

(1958) 08 PAT CK 0002
In the Patna High Court
Case No : A.F.O.D. No. 287 of 1951

Mohammad Ekram and Others	Vs	APPELLANT
Union of India(UOI)		RESPONDENT

Date of Decision : 08-08-1958

Acts Referred:

Contract Act, 1872 — Section 151, 152, 161, 188, 227
Partnership Act, 1932 — Section 42, 46, 47
Railways Act, 1890 — Section 72, 75
Succession Act, 1925 — Section 214

Citation : AIR 1959 Patna 337

Hon'ble Judges : S.C. Prasad, J;B.N. Rai, J

Bench : Division Bench

Advocate : M. Rahman and Amin Ahmad, for the Appellant; P.K. Bose, for the Respondent

Final Decision : Allowed

Judgement

S.C. Prasad, J.—This is an appeal from the judgment of the Subordinate Judge of Bhagalpur. The plaintiffs are the appellants. Their suit was for recovery of Rs. 10325/4/6, being the price of cotton and silk cloth consigned by them to the Eastern Railway (respondent's railways) for being carried from Nathnagar Railway station to Nawadip Dham Railway station, which had not been delivered to them, and also for Rs. 174/- is compensation for non-delivery. The total amount claimed was, therefore, Rs. 10499/ 4/0.

This suit has been dismissed by the learned Subordinate Judge on the findings that there was no misconduct on the part of the railway servants resulting in the non-delivery of the goods to the appellants and, therefore, the respondent was not liable for any amount.

2. The facts of the case briefly stated are as follows:

The plaintiff No. 1 and his brother one Muhammad Idris deceased had a

partnership business under the name of the firm "Muhammad Idris Brothers" dealing in handloom cloth, silk as well as cotton, at Bhagalpur, Muhammad Idris died on 12-12-1949 leaving behind plaintiffs 2 to 8 as his heirs, being his widow, son and daughters.

The original partnership business came to an end on the death of Muhammad Idris but these plaintiffs again entered into a fresh partnership business very soon after the death of Md. Idris. The plaintiffs have however, preferred their claim in this suit on the basis of the transaction with the previous firm. On 6-1-1949, Muhammad Idris Brothers had despatched four bales of silken goods, the value of each bundle having been declared u/s 75 of the Indian Railways Act, 1890 at Rs. 1000/-, and six bundles of handloom cloth in one package worth Rs. 6325/4/6 from Nathnagar railway station by passenger train under five railway receipts.

In the railway receipts they were mentioned as can signors and consignees, but the transaction had actually taken place between this firm and one B. K. Roy, who had approached the firm for the supply of the aforesaid cloth on behalf of another firm, which, he represented, was known as "Roy Karim and Co, of Srirampur" in West Bengal. B.K. Roy had come to Bhagalpur to make purchases but was not known at all to the partners of the firm. Nevertheless, they entered into this transaction, believing his representation.

After B.K. Roy had selected the cloth, it was sent, as mentioned above, by the passenger train, and was due to reach the destination, Nawadip Dham railway station, next day where the packages were to be delivered to the consignees. The railway receipts had been taken in favour of Muhammad Idris and "Brothers, because B.K. Roy had not paid the price which he had promised to pay next day, and was then to take delivery of those railway receipts.

On the morning of 7-1-1949 (next day) he came to the plaintiffs, but expressed his inability to pay the price, because he had spent all his money. The railway receipts, therefore, remained in the custody of the plaintiffs. B.K. Roy promised to send the money immediately after his return to Srirampur. For several days nothing was known of B.K. Roy by the plaintiffs, except, as they alleged, that they had received one letter and one telegram from him to the effect that he had not sent the money because he had fallen ill, promising to send it as soon as possible.

For about three weeks from the date of the despatch of the goods the plaintiffs waited, but neither the money came nor did they receive any further information from B. K. Roy. They became suspicious and sent P.W. Salam, another brother of Ekram and Idris, and P.W. Motilal to ascertain as to what was the matter. These people first went to Srirampur but could find no trace either of B.K. Roy or the firm Roy Karim and Co.

