

(1923) 02 AHC CK 0052
In the Allahabad High Court

Jiwan and Abdullah

APPELLANT

Vs

Secretary of State for India in Council

RESPONDENT

Date of Decision : 05-02-1923

Acts Referred:

Citation : (1923) ILR (All) 380

Hon'ble Judges : Lindsay, J

Bench : Single Bench

Judgement

Lindsay, J.—This is an application for revision of a judgment of the Court of Small Causes at Saharanpur awarding the plaintiff firm damages against the Secretary of State as proprietor of the Oudh and Rohilkhand Railway.

2. The facts found by the court below are as follows: On the 23rd of June, 1920, the plaintiff firm made over to the railway 58 parcels containing mangoes. The goods were consigned to Lahore. At the time of sending the goods the plaintiffs executed a risk-note in form B.

3. The goods were delayed in transit and did not reach Lahore till the 4th of July, and, by that time, the fruit had become rotten. Delivery was offered to the consignee on the 5th of July but was refused by him, and under the orders of the Station Superintendent the goods were then destroyed.

4. The Judge finds that the delay in the transit of the goods, and the resulting deterioration of the fruit, was due to gross negligence on the part of the railway's servants.

5. The present suit was brought by the plaintiff firm to recover the value or part of the value of the consignment. The railway company claimed the protection of the risk-note form B, pleading that as there was no loss of the goods by them, the plaintiffs could not recover.

6. The learned Judge overruled this plea, holding that the word "loss" in the risk-note was not equivalent to loss by the railway, that is to say, disappearance of

the contents of the parcels, but meant the loss to the plaintiff firm occasioned by the destruction of the fruit while it was in the possession of the railway. The present application challenges the correctness of the lower court's interpretation of the word "loss" as set out above and it is argued that the railway company was protected by the risk-note as there was no loss of the goods by the company.

7. In my opinion this contention must prevail; the decision of the court below is erroneous.

8. Section 72 of the Indian Railways Act (Act IX of 1890) defines the responsibility of a railway administration for the loss, destruction or deterioration of goods delivered to it for carriage; the responsibility is that of a bailee as laid down in Sections 151, 152 and 161 of the Indian Contract Act, subject to any special agreement executed by the consignor in a form which has been approved by the Governor General in Council.

9. There can be no dispute that the agreement embodied in risk-note form B is an agreement of this kind.

10. Under this agreement, which governs the relations of the parties in the present case, the railway administration, in consideration of its charging a lower rate for the goods, is indemnified by the consignor against all liability for any loss, destruction, or deterioration of, or damage to, the consignment from any cause whatever except for the loss of a complete consignment or of one or more complete packages forming part of a consignment, where the loss is due either to the wilful neglect of the railway administration, or to theft by, or to wilful neglect of its servants or agents. It follows from this that the consignor who has executed a note in this form has no claim for destruction, or deterioration of, or damage to the consignment. He can only claim in the event of loss occasioned in the manner specified in the contract. The word "loss" in this connection clearly means loss by the railway administration and cannot mean loss to the owner in the sense of injury to him arising out of his being deprived of his goods.

11. Section 151 of the Indian Contract Act, referred to in Section 72 of the Railways Act, lays down that the bailee of goods is bound to take as much care of the goods bailed as a man of ordinary prudence would under similar circumstances take of his own goods of the same bulk, quality and value as the goods bailed. Section 152 of the Contract Act lays down that in the absence of special contract the bailee is not responsible for the loss, destruction or deterioration of the thing bailed if he has taken the amount of care prescribed by Section 151, and obviously the words "loss, destruction or deterioration" in Section 152 refer to something which happens while the goods are still in the possession of the bailee. The word "loss" in this connection must necessarily mean "loss" by the bailee. The word must also have the same signification in Section 72 and the following sections of the Railways Act and also in the risk-note form B, which is one of the forms drawn up under the provisions of the Act.

12. I hold, therefore, that the word "loss" as used in the risk-note must mean

loss by the railway administration.

13. In support of this opinion I refer to a case decided by the Chief Court of the Punjab, Changa Mal v. Bengal and North-Western Railway Co. (1897) P.R.P. 23 where it was held that the word "loss" in Section 77 of the Railways Act means "loss by the railway" and not simply "loss to the owner."

14. In the case now before me there was no loss by the railway administration: the goods were never abstracted from its possession so as to become "lost" in the proper sense of the term, and this being so, the plaintiff firm has no case under the contract embodied in the risk-note.

15. The case is really one of deterioration of goods while in possession of the railway, and although the deterioration was due to the neglect of the railway's servants the claim cannot succeed. The contract of indemnity contained in the risk-note excludes all claims on account of the deterioration of goods.

16. I allow this application and, reversing the decree of the court below, direct that the suit be dismissed with costs to the defendant in both courts.