
(1904) 06 CAL CK 0023
In the Calcutta High Court

Jalim Singh Kotary

APPELLANT

Vs

Secretary of State for India

RESPONDENT

Date of Decision : 09-06-1904

Acts Referred:

Railways Act, 1890 — Section 47, 54, 72

Citation : (1904) ILR (Cal) 951

Hon'ble Judges : Stephen, J

Bench : Single Bench

Judgement

Stephen, J.—This is a case in which the plaintiff sues the Secretary of State, as the authority responsible for the Eastern Bengal State Railway, for the value of four bales of piece-goods, which he delivered to the Railway and which, he says, were lost, while they were in the custody of the Railway.

2. I will first consider the facts of the case, which are not in themselves complicated, but as to which there is a substantial dispute. We have had the procedure for taking goods by Railway detailed to us very fully by one of the witnesses for the defence, and his statement of the procedure may be taken as substantially accurate. I need not go through it in detail, but the general lines on which the operation of sending off goods by train is performed is that the consignor takes his goods to the station, and there has filled in a document called the forwarding note, which, after he has seen various officials, is registered by the registering clerk; then the consignor on production of the registered forwarding note gets the goods marked and afterwards he gets them weighed; after they have been weighed, he does not see either the goods or the forwarding note again. The latter is sent back to the office and various steps are taken with regard to it, and the former are sent to their destination.

3. Now the evidence of the plaintiff is that he sent what we may, for purposes of this case, take as two lots of goods to the Railway Station on Friday, the 1st February 1901. The one lot consist of four bales and the other of one, which was sent at a later time, because additional goods had to be inserted in it. On that

day the beginning of the rather lengthy process necessary for transmission of the goods had begun, but before it proceeded far, it stopped, because the office closed on account of the death of the Queen-Empress. The office remained closed, until the ensuing Monday. On the Monday, the servants of the plaintiff resumed the operation of booking those goods, and they carried it through, according to them, in its regular course, until they arrived at the point where the goods are marked. According to them, the four bales and the one bale were marked. Then the Railway officials stated that they would see them weighed, and they accordingly came away believing all would be well.

4. Next day, on going for the receipt, the delivery of which by the Railway Company is the final operation of booking the goods, the plaintiff's servants were told that the one bale had gone through all right, and they got the receipt, but the other four bales were not to be found. Search was made, and eventually they went to Goalundo, which is a point on the journey towards the final destination of the goods, and there they failed to find any trace of them. Meanwhile the one bale went safely through to its destination.

5. Taking the story so far as supporting their case, the plaintiff proves that he purchased these goods through a broker; that is satisfactorily proved by his books. He also produced the forwarding register book of the Railway Company, where there is an entry of those four bales, which so far corroborates his story.

6. The evidence produced by the defendant goes to show that those four bales in fact never existed. The various officials, who might have spoken to this point, are unavailable, for different reasons. One is said to have left the defendant's service and gone elsewhere. The absence of other important officials have been satisfactorily accounted for and all the evidence that we really have on the point is that of the station-master, who saw the consignor's servants after the receipt for the goods had not been given. The circumstances of that interview are all in dispute.

7. The plaintiff's gomasta says that when he went to see the station-master on failing to get information, the marker and other officials made certain statements before him. This is denied by the station-master, who gives an entirely different account of the matter, and in particular denies the statements said to have been made by the marker. One of the few important documents produced is the lorry, which the station-master gave to the consignor to allow him to have the goods in the goods-shed at Goalundo overhauled by his servant, in order to see if those goods had been transmitted there by any irregular manner.