They then came to Nawadip Railway station and presented the railway receipts to the railway authorities there, but the parcel clerk, one K.C. Das Gupta, who is

since dead, suspecting that these persons had cheated the railway, lodged a complaint with the police, which arrested them, took charge of the railway receipts, and started a case u/s 420, Indian Penal Code.

After completing the investigation, the police submitted final report in that case. The plaintiffs, thereafter, gave notice to the Railway authorities u/s 77 of the Indian Railways Act, and later, u/s 80 of the Code of Civil Procedure. After the expiry of the prescribed period, they filed the suit, alleging that they were always holding the original railway receipts with which they had never parted in favour of anybody, and that the railway authorities had absolutely no authority to deliver the goods to any other person.

3. In order to appreciate the case of the plaintiffs it is necessary at this place to state some more facts. What happened after 6-1-1949 was that on 8-1-1949 forged railway receipts (Exhibits B series) were presented by B.K. Roy before the railway authorities at Nawadip Dham with an endorsement purporting to be signed by Muhammad Idris on each receipt to the effect that the goods should be delivered to the bearer Mr. B. K. Roy.

The words "Mr. B.K. Roy and Muhammad Idris" are in ink, while the words "Please deliver to the bearer" appear to have been stamped on the railway receipts. There are also the words "Idris Brothers" stamped under the signatures in ink. On the presentation of the railway receipts, the consignments were delivered to B.K. Roy, but he did not take actual delivery of the goods.

What he did was that a petition was filed by him for and on behalf of Idris Brothers addressed to the Station Master of Nawadip Dham railway station, mentioning the railway receipt numbers and other details of the consignments, and requesting him to rebook the consignments, saying, further, that all the consignments were to be shown to be uninsured, although originally four of them containing silk goods had been shown in the railway receipts issued at Nathnagar railway station, as insured.

In the petition (Exhibit D) it was not mentioned where the goods were to be rebooked, the only request made was to rebook the consignments. On the strength of this petition the goods were however, rebooked under five railway receipts showing Idris Brothers as consignors and consignees, to Howrah. The goods arrived at Howrah next day, i.e. 11-1-49, and were delivered on the same day to a person named Gaontia or Shaolia. The railway receipts issued at Nawadip Dham railway station after rebooking are Exhibits E series.

They also contained similar endorsements purporting to have been made by Muhammad Idris, as on the railway receipts produced by B.K. Roy at Nawadip Dham railway station, except that in these endorsements Muhammad Idris purported to authorise delivery to one Nandy or order. There are then endorsements by Nandy on these railway receipts to the effect that the consignments were to be delivered to a person whose name can be read, as the writings go, both as Gaontia as well as Shaolia.

4. The appellants contended that the railway authorities had absolutely no right to deal with the consignments in the way mentioned above, and the delivery of the goods to any other person was entirely unauthorised with the result that the goods had not been delivered to Muhammad Idris Brothers the real owners. The plaintiffs claimed that this misdelivery of the goods had been due to the misconduct of the railway servants and, therefore, they were entitled to be reimbursed to the extent of the price of the goods as well as other incidental charges as also damages. Accordingly they claimed the amount mentioned above from the defendant.

5. The respondent in its defence alleged that the delivery had been made to the person authorised by the consignees, Muhammad Idris Brothers, on production of the railway receipts with endorsements, and that this had been done in good faith by the employees of the railway concerned and, therefore, the plaintiffs were not entitled to any decree. So far as the claim by plaintiffs 2 to 8, the heirs of Idris, was concerned, it was contended by the respondent that no succession certificate had been obtained by them, and that the wife of Muhammad Idris had no right to deal with the property of the son and the daughters of Idris, who were minors, and, therefore, the second partnership deed executed by her on her own behalf and as guardian of these plaintiffs was not a valid document in so far as their shares were concerned and no claim on that basis could be entertained. The defendant also challenged the amount claimed by the plaintiffs as the price of the goods etc.

