

(1925) 06 PAT CK 0037

In the Patna High Court

Madras and Southern Mahratta Ry. Co.

APPELLANT

Vs

Firm, Gopal Rai Ram Chunder

RESPONDENT

Date of Decision : 11-06-1925

Acts Referred:

Citation : AIR 1926 Patna 273

Hon'ble Judges : Bucknill, J

Bench : Division Bench

Judgement

Bucknill, J.—This is an application in civil revisional jurisdiction made under somewhat peculiar circumstances. The matter relates to a suit brought by the opposite party here against among other defendants the Madras and Southern Marhatta Railway Company on behalf of which Company the present application has been made. The facts in the case were very simple.

2. The plaintiffs in the suit were consignees of some packages of cloth; these packages of cloth were despatched from Bangalore City in the south of India to Bhagalpur station on the Bengal and North-Western Railway Company's system. The route by which the goods were actually to travel was not of course indicated in any of the papers which formed the contract between the consignors, the consignees and the Railway Companies over whose systems the goods might travel. There might have been a variety of Railways over the lines of which the packages might have gone; at any rate we know the East Indian Railway Company, the Bengal and North-Western Railway Company, and Madras and Southern Mahratta Railway Company were or might have been concerned. Now there is no doubt that when the consignees came to take delivery of the packages there was a shortage of 21 seers of cloth in one package; no one knows and no one can tell where or how this missing cloth was abstracted or why the shortage existed. The plaintiff in due course brought a suit for compensation for the loss of these articles and it was heard before the Small Cause Court Judge at Bhagalpur. The action of course was for damages for breach of contract and on the face of the contract had there been no intervening circumstances the suit

would no doubt have been impossible to defend; but as is so often the case in these cases relating to the carriage of goods by Railways in India the Company that is to say the applicants here, had contracted with the party, for whom they were carrying these goods under special terms. The special terms are contained in what is known as risk note; the person on behalf of whom the goods are carried obtains their carriage at a low rate or what is frequently termed a special reduced rate; but in consequence of obtaining the carriage of his goods at this low rate he absolves specifically the Railway Company from responsibility for loss under certain circumstances. The principal points of importance in the present risk note which covered the articles in question in this case are to the effect that the Railway Company is to be held not responsible for any loss, destruction, deterioration or damage to any of the goods consigned except in the event of any complete parcel being lost under circumstances which could be shown to be due to the wilful neglect of the Railway Administration or to other circumstances, such as, theft and the like to which I need not here refer as they are not material. The defence, therefore, of the Railway Company was simply that they were protected from the claim made by the plaintiffs by virtue of the exemptions from liability contained in this risk note to which I have referred. It is very difficult to see how the Small Cause Court Judge came to the conclusion that the plaintiffs could succeed. However, he seems to have arrived at this conclusion on grounds which I must say appear to me to be erroneous. In the first place., he seems to think that, because the goods did not travel so far as they possibly could on the Bengal and North-Western Railway Company's system, they had been despatched or carried on what he calls a wrong route. There is, however, to my mind no force in such a suggestion; there was no contract on behalf of the Railway Company that they would carry the goods by any particular route; there is nothing except the name of the place of despatch and the name of the place of consignment contained in the contract between the parties concerned; it appears to me that so long as the goods were delivered at the place of consignment and so long as they were delivered in due course, i.e., within a reasonable time, it mattered not to the plaintiffs or to anyone else by what particular route the goods may have been, for the convenience of the Railway Company or for what other reason we do not know, despatched by the carriers. The Small Cause Court Judge has also based his finding in favour of the plaintiffs upon another ground and that is that there was delay in delivery of the goods. As a matter of fact it does not appear to me that there was undue delay in the delivery of goods; the plaintiff could have obtained delivery earlier than they did; but there was considerable correspondence and discussion as to whether the plaintiffs would take delivery without conditions or what is known as open delivery, that is to say, delivery under protest. There is, however, a far more important objection to the case being decided in favour of the plaintiffs on the ground of delay and this is that the suit as framed was not as one brought in tort for damages due to loss occasioned to the plaintiffs on account of the retardation in delivery but simply for compensation for the loss of the articles which were found missing. Certainly the action was founded on breach of contract and in no sense on tort based upon

the delay. There were no damages proved to have been sustained by the delay in the delivery and the action was brought simply upon the question of whether or not there had been breach of the contract and whether or not the Company was liable in view of the exemptions which were contained in the Risk Note Form H. I am quite unable to see how the plaintiffs can in this case succeed. I think the decision of the Small Cause Court Judge was wrong in law. The route was immaterial and the idea that there were any damages, due to delay, appears to me to be quite untenable. The action should have been dismissed, and although one must feel some sympathy with the plaintiffs in respect of their loss it is quite clear to my mind that if they accepted the provisions of the Risk Note Form H they must put up with the loss.

3. Under these circumstances the decision of the Small Cause Court Judge of the 4th of December last must be set aside and the suit must be dismissed. There will be no order as to costs of this Court.