

(1922) 07 AHC CK 0047
In the Allahabad High Court

Munna Lal

APPELLANT

Vs

The East Indian Railway Company

RESPONDENT

Date of Decision : 12-07-1922

Acts Referred:

Contract Act, 1872 — Section 151
Railways Act, 1890 — Section 72

Citation : 82 Ind. Cas. 772

Hon'ble Judges : Sulaiman, J; Stuart, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Stuart, J.—The suit out of which this appeal arises was brought in 1918 in the Court of the Subordinate Judge of Agra by the proprietor of a firm carrying on business at Agra against the East Indian Railway Company on the following allegations:

(1) that the plaintiff had had consigned to him 101 bales of strawboard from Howrah to Agra City in two waggons one containing 53 bales weighing 362 maunds 1 seer, and the other containing 48 bales weighing 315 maunds 30 seers by the defendant Company's line.

(2) That the consignment arrived on 28th May 1918 and 1st June 1918.

(3) That the 48 bales were delivered in good condition but that the consignment of 53 bales was carelessly unloaded with the result that damage was done to a certain number of bales.

(4) That the plaintiff having sold 50 bales to a firm in Delhi to be booked to Delhi the 53 bales which had been carelessly unloaded on a forwarding note which was accepted by the Station Master at Agra.

(5) That at first there was a refusal to forward but that on the 19th July 1918, 42 bales weighing 80 maunds 11 seers were actually booked to Delhi.

(6) That when these 42 bales were booked the plaintiff discovered that 11 bales which had been concealed by the remainder of the consignment had become spoilt.

2. On these allegations the plaintiff claimed damages against the Railway Company. The Railway Company in their written statement suggested that the damage if any had been done before the goods reached Agra. They denied ever having accepted liability in respect of any portion of the consignment after it had reached Agra. Their case was that the plaintiff had taken away 48 bales on their arrival in Agra (there the plaintiff agreed) and that the remaining 53 bales had been offered to them to book to Delhi, but that they had refused to accept the offer inasmuch as at that time booking to Delhi was suspended owing to the exigencies of Military Service. The defence continued that the plaintiff in spite of their reply had refused to remove the 53 bales, and had left them on the Railway premises at his own risk, that subsequently 42 bales had been booked by them to Delhi but that no responsibility had been incurred in respect of the 11 bales. The Company claimed wharfage against the plaintiff in respect of the time that the bales had remained on their premises.

3. The learned Subordinate Judge dismissed the suit. His decree was affirmed by the learned District Judge. The present appeal is filed here.

4. I find that the Courts below do not appear to have appreciated the exact nature of the dispute, or to, have considered, as they should have considered, the evidence before them. The learned Subordinate Judge appeared to consider that when the consignment arrived in Delhi the goods had undergone no damage, and he took the view that it followed that from the date the plaintiff took delivery the goods must have remained on the Railway premises at the owner's risk. He practically decided the case on assumptions without going in any way into the question as to whether the Railway Company had accepted the custody of the goods after delivery in Agra. The learned District Judge took much the same view.

5. This in my opinion was a mistaken view. It is true that the plaintiff might have been better worded but it is perfectly clear that the points for determination were brought out by the evidence on the record. The first point to be noted is this. The East Indian Railway Company, were the carriers from Howrah to Agra. The plaintiff took some sort of objection originally in respect of an alleged damage done to the goods when they arrived at Agra. He instituted a suit in the Small Cause Court in respect of that damage, but he subsequently withdrew it. The withdrawal in no way affects the real point now in dispute. That suit was certainly ill-advised, and he made a mistake in re-iterating his complaint in respect of damage at the time of delivery at Agra in his plaint in the present suit. It is sufficient to say that on the facts, the goods were apparently delivered in Agra in good condition. The plaintiff's real grievance was this. He wished to consign 53 bales after their arrival in Agra to Delhi. The Company was unable to accede to his wishes for some time, as booking had been stopped between Agra, and Delhi

for goods in bulk, owing to the exigencies of Military requirements. These 53 bales, were undoubtedly left at Agra on the Railway premises. The plaintiff's real case was that they were left in the custody of the Company, and that when booking was re-opened owing to the negligence of the Company during the period in which the goods had remained on the Railway premises considerable damage had been done to the consignment, and it is in respect of this damage that the appeal is pressed. It is somewhat surprising that although there is on the record a mass of proved correspondence between the parties, a perusal of which sheds considerable light upon the dispute neither the Trial Court nor the lower Appellate Court has referred to any portion of this correspondence. It will be necessary for me to refer to this correspondence in some detail.