6. The learned Subordinate Judge found that the plaintiffs had proved that there had been misdelivery, but he held that this misdelivery had not been due to any misconduct on the part of the railway servants, who according to him, had acted in good faith in making the delivery to B. K. Roy and in rebooking the goods to Howrah and then delivering them to the person as per endorsements on the railway receipts issued from Nawadip Dham railway station. The learned Subordinate Judge also upheld the contention of the defendant that the second partnership deed was invalid in respect of the shares of plaintiffs 2 to 8 and, therefore, the claim in respect of 8 annas interest in the amount was not sustainable. He, however, did not accept the contention that the succession certificate was necessary. On the question of the amount of the claim he found that the plaintiffs had failed to prove it, but regard being had to the fact that the value of the silk goods had been declared u/s 75 of the Indian Railways Act to the extent of Rs. 1000/- for each bundle, he held that the plaintiffs, were entitled to Rs. 4000/- for four bundles. As regards the cotton goods the learned Subordinate Judge thought that Rs. 1000/- would be sufficient. Therefore, he was of the view that if he had decreed the suit, he would not have allowed the decree to the plaintiffs, for more than Rs. 5000/- and odd annas and pies.

7. During the hearing of the appeal it was found necessary that Exhibits B series and C series, which had been marked by the learned Subordinate Judge representing portions of railway receipts purporting to have been issued by

Nathnagar railway station while booking the goods to Nawadip Dham and portions of the entries of the Delivery Books of Nawadip Dham and Howrah railway stations, respectively, should represent the entire railway receipts, covering all their contents and the entire entries in the Delivery Books. They have accordingly been so treated with the consent of the parties. It was also thought necessary to examine an officer of the railways to elucidate certain obscure points relating mainly to the preservation of the registers and the railway forms and to the manner in which goods are rebooked and, therefore, we summoned one Roshan Lall, Head Parcel Clerk of the Patna Junction Railway Station, and examined him as a Court witness also with the consent of the parties.

8. In the absence of any special contract between the parties limiting the liabilities of the carriers u/s 72 of the Railways Act, the defendants railways, namely, the Eastern Railway, were bailees for the goods consigned to them by the plaintiffs for being carried from Nathnagar Railway Station to Nawadip Dham, and were, as such, responsible for the loss, destruction or deterioration thereof under Sections 151, 152 and 161 of the Contract Act, 1872. Misdelivery is also a loss under certain circumstances, for instance, when the railway authorities deliver the goods to some persons not entitled to receive them, and are unable to trace them out, when required to do so in order to deliver them to the real owners. But if this misdelivery has taken place, in spite of the railway servants having acted with due care and caution required u/s 152 of the Indian Contract Act, 1872, the railway would not be responsible for the resulting loss to the real owners. The amount of the care, which has to be taken by the railways or their employees to the matter, depends upon the circumstances of each case but where it is clear from the evidence that there is this want of the required care, in other words, where there has been negligence on their part the responsibilities of the railways as bailees become clear and fixed: *The Governor-General in Council Vs. Kabir Ram and Others*, , *Ram Das Ram and Others Vs. Dominion of India*, ; AIR 1949 285 (P & H.) : *Stephenson v. Hart* (1828) 4 Bing 476; *Duff v. Budd* (1822) 3 B B 177; and *Bhairuddin Nahata Vs. Union of India (UOI)*, . Bearing this legal position in mind, I would now proceed to find out as to whether there had been actually misdelivery of the goods concerned by the railways and the goods could not be traced, if so, whether this misdelivery was due to the negligence of the servants of the respondent's railways, viz. the eastern Railways.

9. As to the first point, the position is clear. The learned Subordinate Judge seems to have found that the consignments had actually been delivered not to Muhammad Idris Brothers, who were the consignees, but to some other person and before us also this position was not seriously controverted. On behalf of the plaintiffs P.W. 1, who is plaintiff No. 1, and his brother (P.W. 2) have proved that these consignments had not been delivered to any person on behalf of the consignees. I do not see any reason to doubt these statements on oath of these witnesses.

10. It is the admitted position in this case that the goods so misdelivered were not traceable and the railways were not in a position to redeliver them to the plaintiffs. Indeed, their contention has been that they had delivered them to the person authorised by the consignees to receive the goods on their behalf or on behalf of the persons in whose favour they had endorsed the railway receipts.

