

(1934) 06 CAL CK 0043
In the Calcutta High Court

Madras and Southern Mahratta Railway Co. Ltd.	APPELLANT
Vs	
Haji Latif Abdullah	RESPONDENT

Date of Decision : 06-06-1934

Acts Referred:

Citation : AIR 1935 Cal 809 : 159 Ind. Cas. 886

Hon'ble Judges : M.C. Ghose, J

Bench : Division Bench

Judgement

M.C. Ghose, J.—This is a petition by the Madras and South Mahratta Railway against whom the Small Cause Court Judge of Howrah has passed a decree for Rs. 469. The suit was instituted by the plaintiff on account of damage by wet to 22 bags of tobacco out of a consignment of 225 bags sent from a place called Nepani to Calcutta. The goods were made over to a contractor at Nepani. The contractor carried them 29 miles in ox carts to Chakodi Railway Station on the M.S.M. Railway. There an assistant, Rangia Charia, defence witness 2, loaded the bags in two wagons. He deposed that he chose the two wagons and he found no defect in them. He received the consignments at 15 hours on the 22nd July and sent the same at 11 hours on the 23rd July. After the wagons had gone 143 miles to Hubli junction on the M.S.M. Railway it was found that a wire of one of the seals was cut; suspecting theft the two wagons were taken to a covered shed where they were opened in the presence of the watch and ward staff and the numbers of the bags were found to be correct. Thereafter the wagons were again properly sealed and sent on by rail. The delay by this examination was about 23 hours. The wagons arrived at Hubli station at 4-30 hours on the 24th July and were sent on at 3 hours on the 25th July. They travelled 439 miles and arrived at Tadipolli junction on the 27th July. There the metre gauge ends and the broad gauge begins, and the goods had to be transhipped. The clerk who transhipped them defence witness 3, deposed that he noticed certain of the bags damaged by wet. When the goods arrived at Shalimar it was found that 22 bags were damaged by wet. The remainder of the 225 bags were found in good condition. The plaintiff sued both the M.S.M. Railway and the Bengal Nagpur Railway for

damages. The trial Court found that the damage had taken place between Chakodi and Tadipalli on the M.S.M. Railway and that no damage took place on the B.N. Railway and the suit was accordingly dismissed against the Bengal Nagpur Railway.

2. There is no dispute in this Court that the damage to the 22 bags took place between Chakodi and Tadipolli. The question is whether the damage was caused by the misconduct of the railway administration. The learned trial Judge found that the railway administration was guilty of misconduct inasmuch as the railway servant had without justification detained the consignment for 23 hours at Hubli junction and that there was no evidence that the two wagons in which the goods were carried were waterproof or that they were securely sealed and locked. It has been urged that the detention for 23 hours at Hubli junction was in order to prevent any possible theft and that it was done by railway servants in the discharge of their duty to prevent theft. It was found that a wire had been cut and they suspected that a theft had taken place or that theft might take place unless proper steps were taken and they removed the wagons to the proper shed and properly sealed the wagons again and that for this anxiety on the part of the railway servants to secure the goods against possible theft the learned Judge was in error to convict railway officers of misconduct. The argument appears to me to be well founded. It is not correct in the circumstances to find fault with the railway administration for the delay at Hubli junction.

3. The trial Court found that there was no evidence that the two wagons were waterproof. Dr. Brahmachari has read the relevant evidence to show that the railway officers who were examined in the trial Court deposed that the wagons were in good condition and that there was no defect in them. In another place the learned Subordinate Judge stated that there was no reliable evidence that the two wagons were water proof. As to this, it is urged that those railway servants who deposed that the wagons were good and had no defect in them were not cross-examined on the point. The officer at Tadipolli who found the damaged bags wrote a note to the train examiner to examine the two narrow gauge wagons and he examined them and gave a certificate that they were in good condition. In view of this evidence it is urged that the learned trial Judge acted illegally in finding that the two wagons were not sufficiently waterproof. It is urged that having regard to the circumstances the learned trial Judge was wrong to find that the railway administration was guilty of misconduct under risk note B. But the greatest argument on the part of the railway is that in this case the consignor executed risk note form A, but that the trial Court has paid no attention to the implications of this fact. Risk note from A is used when articles are tendered for carriage which are already in bad condition or so defectively packed as are liable to damage or wastage in transit. In the present case the consignment was packed in single gunny bags which was defective packing and made the tobacco liable to damage and wettage, and on this account the consignor signed risk note A stating that whereas the consignment is liable to damage, wettage or wastage in transit, I do hereby agree and undertake to hold

the said Railway Administration and all other Railway Administrations working in connection therewith over whose railways the said goods may be carried in transit 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.

4. In this case the M.S.M. Ry. Co. in their written statement took a ground that they were protected by the risk note form A, inasmuch as the consignment was packed in single gunny bags and was thus rendered liable to damage or wastage in transit. Assuming that the wagons of the M.S.M. Ry. were not perfectly waterproof-indeed few except the latest and best wagons are absolutely waterproof-and assuming that some water entered the wagons and caused wetting it is argued on behalf of the railway administration that the damaged condition cannot be attributed to the misconduct of the Railway. It is urged that they took all reasonable steps to ensure safe transit of the goods. The damage for wetting was as much due to the bad packing as to any other cause, and for this the plaintiff cannot make the railway company responsible. There is some evidence, though the Court below has not referred to it, that as tobacco is liable to damage both by dry weather as well as by wet weather consignors at the time of sending them by rail sprinkle water over the bags so that the tobacco may not suffer by dry weather and turn into dust and lose colour. It has been urged that it was possible that some inexperienced man sprinkled too much water over the bags and that in the rainy season these bags did not dry up and got damaged by the water. However that may be, it was a case of damage by wet and the railway company examined all their servants who could throw any light in the matter. It is a matter of conjecture how the bags were damaged by wet. Having regard to the implications of risk note A, I am of opinion that the plaintiff is not entitled to any damages. The rule is made absolute and the plaintiff's suit is dismissed. The parties will bear their own costs in this Court.