

(1950) 01 AHC CK 0005
In the Allahabad High Court
Case No : Second Appeal No. 411 of 1944

Manohar Lal Gokul Prasad

APPELLANT

Vs

Governor-General of India

RESPONDENT

Date of Decision : 11-01-1950

Acts Referred:

Railways Act, 1890 — Section 72(1)

Citation : AIR 1952 All 648 : (1951) 21 AWR 27

Hon'ble Judges : Misra, J

Bench : Single Bench

Advocate : H.D. Srivastava, for the Appellant; G.N. Mukerji, for the Respondent

Final Decision : Dismissed

Judgement

Misra, J.—This appeal arises out of a suit for recovery of the Rs. 1100 in respect of a loss of a consignment of dal sent by one of the partners of the plff. firm, Messrs Manohar Lal Gokul Prasad, from Bhagalpur Katchery to Lucknow, on 4-8-1942. Bhagalpur Katchery was a station on the B. N. W. Railway which is now a part of the Oudh & Tirhut Eailway. The plff firm wrote several letters to the Railway administration, & gave legal notices of the loss in compliance with Section 77, Railways Act & Section 80 Civ. P. C. They eventually filed this suit for "recovery of Rs. 901/8/ price of the dal, & Rs. 198/8 damages for non-delivery of the goods.

2. It would appear that in view of the paucity of wagons the consignment of dal had to be despatched from Bhagalpur Katahery station to Bhagalpur junction on 11-8-1942, for being reloaded there for Lucknow. Bhigalpur junction is the terminus of a branch line, the starting point of which is Thana Bihpur on the direct route from Samastipur to Kathihar. The goods were reloaded & despatched from Bhagalpur in wagan No. 7070. In order to get to Thana Bihpur the wagon had to pass Bhagalpur Katchery station & cross the river Ganges at Bararigbat where the Railway provides a barge for transshipping it to the station on the other side of the river, Moba-deopur Ghat. After reaching that place, wagon No. 7070

proceeded on its journey, but could not go beyond 2 or 3 miles & had to return to Mahadeopur forthwith because the track between the Ghat & the next station Lattipur (four miles) was found uprooted by a riotous mob.

3. The case set up by the Railway Company in defence was that the consignment was looted on 17-8-1942, at Mahadeopur where the wagon was stabled, that all reasonable care was taken to prevent the loss & that since the Railway was not an insurer of the goods & its liability was not greater than that which is placed on a bailee in similar circumstances it was not liable for nondelivery of the goods. The other defences are not relevant at this stage & need not be specified.

4. The learned Munsif (South) Lucknow, who tried the case, passed a decree in plaintiff's favour for Rs. 898/8 holding that the defendant was unable to prove that the goods were lost as alleged, that the price of the dal was Rs. 700 & that a sum of Rs. 198/8 was payable to the plaintiff as damages. The lower appellate Court reversed the decision & dismissed the suit. It held that the goods were in fact looted by a riotous mob on 17-8-1942, & that the Railway took as much care of the goods as a ordinary prudent man could take under similar circumstances. The plaintiff's firm has come up in appeal, & the sole question which arises for determination is whether or not the proved circumstances of the case disclose negligence on defendant's part.

5. According to Section 72 (1), Railway Act, the liability of the Railway Company carrying goods is merely that of a bailee under Sections 151 & 152 Contract Act. It is thus liable for negligence or for omission to take proper and reasonable care of the goods entrusted to it. Three points have been emphasised in appeal : 1. That the goods should not have been allowed to remain at Bahagalpur Katchery from the 4th to the 11th of August 1942, & that the delay in despatching the goods is attributable to the defendant's negligence. 2. That the goods could have been despatched direct from the booking station to Daliganj. without being sent in the opposite direction to Bhagalpur junction. 3, that the wagon containing the goods should not have been allowed to remain at a wayside place like Mahadeopur Ghat from the 18th to the 17th August 1942 particularly as there was imminent danger of its being looted at that place.