11. The real controversy, therefore, in this appeal is about this matter. Now, the plaintiffs have produced the railway receipts which had been granted to them by the Parcel Clerk of the Nathnagar Railway Station showing that they had booked the , goods in question on 6-1-1949 to Nawadip Dham Railway Station describing them as consignors and consignees. Those railway receipts are Exhibits 1 series. Neither in the written statement nor in the evidence, the defendants have challenged these receipts as being forged. Their stand throughout appears to have been that the railway receipts (Exhibits B series) on the basis of which the delivery had been made by the Nawadip Dham Parcel clerk, were believed bona fide by that clerk to be genuine and, therefore, the defendants were protected from any liability.

12. It is clear from the evidence of the railway servants, who have been examined in this case by the lower court, as well as from that of the Head Parcel Clerk of the Patna Junction Railway station, examined by us, that whenever any consignment is booked by the railway, three papers are prepared. One of them is handed over to the consignor and is called Railway Receipt, another is retained by the booking station and is called Station Copy of the way Bill and the third one is sent along with the consignments by the train by which they are carried to the destination. It is called Parcel Way Bill.

On arrival at the latter place, the way bills are handed over to the Parcel Clerk who copies them in the Delivery Book and despatches them to the Head Office as soon as possible thereafter. When delivery is made the Railway Receipt is produced by the person who takes the delivery, and it is the duty of the clerk, who makes the delivery, to compare the entries of particular Railway Receipt with the relevant entries in the Delivery Book maintained by him, and when they tally, delivery is made to the person producing it. If he is not the consignee, there must be endorsement by the consignee in favour of the bearer, who should also be named.

13. Now, in this case Exhibits B series, are the railway receipts which had been produced by B.K. Roy before K.C. Das Gupta, the then parcel clerk of Nawadip Dham railway station containing endorsements purporting to have been made by Muhammad Idris in his favour and on the strength of these receipts and endorsements on them K.C. Das Gupta had delivered the goods to B.K. Roy. It is, however, not contested that before he had done so, he must have compared the entries in Exhibits B series with the entries in the Delivery Books. Exhibits B series mention that all the consignments were of handloom silk cloth, while the actual fact was that one package of six bundles contained only handloom cotton cloth.

The Delivery Books of Nawadip Dham railway station are Exhibits C and C/1. The entries show that one package containing six bundles had been entered in this book on the 7th January, 1949 on which date it had been received. It was described as being G.P. bundle handloom cloth. The other four packages actually containing handloom silk cloth were entered in this register on the 8th January, 1949 and were described in the same way as G.P. bundle handloom cloth. The entries show that on the 8th January, 1949 they were delivered and were on the 10th January, 1949 rebooked to Howrah.

If, therefore, K.C. Das Gupta had compared these entries carefully, as was expected of him as a prudent man dealing with his own property, he would not have failed to discover the discrepancies between the railway receipts (Exhibits B series) produced by B.K. Roy and the entries in the Delivery Book, namely, that all the consignments according to Exhibits B series were handloom silk cloth while the entries in the Delivery Book indicated that all the packages contained handloom cloth. Another important fact in the nature of the discrepancy, which should have struck K.C. Das Gupta, was that although all the packages were described as handloom silk cloth in Exhibits B series, one of them, namely, railway receipt for the package containing six bundles of cloth, mentioned the - permit number while the other four did not.

It may be mentioned at this place that in those days permit of the Government sanctioning the transport of cotton cloth from one State to another, was required before any goods could be despatched by railway, and accordingly the plaintiffs had taken permit for the despatch of handloom cotton cloth in question, to Nawadip. For silk cloth no permit was necessary. From the evidence of Roshan Lall it is clear that all railway authorities concerned of each station must have been knowing the fact that permit was required only for cotton cloth and not for silk cloth. That being the position, K.C. Das Gupta should have been careful enough to notice this discrepancy.

It is true that one of the D. Ws., namely, D. W. 2, Girish Chandra Ghosh Choudhary, who was then Assistant Station Master at Nawadip Dham, has stated that he had seen these receipts in connection with the enquiry made by K. C. Das Gupta about the procedure for rebooking the parcel, and that, on seeing the receipts for himself, he did not suspect any fraud in respect of them, but this evidence is of no particular significance, because he was not in charge of the delivery of goods or parcels, nor could he have been interested in matters concerned with the delivery of a consignment and the examination of the railway receipts with reference to the entries in the Delivery Book which formed the special sphere of the duties of K. C. Das Gupta alone.

