
(1930) 03 PAT CK 0002
In the Patna High Court
Case No : Civil Revn. No. 514 of 1929

Messrs Gati Shah Mahadeo Ram	Vs	APPELLANT
Secy. of State and others		RESPONDENT

Date of Decision : 06-03-1930

Acts Referred:

Citation : (1930) 03 PAT CK 0002

Final Decision : Dismissed

Judgement

Wort, J.—This application in revision is directed against a judgment of the Small Cause Court Judge in an action in which the plaintiff consignors of 15 maunds of potatoes claimed a sum of Rs. 455-10-0 for nondelivery. The goods were delivered to the B.N.W. Ry. Co. at Panchrukhi for transhipment to a place called Singhjani. This was on 8th February 1928. It appears that the goods did not arrive at their destination until after 11 days had elapsed; they were then in such a condition that the station master exercised his right under the conditions under which goods are consigned on these railways, put them up for auction and they were sold on 28th February 1958.

2. Before the trial Court a number of questions arose including that of whether notice had been given under S. 77, Railways Act, which however has not been taken before me. The question which comes before me is whether in the circumstances the railway company ought to have been held guilty of misconduct within the meaning of risk-note B under which those goods were consigned. The first contention of Mr. Mitter on behalf of his clients is that as the railway company did not disclose all the documents which were called for by the plaintiff it ought to be assumed that the company was guilty of misconduct and, that on that ground alone he was entitled to judgment. Assuming for the moment this is one of that class of case under sub-cl. (b) of risk-note B all that that clause provides is that the railway company are to disclose to the consignors how the consignment was dealt with throughout the time it was in their possession or control. Certain documents, including certain books, were referred to by Mr.

Mitter, but it seems to me that even if those books had been produced they would have given no assistance to the plaintiff. So far as the account books kept by the railway company were concerned it would appear there was a full disclosure of these and that the railway company, assuming it was a case under the sub clause of the risk-note, called a number of witnesses to enable the plaintiff to cross examine them, and in fact those witnesses had given evidence as to the manner in which the goods were dealt with whilst under the control of the company. It seems to me that first of all the plaintiff had no grievance in this regard as no obligation imposed on the company by the risk-note had been performed by them, and in any event as a matter of law I do not think it can be said that even if they had not complied a necessary inference was that they were guilty of misconduct. But the answer to this part of the argument appears to be this that this is not a case of nondelivery or pilferage by reason of the fact which I have already stated. The goods did arrive at the destination. The consignee failed to take delivery of them whether by reason of the condition which they arrived or not does not appear? but they were sold as I have stated already owing to their condition. It would appear, therefore to be a case, if it had been properly framed, under the main clause of the risk-note for deterioration or damage and not a case of nondelivery, in other words bad as the condition of the goods were they were ready for delivery; to the consignee at least on 20th February. If that be so, the condition of the risk-note imposing a certain obligation on the railway company to give evidence as to their dealing with the goods would not arise, but even so however the railway company are liable in the case of misconduct. Mr. Mitter, on behalf of his clients, argues that this delay of 11 days is equivalent to misconduct on the part of the railway company. It may very well be that in certain circumstances a delay of this length of time would be evidence of misconduct, but the learned Judge who tried this case, after dealing with the case had come to the conclusion that the delay in the circumstances was not unreasonable, he points out that there was congestion on the railway company and he also refers to rules and conditions which were laid down by the railway conference as to the responsibility of the railway company owing to delay. Objection is being taken to the Judge's considering this matter, but in any event the matter has to be determined on other grounds. I have stated that the Judge has come to the conclusion that there was no unreasonable delay in the circumstances. If the Judge had stated that there was no evidence whatever of misconduct it might be a question of whether that decision ought not to be reversed, but he has not dealt with the matter in that way and, as I have stated, he has considered the evidence and come to the conclusion that there was no unreasonable delay.

3. Now quite apart from the question as to whether I can disturb that finding, I would come to a conclusion on the matter of whether in the circumstances this could be considered a misconduct. It is true that these goods were perishable but not perishable in the sense that they belong to some class of goods which under no circumstance can stand a long railway journey; but I think it is abundantly

clear that had these potatoes been in good condition when they were first consigned they would not have perished during the 11 days in which they were upon the railway. In my judgment I cannot say that in the circumstances of the case the only inference to be drawn is that there was misconduct upon the railway company; and failing to come to that conclusion it necessarily follows that the decision of the trial Judge cannot be disturbed. In these circumstances, although one has every sympathy with the consignors of goods, it seems that the judgment of the learned trial Judge was right and cannot be disturbed.

4. The application therefore must be dismissed; hearing-fee two gold mohurs to each of the respondents.