
(1935) 08 PAT CK 0014
In the Patna High Court

Naurang Lal

APPELLANT

Vs

B.B. and C.I. Ry. and Another

RESPONDENT

Date of Decision : 18-08-1935

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 25

Citation : AIR 1936 Patna 84

Hon'ble Judges : Wort, J

Bench : Division Bench

Judgement

Wort, J.—This rule is directed against the decision of the Small Cause Court Judge in an action by the consignor against the Railway Company for loss of goods. As regards the powers of this Court u/s 25, Small Cause Courts Act, the position is not thoroughly understood. Cases are argued before this Court as if they were second appeals and that this Court has a right to interfere wherever any question of law has been wrongly decided. I propose to say with regard to this matter that I adopt the words of Sir Charles Fawcett, Ag. C.J., in *M. & S.M. By. Co., Ltd. v. Jumakhram Parbhudas Gujrathi* 1928 Bom 504 where it is pointed out that the Court will only interfere where there is a substantial injustice, i.e., when a clear error of law is shown or when there is obvious perversity in the decision of a question of fact. Had Section 25 of the Act meant anything else I am quite certain the legislature would have stated explicitly that there was an appeal to this Court, whereas no such appeal does lie: it is merely the exercise of revisional powers of this Court in revising, if necessary, the judgments of Small Cause Courts. Had it been open to me to decide this question on a pure question of law, I should have found very considerable difficulties in the way of the petitioner. In my judgment the application is misconceived. The case was conducted by the parties in the Court below in a very negligent way in not getting the particulars beforehand as contemplated by the Act. I say no more about that. The Judge speaks of the matter in these words: The loss was not due to any misconduct or negligence on the part of the railway staff.

2. The only question to be determined, although the parties seem to have been under a misapprehension with regard to it, is whether there was misconduct, and it is contended by the learned Advocate for the petitioner that as the new form of risk-note has eliminated the word wilful the law has been changed. I see no difference between wilful misconduct and misconduct. The word "wilful" seems to me to be redundant. Wilful expresses the act or the will of the person who is guilty of misconduct, but misconduct must always have that condition attached to it, otherwise the word has no meaning. As has been pointed out in a number of authorities, negligence is different from misconduct. Whether the Judge in the Court below has considered the case from the point of view of negligence or from the point of view of misconduct, it seems to me quite clear that even if it had been open to me to discuss the mere question of law I should not be able to interfere. If the learned Judge had said that the Railway Company was guilty of misconduct or its servants were guilty of misconduct, there is no doubt that the Railway Company could have said, always assuming the question of jurisdiction in their favour, that there was no evidence of wilful misconduct or misconduct. But it is never a question of law when a Court has said that there is no neglect or no misconduct in fact. Again if the learned Judge in the Court below had said that there was no evidence of misconduct it would possibly be a question of law, but from the manner in which he has come to his finding it becomes impossible to say that any question of law arises.

3. He has said that there is no misconduct in fact and that ends the matter, although in considering this question I agree with the judgment of Sir Norman Kemp, Ag. C.J., in the case of B.B. & C.I. Ry. Co., Ltd, v. Rajnagar Spinning, Weaving and Manufacturing Co., Ltd. 1930 Bom 129 where it is stated that in cases of this kind what has to be shown is the misconduct of the Railway servants. There has been no proof in this case that it was the rule of the Railway Administration that these goods waggons should be locked and it cannot be said therefore that mere sealing and not locking of the Railway waggons of itself was misconduct on the part of the railway servants. In my judgment the application fails and must be dismissed with costs.