In my view, the discrepancies in this connection were sufficient to have aroused the reasonable suspicion of K. C. Das Gupta about the genuineness or the validity of the railway receipts (Exhibits B series) produced before him by B.K. Roy. It is true that Exhibits B series contained endorsements of Muhammad Idris in favour of B.K. Roy, They are, as I shall presently show, not genuine, but

assuming them to be so, in the context of the aforementioned discrepancies, K.C. Das Gupta ought not to have taken those endorsements to be reliable. If he did so, he did not act as an ordinary prudent man in so doing, and that is sufficient to prove want of the required care under the law. He ought not to have delivered the goods to B.K. Roy on the strength of Exhibits B Series and the endorsements thereon. I will, however, presently show that the true position is that neither these endorsements nor those in favour of Nandi purporting to be in the pen of Muhammad Idris on Exhibits E Series, the railway receipts issued by K.C. Das Gupta at Nawadip Dham railway station when he rebooked the consignments to Howrah, were actually genuine.

14. The matter, however, does not rest here, The evidence discloses further acts of negligence on the part of the railway authorities at Nawadip Dham and Howrah railway stations. Mr. Lal Narain Singh, Counsel for the respondent, urged that if the facts disclosed by the evidence at or about the time when K.C. Das Gupta had made the delivery to B. K. Roy at Nawadip Dham railway station, were themselves not such as to justify an inference of negligence on his part, in making the delivery to B. K. Roy, that would be sufficient to protect the respondent from any liability, and the Court should not take into consideration the further irregularities disclosed by the evidence about the rebooking of goods from Nawadip Dham to Howrah and the delivery of the goods to a wrong person at the latter place by the railway authorities. I think that this contention is not sound. This is not a case in which the evidence is to be considered compartmentally. The whole gamut of facts concerning the conduct of the railway authorities from Nathnagar railway station up to Howrah till the delivery was made must be taken into consideration in arriving at the correct conclusion on the point as to whether or not there was negligence on the part of the bailees, namely, the railway concerned, or their servants, the latter having acted in due course of business and in discharge of duty and as such their negligence must result in the liability of the railways, their masters, for the loss occasioned to the plaintiffs By the resulting misdelivery of the goods in question. See *Hastmal v. Raffi Uddin*, AIR 1953 Bho 5.

15. The endorsements on Exhibits B and E series, purporting to have been made by Muhammad Idris authorising the delivery of the goods to Mr. B.K. Roy or to Nandy, have been challenged on behalf of the plaintiffs, P.W. Ekram as well as P.W. Salam has denied these endorsements as being genuine. The plaintiffs also produced their stamp and although in cross-examination one of the witnesses was asked about it, the respondent did not get that stamp marked as exhibit in this case. The plaintiffs produced their stamp to show that the words "Please deliver to etc." were not similar to the stamp with which the endorsements had been stamped on Exhibits B and E Series.

I have no doubt, therefore, in my mind that these endorsements on Exhibits B series are not genuine. One reason, in addition to the reasons given above, which has led me to hold so, is that on a comparison of the signatures purporting

to be those of Muhammad Idris on Exhibits B series with the signatures on Exhibits E series, railway receipts prepared by Nawadip Dham parcel clerk on rebooking, they appear to be so dissimilar as to make it palpable that the same person could not have signed those endorsements. I have no doubt, therefore, that Exhibits B and E Series contained forged endorsements purporting to be in the pen of Muhammad Idris authorising B.K. Roy and Nandi to take delivery of the goods.

15a. I now proceed to examine the further acts of irregularities of the Railway servants in this matter. The application which B. K. Roy had filed for rebooking these consignments is Ext. D.B.K. Roy purported to have signed it on behalf of Idris Brothers. He asked the railway authorities at Nawadip Dham to rebook the consignments without mentioning in it the new destination, which he ought to have done. He further asked them to rebook those goods without any insurance, although four of the consignments had been booked from Nathnagar as insured which meant that their value had been declared u/s 75 of the Indian Railways Act, so that in the case of their loss the railways were to be liable to pay the amount declared.