6. The appellant's learned counsel also challenged the finding of the lower appellate Court to the effect that the consignment was in fact lost during the mob violence which took place at Mahadeopur Ghat Station on 17-8-1942 & in this connection he drew my attention to Ex. 14, a letter sent by the Railway Company on 31-5-1943, to the consignee, informing him that the loss had taken place on 19-8-1942, at Bihpur Station. The lower appellate-Court considered that the information contained in the letter was wrong & that the defendant's present version of the incident was correct. I am not disposed to assess the value of this evidence or to reconsider whether the contents of Ex. 14 should or should not have been allowed to prevail over the documentary evidence & the testimony of witnesses who have been believed by the learned Civil Judge in appeal.

7. A Court can take judicial notice of the countrywide revolution which occurred in August 1942, & took the form of incendiarism, sabotage & general looting of Railway & private properties, cutting of telegraph wires & dislocating communications. Trains were derailed, Railway Stations, plants & equipments were destroyed, looted or burnt & extensive damage was inflicted on Indian Railways Bihar was one of the worst trouble spots. In view of the wide spread & sporadic sabotage it was impossible to take effective protection at every point in the system. There is evidence on the record that the line beyond Mahadeopur was damaged & that the barge service to Barari Ghat was suspended. It was not possible therefore to send the wagon containing the plff.'s. goods to any place of safety. The delay in despatching the goods from Bhagalpur Katchery up to the 11th of August, & the diversion of the consignment to Bhagalpur junction is explained by the Assistant Station Master T.K. Banerji, D. W. 3. According to him there was considerable paucity of wagons at the time & that the goods had to be sent to the junction as space was available there. In ordinary circumstances there could be no objection in the adoption of this course. There is nothing on the record to show that there was any urgency or that the Railway administration anticipated that a mob would attack Mahadeopur Station about the middle of August. The diary kept by the Station Master of that place (EX. a 4) makes interesting reading in this connection. It says that on 13-8-1942, the line between the station & Lattipur was unsafe for running of trains & there was an order issued that trains should proceed cautiously up to the outer signal & they must be piloted by the District Magistrate of Bhagalpur. On the 14th August the telegraph wires were damaged & news arrived that near the outer signal of Latipur, which is about 4 miles from Mahadeopur, the mob had set fire to a rake. The rioters, it is said, reached Mahadeopur at 15 hours. They cut the signal wires & took possession of the station records. They interfered with a wagon whose seal was found torn. The signal lamps & glasses were removed & taken away & one rake was burnt to ashes. Tele-graph communication was put out of order again on the 14th August. In view of this general lawlessness defence parties were organised by the Railway employees in order to look after Railway property. There were six persons in each group. They were armed & were detailed for keeping a watch throughout the night. The 17th August was the worst day. In the forenoon about 1000 men, headed by certain persons whose names are mentioned in the diary were said to have arrived & captured & destroyed the station records & tickets & to have looted same wagons. Two wagons including No. 7070, were saved & information was sent to the Govt. Railway Police at Barari. But that place itself was on fire. The attack was repeated in the evening. Scotch block signals & telegraph communications were already out of order. At about 20 hours a crowd of about 1000 men looted the two wagons which had been saved earlier & stabled in the loco quarters. For the whole night the mob remained at the station & was engaged in looting & destroying station records & properties, The diary proceeds that the Station Master with the help of chaukidars & pointsmen endeavoured to stop this, but they had to desist on threats of being killed. There was again looting on the 18th of August &

eventually the Railway staff had to leave for Barari Ghat by boat.

8. It would thus seem that mob violence was sudden, unexpected & beyond the deft.'s control. It is well known that Railways are peace time organisations. They cannot be expected to cope with situations which could be handled only by the military. Section 72 (1), Railway Act, does not demand of the railways greater care or skill than that which is expected of an ordinary prudent man. The points urged in support of the appeal, in the circumstances narrated above, lose their force. In sudden emergencies a man takes the best precaution he can, & he cannot be held guilty of negligence if upon a subsequent appraisalment of the situation a way out is discovered & it is found that the course taken was not the best & the adoption of some other strategy might have saved the situation, or prevented the loss. In my opinion due care & precaution were taken by the Railway authorities in handling & protecting the consignment & there was no negligence on the part of the deft. The Railway, under the circumstances, is not liable for the loss.

9. The appeal is dismissed with costs.