

(1923) 04 AHC CK 0041
In the Allahabad High Court

Makhan Lal, Bindeshri Prasad

APPELLANT

Vs

East Indian Railway

RESPONDENT

Date of Decision : 27-04-1923

Acts Referred:

Citation : (1923) ILR (All) 575

Hon'ble Judges : Gokul Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gokul Prasad, J.—This is an application in revision, arising out of a suit for damages for non-delivery of part of a consignment made over to the Railway at Howrah for transport to Allahabad. Three casks of cocoanut oil were alleged to have been sent. Out of these only two were delivered at Allahabad and one cask was not delivered. Hence the present suit.

2. The defence pleaded by the Railway Company was that Section 77 of the Railways Act, IX of 1890, and the risk-note, which was in form B, barred the suit.

3. In two cases of this Court it has been held that in case, of short delivery like this the Railway are not entitled to set up the risk-note unless it was shown that the loss of the cask was due to a theft from a running train or some such cause. This case was tried in the Small Cause Court, and the view taken by the learned Judge of the court below was that the plaintiffs had distinctly stated that their case was one of non-delivery. The defendant Railway Company did not, in the present case, even attempt to prove that the goods had been lost as aforesaid, and it is only after they had done so that the plaintiffs could be asked to prove that the loss was due to any fault of the Railway Company which would make them liable. The learned Judge has referred to several cases. This view, however, was taken in the case of *The Secretary of State for India in Council v. Jiwan* ILR (1923) All. 380 and in the unreported case in Civil, Revision No. 23 of 1923, decided so recently as the 13th of April, 1923, by Mr. Justice Daniels ILR

(1923) All. 530. I am in full accord with these two decisions. It is not necessary to go into the cases decided by other courts. I dismiss this application in revision with costs.