6. [Here after referring to the correspond once, His Lordship proceeded:]

7. Before I arrive at a finding as to what actually happened--a finding which it is open to this Court to arrive at u/s 103 of the CPC as the, evidence disclosed by these documents has not been in any way considered by the lower Appellate Court, I think it advisable to state my view of the principles which should be applied to this case. In respect of the consignment from Howrah to Agra no difficulty arises. Under the conditions governing that consignment it was for the plaintiff to remove the goods from the Railway premises without unnecessary delay and if he did not remove those goods from the Railway premises the Railway Company was in no way responsible for their safe custody. This is clear. But this circumstance does not really affect the point in dispute. The plaintiff's case is that a fresh contract arose after delivery was taken by him at Agra whereby the Station Master undertook to retain the 53 bales in Railway custody until booking of goods in bulk to Delhi was re-opened. The case of the Railway Company is that the Station Master accepted no responsibility in the matter and that the plaintiff in spite of the protests of the Station Master left the goods on the Railway premises. It is further argued that even if the Station Master accepted responsibility, the Railway Company is not bound by his action. My first decision will have to be a decision of fact. Did the Station Master accept responsibility for the custody of the 53 bales after they were delivered in Agra? If he did not accept responsibility there is an end of the matter and this appeal must fail. If he did accept responsibility a further question will arise, as to whether the Railway Company is bound by his action. The learned Counsel for the respondent Company has suggested that there is a rule under which no Railway Company is responsible for the safe custody of goods delivered to them whatever acceptance there may have been by their agent until a Railway receipt has actually been given. He has not produced this rule. But even if such a rule existed it would not have force in any circumstances under the decision of a Full Bench of this Court in *Sohanlal Munnalal v. East Indian Railway*. 65 Ind. Cas. 109; AIR (1922)(A.) 9 : 44 A. 218 : 20 A.L.J. 91 (F.B.) In the particular circumstances of this case such a rule could have no application apart from that authority. Ordinarily there would not have been the slightest difficulty in re-booking the goods to Delhi. The plaintiff would have indicated his requirements

on a forwarding note, the Railway would have at once accepted the consignment and the Railway's responsibility would have been, clear. But a peculiar situation has arisen owing to the fact that booking had been stopped to meet the special circumstances of the Military situation. The Station Master was clearly the agent of the Company. It was open to him to say to the plaintiff either that he would not permit the goods to remain upon the Railway premises, or that he would permit the goods to remain upon the Railway premises at the plaintiff's risk, or that he would accept bailment of the goods. There was nothing to restrict his authority whichever of the three courses he chose to adopt. This is a case where the Station Master was acting both in the course of his employment and within the scope of his authority, and there can be no question as to the law upon the subject. That law is very clearly laid down in Section 226 of the Indian Contract Act and it is unnecessary to discuss whether the principles" of *Dyer v. Munday* (1895) 1 Q.B. 742 : 64 L.J.Q.B. 448 : 14 R. 306 : 72 L.T. 448 : 43 W.R. 440 : 59 J.P. 276 and *Bayley v. The Manchester, Sheffield and Lincolnshire Railway Co.* (1872) 7 C.P. 415 : 4 L.J.C.P. 278 to which reference has been made in *Fazl Ilahi v. East Indian Railway Co.* 64 Ind. Cas. 868 : 43 A. 823 : 19 A.L.J. 654 : A.I.R. (1922) All 324 are modified by the provisions of Sections 227 and 237 of the Indian Contract Act. Here the Station Master clearly had authority to bind the Company by his action. The responsibility of the Railway Company is thus that of a bailee under Sections 151, 152 and 161 of the Indian Contract Act. This is clear from the provisions of Section 72 of the Indian Railways Act (IX of 1890).

