
(1971) 01 SC CK 0045

In the Supreme Court Of India

Case No : Civil Appeal No. 1228 Of 1967

Jeetmal Ram Gopal

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 19-01-1971

Acts Referred:

Contract Act, 1872 — Section 151, 152, 161

Citation : (1972) 4 SCC 162 : (1971) 3 UJ 201

Hon'ble Judges : J. C. Shah, C.J.; K. S. Hegde, J.; A. N. Grover, J

Bench : Full Bench

Final Decision : Allowed

Judgement

J.C. Shah, C.J.—On August 28, 1948, the appellants booked a consignment of 176 mds 6 seers of ghee in 357 tins from railway station Hathras Killah to Kanpur Central on East India Railway under RR. No. 721200. At the destination station, the consignment was found to be short by 37 mds. 24 seers 4 ch. of ghee. The appellant filed a suit against the railway administration for a decree for Rs. 10,965.50 p. as damages for loss suffered by them on account of short delivery in the consignment. The appellant submitted that the loss was due to the negligence and misconduct of the employees of the railway administration. The suit was defended by the Union of India. It was contended that the goods had not been properly packed and on that account the goods were booked at owner's risk under railway risk note in Form A and that the Railway Administration and its employees were not guilty of negligence or misconduct in dealing with the consignment. The Trial Court decreed the suit holding that the execution of the railway risk note in Form A was not proved, and the railway being a bailee of the goods consigned was liable to make good in loss suffered by the appellants. In appeal against the decree, the High Court of Allahabad reversed the decree and dismissed the appellant's suit. With certificate granted by the High Court, this appeal has been preferred by the appellants.

2. It was enacted by Section 72 of the Indian Railways Act, 1890 as it stood at

the relevant time that :

(1) The responsibility of a railway administration for the loss, destruction or deterioration of animals or goods delivered to the administration to be carried by railway shall, subject to the other provisions of this Act, be that of a bailee Under Sections 151, 152, and 161 of the Indian Contract Act, 1872.

(2) An agreement purporting to limit that responsibility shall, in so far as it purports to effect such limitation, be void, unless it

(a) is in writing signed by or on behalf of the person sending or delivering to the railway administration the animals or goods, and

(b) is otherwise in a form approved by the Central Government.

3. The railway administration being a bailee, it would ordinarily be liable to make good the loss suffered by the bailor unless it shows that it took such care as a person of ordinary prudence would under similar circumstances take of his own goods of the same bulk, quality and value. It is however, open to the railway administration by agreement with the consignor to limit its responsibility as a bailee, provided the agreement is executed in the manner prescribed by Sub-section (2) of Section 72. The case of the Railway Administration is that it had booked the consignment under Risk Note form A i.e. at owner's risk. The appellants denied that the consignment was booked under Risk Note Form A. Witness Lala Ram examined on their behalf deposed that a risk note restricting the liability of the railway administration was even executed. Lala Ram Stated that he had taken the forwarding note to the station, that after getting the tins of ghee loaded, he took them to Hathras station & that he had the goods booked, but he did not remember who filled up the risk note form and whether it was filled up or not. He did not see O.R.A. (Owner's risk) written on the railway receipt, that the goods were loaded on the day it was booked, that he got loaded the goods and that he was not told that the goods were sent at the owner's risk.

4. Mr. Gupta for the appellants contended that in fact no risk note was even executed by the appellant and on that account, the liability of the railway administration was u/s 72(1) of the Indian Railways Act, 1890 as in force in 1948 that of an ordinary bailee. But the appellants in their plaint have expressly referred to the railway receipt No. 721200 dated August 28, 1948. They have not produced the railway receipt. The railway administration has tendered in evidence a copy of the railway receipt which is printed at p. 76 of the record. They have also produced the form of risk note "A". We do not think there is any substance in the contention raised by Mr. Gupta that these, documents were not properly exhibited in the Court of first instance. The risk note was tendered in evidence by the railway administration and there is an endorsement of the Civil Judge, Aligarh directing that the document be exhibited. Once the document which is not otherwise inadmissible is admitted in evidence, and is exhibited, it is not open to the appellate Court to allow a contention to be raised as of its proper proof. The Risk Note was admitted without any objection The risk note form is

statutory and needs no formal proof. The risk note, which is printed at p. 77 of the record states :

Whereas the consignment of 357 tins Ghee tendered by me/us as per Forwarding Order No. 992 of 28th August, 1948 (date) for despatch by the Railway Administration to Cawnpore Grain Shop station under Railway Receipt No. 721200 of 28th August, 1948...it is liable to damage leakage or wastage in transit as follows :

Tins unpacked soldering defective P/c not complied with.

I/We the undersigned do hereby agree and undertake to hold the said railway Administration over whose Railway the said goods may be carried in transit from HRF station to Cawnpore Junction Station harmless and free from all responsibility "for the condition in which the aforesaid goods may be delivered to the consignee at destination and for any loss arising from the same except upon proof that such loss arose from misconduct on the part of the Railway Administration's servants.

By this risk note the appellants had clearly undertaken that in respect of the consignment of ghee the railway administration will be free from all liability for the condition in the goods may be delivered to the consignee at the destination, unless it be proved that the loss arose from misconduct on the part of the railway administration. The burden of proof of misconduct under the terms of the risk note clearly lay upon the appellants.

5. Mr. Gupta then Contended that in any case there was evidence to prove that the servants of the railway administration were guilty of misconduct. He again relied upon the testimony of Lala Ram who stated that he the witness had been informed "by the gunner that the carriage had been taken to Central mounted on the hump and therefore damage had been caused to the consignment." But this was clearly hearsay The witness had no personal knowledge. Mr. Gupta contended that the railway administration was called upon to produce documentary evidence in their possession relating to movements of the wagon in which the goods were loaded. The record does not appear to have been clear on what step were taken, but from the findings of the High Court it appears that there was no evidence which suggested that the servants of the railway administration were guilty of negligence in the course of the movements of the goods from place of loading to the destination.

6. Mr. Gupta also urged that the wagon which was originally loaded at Hathras railway station was carried first to Jamuhi area and then to the grain shop siding, then back to Jamuhi and it was finally taken to the Kanpur Central Station where delivery was given The High Court has pointed out that the wagon had reached Kanpur Central station by the normal route. It was only taken to the Kanpur Central for unloading first and then to another platform of the same station It could not be said that on that account the protection of the risk note in Form "A" came to an end. In the absence of any clear evidence to prove that by reason of

the wagon being taken to Jamuhi and then to the grain shop siding, the back to Jamuhi and finally to the Kanpur Central station, any damage was caused, the claim made by the appellants for a damages arising from misconduct of the railway Administration is not proved.

7. The appeal therefore fails and is dismissed. In the circumstances, there will be no order as to costs.