It is to be noted that significantly enough the endorsements on the railway receipts (Exts. B Series) were the only authorities which B. K. Roy had on behalf of Muhammad Idris Brothers, and that was only to take delivery of goods, so that the utmost that could be said was that K.C. Das Gupta or D. W. 2, the Asst. Station Master, thought bona fide that he was the proper man to whom the delivery could have been made. But that could have only led K.C. Das Gupta to have delivered the goods to B.K. Roy but to rebook the goods to Howrah on the authority of B. K. Roy on behalf of Idris Brothers, was an act, which no prudent man, acting in respect of his own property, was expected, in the circumstances of the case, to have done, bearing in mind the fact that B. K. Roy was merely an agent of Md. Idris Brothers, and had his authority limited only to the taking of the delivery of the goods at Nawadip Dham and no further: (see AIR 1947 169 (Bom.); AIR 1938 52 (Privy Council)) and Hari Mohan Dutt Vs. Dominion of India, . Under Rule 161 of the Coaching Traffic Rules whenever rebooking is done, an application is taken from the consignor or the consignee, as the case may be, for that purpose, and after the rebooking of the goods, the railway receipts are sent to him under a registered cover. In this particular case the application was filed by B. K. Roy who had no authority to apply for rebooking on behalf of Md. Idris Brothers.

16. Unfortunately when the consignments were rebooked on that unauthorised application of B. K. Roy, the further mistake committed was that Idris Brothers were shown in the railway receipts etc. as consignors and consignees which should not have been done under the rules as well as the practice, as is clear from the evidence of D. W. 2 and Roshan Lal, the Court witness examined by us. In such a case, as the present one, the proper course would have been to show B. K. Roy himself as the consignor, but for reasons best known to K. C. Das

Gupta, it was Idris Brothers who were shown as consignors and consignees at Nawadip Dham in the railway receipts issued by him after rebooking the goods to Howrah. This was no less a serious act of negligence committed by the railway servant concerned at Nawadip Dham railway station and this has also been directly responsible for the misdelivery of the goods.

17. It is true that the Nawadip Dham railway station receipts (Exhibits E series) also contained endorsements purporting to have been made by the Idris Brothers, but I have already found that these endorsements are forged. Therefore, there is no force in the contention of the learned counsel for the respondent that whatever irregularities, however, serious in nature, which might have been committed by the railway authorities at Nawadip Dham had been condoned by the owners of the goods, namely, Idris Brothers, when Muhammad Idris, one of the partners, had endorsed the rebooking railway receipts (Exhibits E series) in favour of Nandi.

18. At Howrah itself the delivery appears to have been made by the railway authorities in some peculiarly suspicious circumstances. The endorsements on the railway receipts (Exhibits E series) by Nandi have been written in such a way that the name of the person to whom the delivery was to be made, could be read as Shaolia as well as Gaontia. The evidence of D. W. 3 the railway clerk who had made the delivery at Howrah, itself will show this. Apart from this, I have examined the endorsements and have found that the endorsements are not clear. They may be read in both ways.

I am of the view, in these circumstances, that it was also an act of negligence on the part of the railway authorities at Howrah to have made the delivery without getting the endorsements made by Nandi re-written in a clearer and more undoubted manner. The entries in the Delivery Book of Howrah station (Exhibit C/2) would show that the man, who had taken the delivery had signed the relevant column, in an illegible manner. This circumstance also has to be taken in the context of the other circumstances of this case, and so taken, it also forms a step in the wrong direction taken by the railway authorities while dealing with these consignments, there being no explanation forthcoming as to why legible signatures were not insisted upon.

19. On a consideration, therefore, of the entire evidence on the record and all these circumstances of the case I am satisfied that the evidence in this case discloses negligence on the part of the servants of the defendant's railways in dealing with the goods which had been entrusted to them as bailees for being carried from Nathnagar railway station to Nawadip Dham railway station, and that the misdelivery of the goods has been the direct result of this negligence causing loss to the plaintiffs, who are therefore, under the law entitled to hold the defendants responsible for the price of the goods which they had lost.