8. It is argued strenuously by the plaintiff that he could not possibly have suggested this on his own account. This letter must have been given on the suggestion of the station-master. This I doubt, but I think the letter is not a very strong piece of evidence, either one way or the other. Taking the story as told by the plaintiff and considering the credibility, which I attach to the witnesses, I incline decidedly to the story told by the plaintiff one of my reasons being that

very little of the station-master's evidence was put to the plaintiff in cross-examination. Also there are parts of the written statement which, are not fully consistent with that story. Further, it appears that the station-master has never in any way recorded the story he tells us, until long after the event occurred. I therefore find as a fact that the four bales were brought to the defendant's premises by the plaintiff, and were left there by the plaintiff under the control of the defendant's servants with the defendant's knowledge and consent. Now, this raises the second point, in the case I have to consider; what is the legal position of the Railway Company under the facts which I have found? Three sections of the Indian Railway Act of 1890, which governs this case, seem to me to be of importance. The first is Section 72, which puts in a legislative form what I take to be the ordinary law upon the subject, which is that, when goods are delivered to the Railway to be carried, they become liable like any other bailee. It is argued that there was no delivery in this case, because under the circumstances stated, delivery does not take place until a receipt is given by the Railway Company. I cannot read this section in that way. Delivery I take to be a purely lay word, devoid of any legal significance at all; it alludes to a physical event; I do not think one can say that whether there is delivery or not is in any way affected by any legal event. Therefore I take delivery in that section to refer to a physical event, an important element of which is that, whatever is delivered passes from the physical custody of one man to the physical custody of another.

9. The real question depends upon the construction that is to be placed upon Sections 47 and 54 of the Railway Act. For the present purposes these two sections need not be distinguished. By Section 47 the Railway Company may make general rules for regulating the terms on which it will warehouse or retain goods at any station. By Section 54 the Railway Company may impose conditions for receiving goods. For the present purposes, these two things are the same. In both cases these rules and conditions have to be consistent with this Act. Now, what does that mean? The Railway Company has cast upon it the duties of an ordinary bailee. As I read the Act, it cannot wholly divest itself of those duties, but it may determine the conditions under which that duty may vest, and in particular it may specify the point of time at which it shall vest. The general common law embodied in Section 72 is by those sections liable to be cut down to a certain extent by those rules under Sections 47 and 54. The question is to what extent? And the answer is as far as is reasonable, which really means the same thing as being consistent with the Act.

10. This brings me to the further point that any of the bye-laws or conditions of the Company are void, if and in so far as they are unreasonable, and I have to consider whether the conditions imposed by the rules in this case are or are not reasonable. Two rules have been so imposed--one u/s 47, the other u/s 54, and again we need to distinguish between the two. By the former the goods are at the owner's risk, until a receipt has been signed by an authorized Railway servant; by the latter, which in this case is endorsed on the back of the forwarding note, the Company are not accountable for any article received,

unless a receipt has been given. In both cases what the Railway say is, we are not liable for your goods, until we have given you a receipt for them.

11. We have seen in the procedure detailed to us that giving that receipt is the last act performed by the Company in booking the goods.

11. But there appears to be no rule as to when the receipt is to be given. It might not be given for a considerable time, and we have evidence that it is sometimes given on the day after the goods have been received. I suppose it might be given after the goods had arrived at their destination. In the present case the receipt for the bale that went through was not given until the bale had been for three nights in the Company's possession, and in any case when the process of booking is interrupted by the end of office hours, goods must necessarily be so left.

12. The Company, however, claims a right to delay the beginning of its own responsibility until a performance of a formal act of its own, which may be delayed until the goods have passed out of their possession at the other end of their journey. This seems to me unfair, and I cannot think the condition is reasonable. It is also open to this view, that that construction was never intended by the framers of the rules. I think it is not unreasonable that as long as the consignor's servant is seeing the goods through the process of booking, marking and weighing, the Railway Company should not be responsible; but that the Company should become responsible, if the booking process is interrupted for any substantial time and the goods are left in their possession, as in such a case they practically must be. I think this construction might not unreasonably be put on the rules in question. But then they could not apply to the present case.

13. Under these circumstances I hold that the defendant is liable for the loss of these four bales. There has been no question as to the value of the bales; judgment will accordingly be for the plaintiff for Rs. 2,381-11 with interest at 6 percent from the 4th February 1901 until date of action and costs on scale No. 2