

(1930) 12 CAL CK 0007
In the Calcutta High Court

Mafat Lal Gogal Bhai

APPELLANT

Vs

B.B. and C.I. Ry. Co. Ltd. and Another

RESPONDENT

Date of Decision : 15-12-1930

Acts Referred:

Citation : AIR 1931 Cal 489

Judgement

1. The question involved in this appeal is what is the precise meaning and effect of a risk-note, being risk-note "A," signed in circumstances detailed below. It appears that one package of 54 bales of piece goods was consigned by one Monilal Barilal to the plaintiff under Invoice No. 12, dated 14th September 1923. A further package of 58 bales of piece goods was consigned by the same consignor to the plaintiff under Invoice No. 14 on 21st September 1923. Both the consignments were from Nadiad Station on B. B. & C. I. Ry., to Sealdah on the E.B. Ry. They were carried in a through wagon which reached Sealdah on 6th or 7th October 1923. On arrival of the consignment, it was found that 12 bales out of the consignment of 54 bales and 25 bales out of the consignment of 58 bales had been damaged. Thereupon the plaintiff took delivery of the non-damaged bales only. After a survey had been made of the damaged bales, the plaintiff took delivery of the damaged bales and then gave the usual notices to the railway companies concerned claiming damages. The plaintiff's claim not having been admitted, the suit out of which this appeal has arisen was brought by the plaintiff on 16th September 1924. The trial Court decreed the suit on 7th September 1927 for Rs. 4,133-9-0 against the B. B. & C. I. Ry. Co., but dismissed the suit against the Secretary of State, the owner of the E. B. Ry. The B. B. & C. I. Ry. Co., preferred an appeal to the lower appellate Court making the Secretary of State a party respondent.

2. The appellant at the hearing before us did not wish to press his claim against the Secretary of State. He is accordingly dismissed from the record. The appellant must pay the costs of the Secretary of State.

3. The lower appellate Court has allowed the appeal of the B. B. & C. I. Ry. Co.,

and dismissed the suit. The present appeal is against the judgment and decree of the lower appellate Court. Various points were discussed in the Court below, but the main question which has been canvassed before us is whether or not the appellant is entitled to any relief having regard to the language of risk-note "A." It is therefore incumbent on us to examine the terms of risk-note "A." The two risk-notes are in exactly the same language; one of such risk-notes is set out below:

Whereas the consignment of 54 bales C. P. goods tendered by us as per forwarding Order 392 of this date, for dispatch by the B. B. & C. I. Ry. administration or their transport agents or carriers to Calcutta, Sealdah Station (and for which we have received Railway Receipt No. 28,926 of same date) is in bad condition or liable to damage, leakage or wastage in transit as follows not dammed to be protected from damp and rain. We the undersigned do hereby agree and undertake to hold the said railway administration and all other railway administrations working in connexion therewith, and also all other transport agents or carriers employed by them respectively, over whose railways or by or through whose transport agency or agencies the said goods may be carried in transit from Nadiad Station to Calcutta Sealdah 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.

4. It appears to us that having regard to the express terms of the risk-note the appellant cannot contend that the conditions of the packing of the damaged bales was satisfactory. If the sender agrees that the condition of the package is not satisfactory, he cannot afterwards turn round and say that the packages were in good condition.

5. The next point is whether the railway company has got an absolute indemnity under the terms of the risk-note. Now, it appears to be clear from the risk-note that one of the conditions of the contract between the parties was that the railway administration would not be held responsible for the conditions of the goods until the same are delivered at destination or for any loss arising from the same. It appears that the outer covering of the packages was not made secure against damp and rain. That being so, the only question is whether there was any wilful negligence on the part of the railway company or their servants in the transit of the goods. On this point [there is an express finding by the lower appellate Court that there was no wilful negligence on the part of the railway company or their servants. That being so, the plaintiff is out of Court in view of the contract between the parties and the railway company is not liable for the amount claimed. In the result, it follows that, on the facts found, the present appeal is without substance and must be dismissed with costs.