

**(1956) 12 MP CK 0034**

**In the Madhya Pradesh High Court**

**Case No : First Appeal No. 147 of 1950**

Natwarlal Gowardhandas

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

**Date of Decision : 14-12-1956**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 79

Contract Act, 1872 — Section 151, 152

Railways Act, 1890 — Section 3(6), 72, 80

**Citation : AIR 1957 MP 157**

**Hon'ble Judges : Sen, J; Bhutt, J**

**Bench : Division Bench**

**Advocate : M.R. Bobde, for the Appellant; K.V. Tambe, for the Respondent**

**Final Decision : Dismissed**

## **Judgement**

1. This is plaintiff-firm's appeal against the dismissal of its suit for damages.

2. Manilal alias Manibhai (P. W. 4) booked 52 bags of tobacco on 11-7-1947 at Bhaili station on the Gaekwar Baroda State Railway for transport to Damoh on the Great Indian Peninsula Railway. The consignee was the plaintiff. It was not disputed before us that the consignment reached Pratapuagar on the Bombay-Baroda and Central India Railway without any damage and was despatched from that station on 12-7-1947 without delay. The consignment was placed at that station in wagon No. N. W. R. 37414 and travelled throughout in that wagon to Damoh. The wagon reached Ujjain on 19-7-1947, Bina on 9-8-1947 and Sagar on 12-8-1947.

There was no remark about any damage in the summary books of these railway stations. When the consignment was unloaded at Damoh on 16-8-1947, it was noticed that 39 bags were completely damaged by rains and only the remaining 13 bags were in a good condition. The loss was estimated at Rs. 4,923 and is not in dispute. The plaintiff, had paid Rs. 2,430-10-0 on account of excise duty. The proportionate duty on 39 bags was Rs. 1,898-14-0, which was claimed by the

plaintiff besides Rs. 4,923.

The plaintiff also claimed damages at the rate of 20 per cent profits on the amount of the price. The lower Court held that the profits which would have earned would have been only 10 per cent of the price. The claim at this rate amounts to Rs. 492-4-6. The plaintiff did not in arguments: claim anything more on this account.

3. The plaintiff's claim was based on a plea of misconduct of the railway servants either of the Bombay, Baroda and Central India Railway or of the Great Indian Peninsula Railway. Its case was that the goods were allowed to be exposed to rains for a long time at some stations or they were loaded in a leaky wagon.

4. The plaint was filed on 29-7-1948, in which the defendant was described as "The Dominion of India, Ministry of Railway, Central Government, New Delhi". On amendment of Section 79, Civil Procedure Code, in 1950, after the advent of the Constitution, the word "Union" was substituted for "Dominion". The suit was defended on behalf of the Great Indian Peninsula Railway which is also contesting the appeal. It was contended by the learned counsel for the respondent. Union of India that as the railway administration, representing the Bombay, Baroda and Central India Railway was not made party to the suit, the Union's liability cannot be extended to the actions of the Bombay, Baroda and Central India Railway. This plea was not taken in the Court below. However, it has no substance.

5. It is true that in the plaint the Union of India was not described as representing any particular railway administrations. "The plaint, however, was specific as to the administrations against which the claim was laid. The Union of India was thus aware that it had to defend the actions on behalf of both the railway administrations. The case is analogous to Chandra Mohan Saha and Another Vs. Union of India (UOI) and Another, in which Union of India v. Hussain AIR 1952 Gau 51 (B) which had followed Dominion of India v. firm Museram Kishunprasad ILR (1950) Nag 212 : (AIR 1950 Nag 85) (c) was referred to and distinguished.

The Nagpur case had arisen before the Indian Independence Act was passed, and appears not to be intended to apply to cases arising after that enactment. It is no doubt true that Section 80 of the Indian Railways Act, 1890 permits an action against the railway administration, but it only provides for their liability and not for frame of the suit. The expression "railway administration" or "administration" has been defined in Section 3 (6) of the Indian Railways Act, and is wide enough to include the Government administering the railways. Section 79 of the CPC enacts that where a suit is instituted against the Central Government, the authority to be impleaded as defendant is the Union of India.

