
(1953) 03 RAJ CK 0008
In the Rajasthan High Court
Case No : S.C.C. Revision No. 87 of 1952

Heeralal	Vs	APPELLANT
Union of India		RESPONDENT

Date of Decision : 30-03-1953

Acts Referred:

Contract Act, 1872 — Section 151, 152, 161

Citation : (1953) 03 RAJ CK 0008

Hon'ble Judges : B.N. Nigam, J.C.

Bench : Single Bench

Advocate : D.D. Bhargava and B.L. Bakliwal, for the Appellant; B.P. Beri, for the Respondent

Final Decision : Dismissed

Judgement

Nigam, J.C.

1. Heeralal Karta and Manager of the Joint Hindu Firm Kishanlal Heeralal Pandariba, Ajmer, filed Suit No. 760 of 1951 against the Union of India through the General Manager, B.B. & C.I. Railway, Bombay claiming a decree for Rs. 250/- and interest thereon from the date of suit till payment.

2. The plaintiff came to the court with the statement that 24 baskets of betel leaves were consigned from Grant Road Station at Bombay to Ajmer on 27.05.1950. That the said goods were sent in a sealed iron wagon instead of a wooden wagon which is the usual practice in view of the perishable nature of the goods. That the defendant is estopped from denying the fact that the goods reached Ajmer in a wholly deteriorated condition. That the plaintiff had purchased the betel leaves for Rs. 2.41/12/- and now claims a sum of Rs. 250. The suit was contested and the learned Judge, Small Causes, held that the defendant was not responsible for the damage. He accordingly, dismissed plaintiff's suit with costs. Against that judgment and decree, Heeralal plaintiff has come up in revision. I have heard the learned counsel for the parties.

3. The first question for my consideration is whether the defendant Company's liability is affected by the execution of a Risk Note in form "Z" by the consignor at Bombay, The Parcel Way Bill bears the following seal:

"BTBL ATORZ liable to be decayed"

There is no disagreement as to what these letters stand for. "BTBL" stands for "basket of betel leaves" and "ATORZ" stands for "at owner's risk" under Risk Note "Z". The learned counsel for the opposite party has urged that the defendant Railway is entitled to the benefit of the provisions of S. 72(2), Railways Act. The learned counsel for the applicant has, on the other hand, urged that the Railway did not produce any Risk Note executed by the consignor and the seal on the Parcel Way Bill cannot be taken to be evidence of the due and proper execution of a Risk Note in form "Z". The learned counsel for the opposite party has relied on - AIR 1929 698 (Lahore) and - AIR 1934 186 (Lahore) These rulings are certainly authorities for the proposition that the seal on the Parcel Way Bill is sufficient evidence of the execution of a Risk Note in form "Z" and that the plaintiff is estopped from pleading that he did not execute the Risk Note in that form. The learned counsel for the applicant, on the other hand, refers me to- Bengal and North Western Railway Co. Ltd. Vs. Sobrati Mia and Others, ; - Ram Das Ram and Others Vs. Dominion of India, and - AIR 1951 357 (Nagpur) The learned counsel for the opposite party has also referred to an earlier ruling i.e., - The East Indian Railway Co. Ltd. Vs. Ram Chabila Prasad, .

4. I may respectfully state that I agree with the view taken in Ram Das Ram and Others Vs. Dominion of India, . In my view the railway receipts are merely evidence of the facts that certain goods were placed with the rail way and a certain amount was paid as freight or was to be charged at destination. Even if the reference to Risk Note "Z" is to be taken as a reference to the execution of a Risk Note by the consignor, the Railway Company will not be absolved of the burden of proving that the Risk Note was duly and properly executed. The mere fact that a lower rate was charged would also not take away the liability of the Railway Company unless the execution of a Risk Note in form "Z" Bringing the case of the Railway Company within the provisions of sub-s. (2), s. 72, Railways Act, was duly proved. As such, I am of opinion that if the Railway company wants to take advantage of S. 72 (2). Railways Act, it must prove the due execution of Risk Note "Z"

5. As such, the liability of the Railway Company will be regulated by the provisions of S. 72 (1) and it would be liable as a bailee under the provisions of Ss. 151, 152 and 161, Contract Act. The question thus is whether the Railway administration took all due and proper care of the consignment entrusted to its custody or whether it had been guilty of misconduct. The learned counsel has drawn my attention to S. 10 of Amending Act LVI of 1949. The learned counsel refers to Cl. (b) of s. 74 D and urges that "the Railway administration is bound to disclose to the consignor how the consignment or package was dealt with through" out the time it was in its possession or control but if negligence or

misconduct on the part of the railway administration or of any of its servants cannot be fairly inferred from such disclosure, the burden of proving such negligence or misconduct shall lie on the consignor". The learned counsel points out that the evidence discloses that upto Ahmedabad i.e., on 28-5-1950 the consignment was in good condition and that when it reached, Ajmer on 31-5-1950, 255 baskets in Wagon No. 14971 had so far deteriorated as to be unfit for human consumption. The contention of the learned counsel is that even if wooden wagons were not available, the consignment should have been brought to Ajmer in a ventilated iron wagon. The defendant company has disclosed how the consignment was dealt with. Even the number of wagon has been given. The plaintiff could have easily by cross-examination or summoning other evidence from the defendant Company given evidence of the construction of the wagon and proved that the parcels were brought to Ajmer in an unventilated wagon. There is, however, no evidence on the point. The learned counsel has based his argument on the allegation that the packages were brought to Ajmer in an unventilated wagon. There is no proof that the wagon was not ventilated. As such, I am of the opinion that the plaintiff failed to prove his case.

6. No other point has been pressed before me.

7. Accordingly, I see no force in this revision application and dismiss it. The parties will, however, bear their own costs.