

(1913) 11 CAL CK 0004
In the Calcutta High Court
Case No : Rule No. 1169 of 1913

Radha Kishen Chooni Lal

APPELLANT

Vs

The East Indian Railway Co.

RESPONDENT

Date of Decision : 28-11-1913

Acts Referred:

Citation : (1913) 11 CAL CK 0004

Judgement

Fletcher, J.—This Rule was obtained by the Plaintiff in a suit in the Court of Small Causes at Howrah calling upon the Opposite Party, the East Indian Railway Co., to show cause why the decree of the Court below should not be set aside as prayed in the petition. The suit was brought by the Plaintiff against the East Indian Railway Co. to recover damages for not having delivered ten bags of mustard seed which formed part of a parcel that had been consigned to Howrah on account of the Plaintiff. The case set up, as far as we have been told, was that the East Indian Railway Co. offered to the Plaintiff ten bags which they believed formed a portion of the consignment of the Plaintiff's goods but that the Plaintiff refused to take delivery thereof stating that they were not his goods. The case came on for trial before the learned Judge and the case put forward by the Plaintiff was that these goods were not his and, in the evidence before the Judge, he came to the conclusion that the ten bags were missing or lost. If there is evidence to justify that finding, we cannot interfere with it. We have heard from the learned Vakil for the Applicant what can be said against that and in our opinion, there was evidence which justified the learned Sub-Judge in coming to the conclusion that the goods were lost or missing. If the goods were lost or missing, then sec. 77 of the Indian Railways Act (IX of 1890) would apply and the Plaintiff was bound to serve notice as provided by that section and the notice that the statute requires is notice on the Railway Administration or, in the case of a Railway administered by a Railway Company, on the Agent in India of the Company. The Agent in India does not mean any person employed by the Railway Company; it means the particular person who holds the title and office of the Agent of the Railway Company in India. There is no doubt that in this country

everybody knows who the Agent is of such a big Railway Company as the East Indian Railway Company" which is incorporated in England. In the present case, the notice--according to the learned. Sub-Judge and that finding is not quarrelled with--was served on the Goods Superintendent, a person holding a comparatively subordinate position and it was also found as a fact that there was no evidence to show that the notice ever reached the Agent of the Company. On those findings, in my opinion, the decision in the case of Janaki Das v. The Bengal Nagpur Railway. Company 16 C.W.N. 356 (1912), is, conclusive upon this matter.. That is a decision of the learned Chief Justice and my learned brother who is now sitting with me. It seems to me impossible to distinguish this case from the part of that case which had reference to the two lost bags. Then, it is said that the notice was properly served on the strength of a decision in V. Woods v. Meher Ali Bepari 13 C.W.N. 24 (1908), which is a decision of Mr. Justice Holmwood and Mr. Justice Sharfuddin. Speaking for myself, I prefer the decision of Mr. Justice Harington and Mr. Justice Carnduff in the case of East Indian Railway Co. v. Babu Madho Lal 17 C. W. N. 1134 (1913), and I may point out in passing that the decision of Mr. Justice Holmwood and Mr. Justice Sharfuddin in V. Woods v. Meher Ali Bepari 13 C.W.N. 24 (1908) is not consistent with the decision of the learned Chief Justice and my learned brother who is now sitting with me in the case in Janaki Das v. The Bengal-Nagpur Railway Company 16 C.W.N. 356 (1912). But even if we are bound by the decision in V. Woods v. Meher Ali Bepari 13 C.W.N. 24 (1908), the facts in this case are not sufficient to bring it within the decision of Mr. Justice Holmwood and Mr. Justice Sharfuddin, because the learned Judges in that case came to the conclusion that the notice which had been served upon the Traffic Manager did, in fact, find its way into the hands of the Agent. The learned Sub-Judge in this case has found that there is nothing to show that the notice served on the Goods Superintendent ever found its way into the hands of the Agent. Then, there was another point that was faintly suggested, namely, that the Goods Superintendent promised to pay a liquidated sum to the Applicant as the value of the ten bags. There is nothing to show that the Goods Superintendent is a proper person to bind the East Indian Railway Company with such a promise, nor is it suggested that it ever came to the knowledge of the Agent. It seems to me quite impossible to hold that the East Indian Railway Company should be bound by an admission or statement made by any person employed by them. I am of opinion that, on the findings made by the learned Judge of the Court below, the present Rule must fail. The Rule is accordingly discharged with costs, one gold mohur.

N.R. Chatterjea, J.

I agree.