plaintiff had to come away without taking complete delivery. When on the next day the plaintiff's man went to the Railway station again for taking delivery of the remaining bags it was found that 84 bags of masur and 51 bags of gram were missing. The plaintiff's representative thereupon took open delivery of the consignments in the presence of the goods clerk. The plaintiff claimed Rs. 1575 for the loss of masur and Rs. 753/2/- for the loss of gram. In paragraph 5 of the plaint it was stated that the loss was due to the "wilful negligence, misconduct and lack of proper care" on the part of the servants of the East Indian Railway Administration, Jharia, being a station on the East Indian Railway, The Governor. General-in-council representing the East Indian Railway Administration, the defendants in suit, filed written statement denying liability. It was alleged in paragraph 2 of the written statement that the consignments in question reached their destination on 16th

and 17th August 1942 with their seals intact. Further it was stated that they were unloaded in "good and sound condition" at Jharia Railway Station. In paragraph 3 the defendant stated that the plaintiff's representative took delivery of all the bags of both the consignments on clear receipts on 17th August 1942, but could not take away all the bags and had to leave behind some in the railway goods shed. It was further the case of the defendant that on the evening of 17th August 1942 Jharia Railway Station was raided by an unruly and violent mob which burnt the goods shed and the post office at Jharia and looted away property from the goods-shed including several bags of the two consignments in suit. It was also the case of the defendant that the Claims Inspector and the goods clerk of the Railway held an enquiry and found that 84 and 51 bags of the two consignments were destroyed by the mob. In the circumstances mentioned in the written statement the defendant denied his liability to pay the amount claimed by the plaintiff.

2. The learned Subordinate Judge at Dhanbad, who tried the suit, held that the defendant was liable for the loss of 84 bags of masur and 51 bags of gram which were not delivered by the plaintiff. As the prices claimed by the plaintiff for the masur and gram were not disputed the learned Subordinate Judge gave a full decree to the plaintiff. The defendant appealed to the District Judge and in appeal the learned District Judge held that in the circumstances of the case the defendant could not be made liable for the loss of the goods. Hence this second appeal.

3. One of the grounds on which the learned lower Court has held that the plaintiff is not entitled to succeed in the suit is that according to Clause (8), Appendix C, Railways Act, the railway receipt given by the Railway Administration for the articles delivered for conveyance must be given up at destination by the consignee to the Railway Administration, and the signature of the consignee or his agent in delivery book at destination shall be evidence of complete delivery. The learned District Judge apparently was in error when he took this to mean that such signature of the consignee or his agent will be conclusive evidence of complete delivery and no other evidence will be permitted to be adduced to show that really there was no complete delivery.

4. In the present case it is admitted by the Railway Company that the bags for the loss of which the suit had to be brought could not be taken away by the plaintiff's man because the goods-shed was closed at 5 P.M. There is evidence to show that the goods arrived at Jharia partly on the 16th and partly on 17th August 1942. Without any loss of time the plaintiff's representative wanted to take delivery. Before delivery could be completed the shed was closed by the Railway Company as it was getting late. That evening the shed was attacked by a large mob and some of the goods stored there were destroyed or looted. It was admitted by the defendant that the 185 bags in respect of which the suit was filed were either destroyed or looted away by the rioters. This being the position, I do not see how the defendant can rely on Clause (3) of Appendix C, Railways

Act, and ask any Court to draw the conclusion that complete delivery of the two consignments in question was taken.

5. On behalf of the defendant-respondent it was contended that as there was a widespread loot and destruction of properties in the goods-shed, the learned District Judge who was the final Court of fact rightly arrived at the conclusion that the bags in question were lost during the raid on the goods-shed. That there were widespread disturbances throughout the country is a matter of history now and a Court can almost take judicial notice of that fact. But this alone will be of little avail to the defendant who has to prove in case of non-delivery as in the present case that these particular consignments were lost due to the acts of the rioters. The learned lower Court correctly formulated the question when he observed as follows at page 27 of the paper-book.

The question however, arises for consideration whether these very goods which were delivered to the consignee were looted during the disturbances that is save in the night of 17-8-42.

6. Further on, the learned District Judge says that there is no evidence of eye-witnesses on the record to show that these very goods were actually looted. It will amount to an absurdity to ask for the evidence of eye-witnesses to prove the allegation of the loot of these very consignments. It is easy to imagine that while the loot and destruction went on no railway employee was allowed to go near the shed. Even if any spectator was present in the neighbourhood of the goods-shed it was not at all likely that he could notice as to which of, the bags in the goods-shed were looted or destroyed and which of them were left behind by the rioters. As could be expected an inventory was taken after the incident. Naturally this was done by the Railway Company. The papers relating to the inventory must be in the possession of the Railway Company. Strangely enough, they have not been produced in this case. It is only natural that the non-production of these papers was severely commented upon in the lower Courts as well in this Court. The learned lower appellate Court seems to have been quite alive to the proposition of law that where a party can produce evidence, specially documentary, to prove a fact and it does not produce that document the Court should make adverse inference against such party. Then he observes that to make an "adverse, inference is one thing and holding that the party has failed to prove it a case is another." The learned lower Court then goes on to describe what must have taken place at the time of the alleged loot. As already indicated above, there was admittedly a raid on the goods-shed attended with loot and destruction. If the evidence in the case had been that whatever was in the shed at the time of the mob attack on it was either carried away or destroyed leaving nothing in the shed, then the matter would certainly have been different, for the whole must always include a part, but the admitted facts in this case go to show that the alleged loot and destruction were in respect of only some and not of all that was in the shed. D.W.S Panchanan Chatterji who is an assistant goods clerk at Jharia Railway Station was examined on behalf of the defendant. He has proved two

reports, Exs, E and Eq. These reports clearly go to show that an inventory of the goods left behind by the rioters was taken by the Claims Inspector with the help of the goods clerk. No doubt in the report Ex. F submitted by the goods clerk, Jharia, to the Inspector, Watch and Ward Department, Asansole, it is stated that 135 bags of the two consignments in question were looted away by the mob, but in the absence of the inventory this report which is in the handwriting of one Mr. J.B. Ray and has been proved by D.w. 3 Panchanan Chatterji cannot be safely relied on to exonerate the Railway Company. The learned District Judge was not quite right when he observed (vide page 30 of the paper-book) that in the circumstances of the case the only reasonable inference that can be drawn is that these goods were lost in the course of the loot of the goods-shed.

7. In my opinion, the view taken by the learned District Judge is not correct and for the reasons stated above I would allow the appeal and restore the judgment and the decree of the learned Subordinate Judge. The appellant is entitled to his costs in all the Courts.

Manohar Lall, J.

8. I agree. Great reliance was placed before us that Clause (3), Appendix C., Railways Act, clearly lays down that when a consignee has handed over a railway receipt at the destination to the railway authorities, this amounts to an actual delivery of the goods, and thereafter the goods remain with the Railway Company at the risk of the consignee. I do not agree with this contention, because Clause (3), of Appendix C only says that the signature of the consignee in the delivery book at the destination shall be evidence of complete delivery. It does not say that it shall be the conclusive evidence of complete delivery. In the second place, my experience is that railway receipts are first handed over to the railway authorities and then after making enquiries in the books and go downs they deliver goods to the consignee. Again it may well happen that after the railway receipt had been handed over to the authorities at the destination, the authorities took time for searching the goods and the closing time arrived and the goods then were left in the custody of the railway company in whose custody they were already from before. In my opinion, the position is exactly the same as the delivery of the goods has not been made over to the consignee.