
(1924) 05 AHC CK 0048
In the Allahabad High Court

Munna Lal, Bishambhar Nath

APPELLANT

Vs

Bengal and North-Western Railway

RESPONDENT

Date of Decision : 27-05-1924

Acts Referred:

Citation : (1924) ILR (All) 844

Hon'ble Judges : Neave, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Neave, J.—This is an application for the revision of an order of the Judge of the Court of Small Causes at Agra, granting to the plaintiff opposite party a decree for Rs. 357-8 as damages.

2. It has been found that the plaintiff booked a number of bags of chillies, at Semaria Ghat station on the Bengal and North-Western Railway, for despatch to Agra Fort station on the East Indian Railway. The goods were despatched on the 5th of May, 1922, and were, not delivered till the 19th of June, 1922,—45 days later. It has further been found on the evidence of the railway company's own witness that the normal time for the journey is from 11 to 16 days. There was, therefore, in this case a delay of a month, and during this interval the price of chillies dropped from Rs. 24-8 a maund to Rs. 21-8 a maund, a difference of Rs. 3 a maund.

3. On behalf of the defendant applicant it is contended that as goods were consigned to the railway company under a risk-note in form A, the company is exempted from all liability for loss occasioned to the consignor by the delay. This risk-note is employed in cases where goods tendered for carriage are either already in bad condition or so defectively packed as to be liable to damage, leakage or wastage in transit, and in the particular risk-note which was signed by the consignor in the present case, the consignment is described as contained in "bags old, torn and different sizes, contents liable to wastage, damage or

shortage in weight in transit". The note goes on to say that the sender "agrees and under--takes to hold the railway administration...harmless and free from, all responsibility for the condition in which the aforesaid goods may be delivered to the consignee at destination and for any loss arising from the same".

4. The learned Munsif has held that this language clearly shows that; the risk-note in form A has no concern whatever with the case of delay. In this view I concur. It is obvious that the special contract contained in this document is merely intended to protect; the railway from responsibility for any loss or damage which will result to the goods from defective packing and, consequent leakage or wastage in transit. No evidence appears to have been given by the company to explain or account for the unusual delay, except that when the waggon containing the goods arrived at Gorakhpur on the 7th of May, it was found to be "panel torn" and the goods, were, therefore, transhipped, to another waggon on the following day. This explanation; however, fails to account for more than one day out of the month which was spent on the journey in excess of the usual time. It has been held in. *East Indian Railway v. Inderman Tulshi Ram* 1922 (20) A.L.J. 114 that, in the absence of any risk-note, a railway company is bound to deliver goods within a reasonable time, and is liable to pay compensation for loss caused by delay which it is unable to explain. It is true that in the present case there was a risk-note, but it was of a character which did not protect the company against the consequences of delay. The learned Counsel for the defendant, applicant has relied on *Ram Kishun Ram v. North-Western Railway* (1922) 20 A.L.J. 973 and *The Secretary of State v. Jiwan* ILR 1923 All. 380. These, however, were both cases in which a risk-note in form B was employed and the goods were taken at a reduced rate on conditions quite different to those contained in the contract which is embodied in form A. The case of the *East Indian Railway v. Gopi Krishna Kashi Prasad* ILR 1923 All. 534 is similar in many respects to the present case, though in it also the risk-note was in form B. In that case unreasonable delay in transit, which resulted in damage to the plaintiff quite independent of any deterioration or loss of the goods consigned, was held to give a cause of action to the plaintiff.

5. In the first ground of appeal reference is made to paragraph 40 of the Goods Tariff Regulation. This regulation, however, was not produced; nor was this point argued.

6. The application is dismissed with costs.