8. It now has to be considered what actually happened. It is clear that the 53 bales when taken out of the waggon were placed under cover of the roofed platform and sheeted. This will be seen from Mr. Sandwell's letter of the 18th June 1918. The Trial Court found that the plaintiff did not execute a forwarding note. The lower Appellate Court was apparently under the impression that he did execute a forwarding note. Whether he did or did not do so appears to me unimportant. He probably did. But his letter of the 24th May, 1918, would have the effect of a forwarding note. It contains a clear request to book the goods. The Station Master certainly did not book the goods but he kept them in his custody. On the 27th May 1918 the plaintiff stated that the goods were at Railway risk. The Station Master did not reply that the goods were not at Railway risk in his answer to that letter. He merely requested the plaintiff to await the Traffic Manager's reply. It is true that on the 1st of June 1918, the Station Master suggested that the goods were at plaintiff's risk but the plaintiff denied that suggestion on the 2nd June 1918, and on the 13th June, 1918, the Station Master in his letter to the District Traffic Manager did not suggest that the goods were at plaintiff's risk and left it an open question whether wharfage should be charged. When the Traffic Manager directed the plaintiff to remove the goods the Station Master on the 19th June 1918, forwarded the order to the plaintiff, but on the 21st June 1918, he made the suggestion that he would book the goods in small consignments of 6 maunds each. From the 27th June 1918 the Station Master again referred to the goods as being at the plaintiff's risk but on the 19th

July 1918, the Station Master wrote to the plaintiff that re-booking had been opened, offering to book the goods to Delhi at once. It is clear to me on this evidence--and I would arrive at a finding of fact accordingly--that the Station Master never definitely directed the plaintiff to remove the goods, that he never definitely told the plaintiff in unmistakable terms that the goods were being kept on the Railway premises at his own risk, and that he never definitely accepted the goods at Railway risk. But, his conduct in retaining the goods in the Railway shed sheeted affords to my mind satisfactory evidence that he accepted the bailment of the goods on behalf of the Railway Company and in the circumstances Section 72 of the Railways Act comes into operation and the Railway Company is responsible for their safe custody. There are no qualifying circumstances, I attach no importance to the Railway Company claiming for wharfage as showing an admission on their part that they were responsible for the goods for they appear to have Claimed wharfage not on goods for despatch waiting to be consigned, but on an insupportable plea that the goods were available for delivery as soon as they arrived in Agra and were afterwards kept on the Railway premises at the plaintiff's risk. It is however sufficient for the purpose to find, as I do, that the Railway Company were bailees. As bailees they were bound to take such care of the goods as they would have taken of their own goods of a similar nature, and are bound in damages for loss resulting from their negligence.

9. The question now arises whether there was any damage and whether that damage originated owing to the defendant Company's negligence. There can be no doubt as to the fact of damage and this point can be decided at once as a question of fact under the provisions of Section 103 of the Code of Civil Procedure. The evidence is ample for the decision of this point. It would be most inadvisable, in my opinion, to drag out this protracted trial by sending the matter back for a finding of fact by the Court below. The Commissioner's report which was made in conjunction with members of the Railway staff has never been challenged; so both the questions of damage and the amount of damage can be determined on that report.

10. Further a finding u/s 103 can be arrived at, as to the cause of damage. The materials here again are ample. There is nothing to show that the goods were damaged when they arrived at Agra or that they were damaged while being unloaded. It is clear on facts that the damage took place while the goods were stored under cover of the roofed platform, and it was due entirely to careless stacking. The goods had clearly been packed in such a manner that if a very heavy weight was superimposed upon them, they were bound to be damaged, and they were apparently so stacked that a heavy weight was superimposed on many with the result that the cases broke and the contents were in some instances irretrievably ruined, I have no hesitation in finding that this damage was caused by careless stacking by the Railway Company and that it was caused after the arrival of the goods in Agra and before the Commissioner made his inspection. Taking this view I would decree the appeal for Rs. 828-8-6 with

proportionate costs and future interest at 6 per cent from the date of institution to the date of realisation. The respondent Company will pay their own costs throughout, the proportionate costs of the plaintiff in the Trial Court and his full costs in the First Appellate Court and in this Court his full costs including fees on the higher scale.

Sulaiman, J.

11. I agree with the conclusion arrived at by my learned brother.