The inference, therefore, is that a suit against the Union of India without impleading the railway administrations, is permissible under law. All that may be urged is that the plaint should disclose clearly the cause of action against each railway administration. In the present case, the plaint clearly discloses that the

plaintiff laid its claim against any one of the two railway administrations which was at fault. The contention that the Union of India cannot be made liable for the actions of the Bombay, Baroda and Central India Railway is not, therefore, tenable.

6. The case of Union of India was that the consignment was booked under Risk Notes A and B, Exhibits D-15 and D-16. The lower Court has held that the signature on these documents is not proved to be that of Manilal (P. W. 4). It has, however, held that he must have executed some other forms of Risk Notes A and B. This finding is assailed before us mainly on the ground that when particular Risk Notes relied upon by the railway administration were not proved, the Court was not "justified in making out a case of execution of other documents,

7. It is clear from the evidence of Manilal (P. W. 4) that he had put his signature on a form like that of exhibit D-16. There is, therefore, an admission on his part of having executed Risk Note B. He was not a novice in the business as he had been dealing in tobacco from the last 100 12 years and had even booked consignments before the one in suit. He was, therefore, aware of the nature of Risk Notes and must, therefore, be found to have, with proper understanding, executed Risk Note B for the consignment in suit.

This is confirmed by the fact he had booked the consign at reduced rates. None of the cases cited at the Bar were cases of admission of execution of a Risk Note by the consignor. It is not, therefore, necessary to refer to them. In Gopal Krishna Potnay Vs. Union of India (UOI) and Another, the service agreement was not on record but still its execution was held to be proved from the circumstances of the case. In cases where forms are prescribed and there is evidence tending to show that some such form must have been executed, the finding in favour of its execution must beheld to be proper.

8. Risk Notes E limits the liability of the company to cases where there is proof that the loss, destruction, deterioration or damage complained of arises from the misconduct of Railway Administration servants. The burden of proving misconduct is upon the plaintiff: See Dwarkanath y. R.S.N. Co. Ltd. AIR 1917 PC 173 (E), Dominion of India, v. Chhaganlal 1951 Nag. LJ 470: (AIR 1951 Nag 357(F). The question is whether this burden has been discharged by him.

9. The lower Court was of the view that the damage must have been done to the goods during transit from Sagar to Damoh and not before. It was accepted by the learned counsel for the Union of India that such a finding should, not be given merely on the basis of the fact that no damage was entered in the summary books of the previous railway stations. The extent of damage indicates that water must have entered into the wagon during considerable part of the journey. The alternative plea of the plaintiff that the goods might have got wet during transshipment at the intervening stations cannot be accepted as there was no occasion for taking out the goods during transit after Fratapnagar. How the

water entered into the wagon is not known. It could also be possible that there were leakages in the roof of the wagon which were not discernible on inspection at the time the goods were loaded and they gave way during the course of the journey, or rain water entered by great force of winds through the crevices in the doors. In either case, the railway administration cannot be held to be guilty of misconduct: See *Secretary of State v. Finn Jhuddu Lal* AIR 1933 All 4430 (G) and *Atul Chandra Sen Vs. Kaunammal and Others*, . There is therefore, no case for the plaintiff for damage.

10. Even if there was not any Risk Note, the liability of the railway administrations was that of bailee. They were, therefore, bound to take only the amount of care which has been enjoined on a bailee u/s 151 of the Indian Contract Act, 1872. % has been held in *Dwarkanath v. R. S. N. Co., Ltd.* (E) (supra), the burden of proving negligence on the part of the servants of the carrier is on the plaintiff. There is no proof of any such negligence 011 their part. In the absence of evidence of want of due diligence, the mere fact that great damage, was done to the goods cannot raise an inference of negligence, when it could be caused in the long course of the Journey on account of natural forces.

11. The appeal is dismissed with costs.