20. I do not find any relevancy in the contention of the learned Counsel for the respondent that the second partnership deed executed by plaintiff No. 2, the

widow of Muhammad Idris, on her behalf and as guardian of his minor children, plaintiffs 3 to 8, was invalid and, therefore, the claim to the extent of 8 annas was not sustainable, as held by the learned Subordinate Judge. I have already said, in the beginning of this judgment, that in this particular case the plaintiffs have based their claim not on the basis of the second partnership business, which was started after the death of Muhammad Idris, resulting in dissolution of the original partnership business which had consigned the goods to defendant's railways for being carried from Nathnagar to Nawadip Dham.

The original partnership dissolved when Idris died, but with his death, the assets of the partnership came into the hands of his heirs, plaintiffs 2 to 8, and, therefore they were entitled to claim along with plaintiff No. 1, Muhammad Ekram, the amount of the price of the goods which had been made over to the defendant's railways by the previous firm Muhammad Idris and Brothers.

21. The learned Subordinate Judge, has in my opinion, rightly held that no succession certificate was necessary in this case, because u/s 214 of the Indian Succession Act it is only in respect of a debt that such a certificate is necessary for a Court to pass a decree in favour of the heir of a person who dies intestate. The claim made in this case cannot be said to be a debt. Indeed, the learned Counsel for the respondent did not seriously press this point before us and almost conceded that this finding of the learned Subordinate Judge was correct.

22. As regards the amount of the claim so far as the silk goods are concerned, the plaintiffs are entitled to get Rs. 1000/- for each bundle and thus in total they will get Rs. 4000/- for those goods. As regards the value of the cotton cloth, the plaintiffs have relied upon the entries in their Khata Bahis, which, as stated by P. Ws. 1, 2 and 3, appear to have been kept in the regular course of business. I have also examined the entries in the bahis, not only the entries relating to the claim in this case but also the other entries.

I am satisfied that the evidence of these P. Ws on this point is true. One of these P.W.'s, namely, P. W. 1 Muhammad Ekram, plaintiff No. 1, has stated in his evidence that the goods were entered in the account book and that by the five railway receipts goods worth Rs. 10,325/- and odd had been booked, P. W. 2, Abdus Salam, brother of Ekram, has stated that the entries regarding these goods were made in the account book (Exhibit 6) by Banwari Lal Munshi in his presence. I do not see any reason to disbelieve this evidence of these witnesses.

The entries in the bahi clearly show the details of the prices and the fact that the goods worth Rs. 10,325/- and odd had actually been sold to Ray Karim and Company on the 6th January, 1949 by Idris Brothers. These entries are supported and confirmed by the evidence of P. Ws. 1 and 2. It is also to be mentioned in this connection that in the plaint itself in Schedule A the plaintiffs gave the details of the value of the goods. In the written statement, paragraphs 6 and 12, the defendants have stated that the booking particulars mentioned in paragraph 3 of Schedule A of the plaint were correct except item No. 5 in

Schedule A which was not correct, (the mistake appears to have been subsequently amended by the plaintiffs) and that the claim of the plaintiffs in Schedule B (which gives the totals of the detailed prices set forth in Schedule A) was excessive and denied.

There is no specific allegation in the written statement anywhere, except this vague allegation, that the price of the goods as mentioned by the plaintiffs in the plaint was incorrect. I think the vague manner in which denial has been made by the respondent in the written statement, has also to be taken into consideration on the question whether the plaintiffs have been able to prove their claim. I think, on a consideration of the entire evidence, facts and circumstances of the case, that the plaintiffs have succeeded in proving that the handloom cotton cloth was worth Rs. 6166/8/-.

They have also proved that the sale taxes and costs of packing and other charges have been correctly mentioned in the plaint. I do not, however, think that the plaintiffs are entitled to claim those items which relate to Dharmda; it not having proved upon what basis these have been claimed. I further, find that the plaintiffs have not succeeded in proving the amount of damages which they claimed at Rs. 174/-. I, therefore, disallow this claim as well as the claim on the item of Dharmda. The plaintiffs are, in my opinion, entitled to the balance of the claim.

23. In the result, the appeal is allowed, the judgment and decree of the learned Subordinate Judge are set aside and the suit is decreed in part as observed above with proportionate costs throughout.

Rai, J.

24. I agree.