

(1924) 04 CAL CK 0060
In the Calcutta High Court

Narendra Nath Sen

APPELLANT

Vs

East Indian Railway Co. Ltd.

RESPONDENT

Date of Decision : 08-04-1924

Acts Referred:

Railways Act, 1890 — Section 75

Citation : AIR 1925 Cal 115 : (1924) ILR (Cal) 929 : 84 Ind. Cas. 239

Hon'ble Judges : Page, J

Bench : Single Bench

Judgement

Page, J.—This is a suit brought to recover damages for the non-delivery of certain cases of medicine consigned by the plaintiff on the defendant railway from Calcutta to Benares. Five cases of medicine were delivered to the Railway Company at Calcutta on the 25th April 1921, and three cases, arrived at Benares on the 11th May 1921. Two of the cases, however, were found to be missing.

2. The material facts are few, and can be ascertained without difficulty. It is agreed that the two cases did not arrive at Benares, that they were lost during transit; and that no declaration was made or increased duty paid as provided by Section 75 of the Railways Act (IX of 1880).

3. The defence of the Railway Company is that, as the plaintiff did not comply with the provisions of Section 75, the Railway Company is exempted from all liability, because the defendant Company alleges that the two cases in question contained gold, silver and pearls. Having regard to the larger number of cases containing medicine which are consigned for transportation, I understand that this case involves the decision of a question of general importance to the Railway Companies. I am not satisfied on the evidence that the medicine contained in these cases contained pearls, and I am supported in that view by the evidence of the plaintiff, who stated that he could obtain the same medicinal result by the use of lime instead of pearls. It is improbable therefore that he would have used the more expensive ingredient.

4. As regards gold and silver, the problem which I have to solve is rather more difficult. I do not propose, nor do I think, that it would be desirable to attempt to define the words used in the second schedule to the Railways Act which are material in this case, namely, "gold and silver coined or uncoined, manufactured or unmanufactured." The question which I have to decide is whether the gold and silver which it is alleged was contained in this medicine was "gold and silver coined or uncoined" manufactured or unmanufactured, within the meaning of the second schedule. In my opinion, it was not. The contents of these two cases were medicine, largely in the form of pills concocted by an elaborate process, and in some instances, containing as one of the ingredients gold oxide or sulphite of silver. The process by which the pills were compounded resulted in the gold and silver being reduced to fine powder, in colour dark brown and black. According to the plaintiff it is not possible to cause them to be restored to their original condition as gold or silver in a free state. According to an expert called on behalf of the defendant company it is possible to do so, only by the application of a further chemical process. Such substances, no doubt, may be regarded in one sense as being gold and silver, and it may be that what was put into these pills as part of the ingredients of the medicine was a form of metallic gold or silver, or, as contended by the plaintiff, it may be that it was gold oxide and sulphite of silver. But, whichever view may be the correct one, these substances were not gold and silver in the sense in which such terms are understood in general parlance and by ordinary people.

5. In my opinion, a broad and common-sense, rather than a technical construction should be placed upon these words. I find as a fact that the medicines contained in these cases were bonafide made up for the purposes of the plaintiff's calling and, having regard to the commonsense meaning, which I hold ought to be attributed to the words "gold and silver, coined or uncoined, manufactured or unmanufactured," in my opinion, the medicine contained in these two cases did not contain " gold and silver, coined or uncoined, manufactured or unmanufactured " within the meaning of those words as used in the second schedule. I expressly refrain from defining what is the meaning of those words in the second schedule, and for the purpose of this judgment I confine my observations to stating, that, whatever may be the meaning properly attributable to those words, they are not referable to the medicine contained in the cases which are the subject-matter of this suit.

6. There remains the question of damages. The plaintiff has not refrained from adopting what appears to be almost the invariable course taken by a plaintiff who institutes a suit against a Railway Company. He has grossly exaggerated the value of his claim.

7. In my opinion, having regard to the evidence, the plaintiff has not suffered the damages which he alleges, and the value of the two cases of medicine which have been lost I estimate to be Rs. 1,200. A decree therefore, will be passed in favour of the plaintiff for Rs. 1,200 and costs on scale No. 2.