

(1923) 04 AHC CK 0059
In the Allahabad High Court

Kishan Lal, Tirkha Mal

APPELLANT

Vs

East Indian Railway Company

RESPONDENT

Date of Decision : 13-04-1923

Acts Referred:

Citation : (1923) ILR (All) 530

Hon'ble Judges : Daniels, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Daniels, J.—This revision raises a question of the liability of a railway company in respect of goods consigned under risk-note B. In this form of risk-note the consignor, in view of reduced rate of freight, agrees to hold the railway "harmless and free from all responsibility for any loss, destruction or deterioration of or damage to the said consignment, from any cause whatever, except for the loss of a complete consignment or of one or more complete packages...due either to the wilful neglect of the railway administration or to theft by or to the wilful neglect of its servants," with a further proviso that "wilful neglect shall not be held to include fire, robbery from a running train or any other unforeseen event or accident."

2. One hundred and twenty-six bags of sugar were consigned to the plaintiff under a risk-note in this form. On taking delivery the number was found to be short by three bags. The plaint alleges that in consequence of this short delivery the plaintiffs have suffered loss to the amount claimed. In defence the railway company set up the risk-note and they further alleged that in this case the loss of the bags was due to theft from a running train. It has been held that in this connection the terms robbery and theft are equivalent, *Great Indian Peninsula Railway v. Bhola Nath Debi Das* ILR (1922) All. 56. The case was tried in the Small Cause Court. The view taken by the learned Judge of the court below was that as the plaintiff did not allege in his plaint that the goods were lost, but merely that he had not received them, it lay on the defendants to prove loss of

the goods, and it was only after they had proved this that the plaintiff would be required to prove that the loss was due to a cause for which the railway company would be liable. In support of this view the learned Judge relies on the case of Ghelabhai v. East Indian Railway Company reported in ILR 45 Bom. 1201, though the learned Judge prefers to cite the case from some volume of private reports.

3. The trial judge has held that loss means loss of the goods by the railway company.

4. The same view was taken by Lindsay, J., in Secretary of State v. Jiwan ILR (1923) All. 380 in p. case in which a consignment of food had rotted owing to delay in transit and the plaintiff had suffered loss in consequence. The delay was found to be due to the wilful neglect of the railway company. The goods were consigned under risk-note B, as in the present case. The risknote gave the railway absolute protection in respect of damage to the goods. It did not protect them against loss, if the loss was due to the wilful neglect of their servants. The learned Judge held that "loss" meant loss by the railway company and not loss to the plaintiff. On this view the plaintiff is entitled to a decree in the present case. In that case the plaintiffs were suing for something which was prima facie within the protection afforded by the risk-note, namely, damage to the goods. Therefore in the absence of proof of loss the suit failed. Here the plaintiffs are suing for something which is prima facie outside the protection afforded by the note, namely, breach of the contract to deliver. In the absence of evidence of loss, the plaintiff is entitled to succeed. No doubt a different view has been taken by the Punjab High Court in Hill Sawyers & Co. v. The Secretary of State ILR (1921) Lah. 13 but the subordinate judge was bound to follow the rulings of this Court.

5. Reliance is placed by the respondent on East Indian Railway Company v. Nathmal, Behari Lal ILR (1917) All. 418 and Smith v. Great Western Railway Company (1922) L.R. 1 A.C. 178. In both these cases the loss of the goods was admitted by the plaintiffs. In the former case the goods were missing on the arrival of the train at its destination. In the English case it is specifically stated in the last paragraph of Lord Wrenbury's judgment that the plaintiff alleged the loss of the goods. The argument turned on whether wilful negligence could be assumed from the mere fact of nondelivery. Moreover, the protection given to the railway was in wider terms and included delay or detention.

6. For the above reasons I am unable to accept this revision, which I accordingly dismiss with costs.