
(1918) 02 BOM CK 0010
In the Bombay High Court
Case No : O.C.J. Suit No. 1038 of 1917

Ramchandra Jagannath

APPELLANT

Vs

The Great Indian Peninsula Railway

RESPONDENT

Date of Decision : 19-02-1918

Acts Referred:

Railways Act, 1890 — Section 75

Citation : AIR 1918 Bom 148 : (1918) 20 BOMLR 591

Hon'ble Judges : Kajiji, J

Bench : Single Bench

Judgement

Kajiji, J.—The plaintiff in this suit claims from the defendant railway company Rs. 25000 as damages. It appears that, on 16th September 1916, the plaintiff delivered to the defendant railway company, at the Victoria Terminus Station, a parcel containing twenty-four account-books consigned to the plaintiff's firm at Nagpur for carriage from the Victoria Terminus Station to Nagpur. It appears that, on or about the 21st September 1916, the plaintiff's agent presented the railway receipt and claimed delivery of the parcel in question but he was informed by the defendant company's agent that the parcel belonging to the plaintiff had been received at Nagpur but the same had by mistake been delivered to a representative of the Superintendent of the Central Jail at Nagpur and it was afterwards ascertained that the Jail authorities had practically destroyed all the account-books contained in that parcel.

2. The defendants say that the account-books were "writings" within the meaning of the second Schedule to the Indian Railways Act, 1890, and that as the plaintiff claims more than Rs. 100 in this suit and that as neither the plaintiff nor the person sending or delivering the parcel to the defendant company caused its value or contents to be declared or declared them at the time of the delivery as required by Section 75 of the Indian Railways Act, they, by virtue of the provisions of the said section, are not responsible for the loss or destruction of the parcel or the account-books. Hence the present suit.

3. Pursuant to the consent Chamber Order, dated 20th December 1917, this suit appeared before me for the trial of the preliminary issue, viz.,

Whether the defendants are protected from liability to the plaintiff u/s 75 of the Indian Railways Act, 1890

4. Material portion of Section 75 runs as follows :-

When any articles mentioned in the second Schedule are contained in any parcel or package delivered to a railway administration for carriage by railway, and the value of such articles in the parcel or package exceeds one hundred rupees, the railway administration shall not be responsible for the loss, destruction or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for carriage by railway, and, if so required by the administration, paid or engaged to pay a percentage on the value so declared by way of compensation for increased risks.

5. It is conceded by Mr. Setalvad for the plaintiff that the account-books are included in the term " writings " mentioned in item (i) of the second Schedule to the Indian Railways Act, 1890. Mr. Setalvad for the plaintiff states that the value of the account-books in question does not exceed Rs. 100; therefore, Section 75 of the Indian Railways Act, 1890, has no application to the present case and further contends that even if the value exceeds Rs. 100, Section 75 does not exempt the railway company from liability for the loss of the account-books that has occurred by delivery of the parcel to a wrong person. First question, therefore, to determine is : Does the value of the articles in the parcel, viz., the twenty-four account-books, exceed Rs. 100 ?" From the evidence recorded it appears that these books of accounts when purchased cost the plaintiff between Rs. 60 and 70 and that if these had been sold either when they were delivered at the Victoria Terminus Station or when they reached Nagpur would have fetched a few rupees as waste paper. It is contended by the counsel for the plaintiff that the term "value" in a, 75 means intrinsic value or the market value of the articles and not a fancy value which a person sending or delivering a parcel or package puts on the articles in it. The word "value" is unfortunately not defined in the Act. It is clear to my mind that the term "value of the articles" does not mean cost of the articles, for if the Legislature intended that the term "value" meant cost, it could have easily used the word cost instead of the word "value". It seems to me however that we get some indication of what the Legislature intended the word "value" to mean, if we look to the nature of the articles mentioned in the second Schedule to the Act. The articles are, e. g., gold, silver, plated articles, pearls, precious stones, jewels, watches, Government Securities, Hundis, Bills of Exchange, paintings, silk, etc., and if we bear in mind the object of Section 75 which is that the railway administration receiving the excepted articles may be apprised of its nature in order that it may give a proportionate degree of protection and that as it incurs an additional danger and risk it should

have an increased compensation, it is clear that the articles with which the Legislature is dealing are valuable articles whose intrinsic value is appreciable in the market. I, therefore, hold that value of articles in Section 75 means intrinsic value of the articles, i.e., market value, i.e., the price for which they would reasonably sell at the time in the market as well as the value in the market independently of any circumstances peculiar to the plaintiff. I am fortified in this opinion by the cases of *Stoessiger v. The South-Eastern Railway Company* (1854) 23 L. J.Q.B. 203 and *Blankensee v. London and North-Western Railway Company* (1881) 45 L.T. 761. The result is that the preliminary issue must be found in the negative and against the defendants. But assuming that the interpretation I have put on the term "value" is erroneous and that the value of the account-books in question exceeds Rs. 100 by adding something for the written portion contained in them and that the person sending or delivering the parcel was bound to declare its value and contents and did not do so and the loss occurs then the question for determination is : "Does Section 75 of the Indian Railways Act, 1S90, give absolute protection to the Railway Company for loss under every circumstance ?" Mr. Setalvad for the plaintiff has contended that a. 75 does not apply to a case of loss by misdelivery and that the application of the section must be limited to the loss which occurs in their capacity as carriers, and that once the goods reach its destination safely the capacity of the railway company as carriers ceases and that thereafter they hold them as mere bailees, and that loss, u/s 75, means loss to the railway company and not loss to the owner. In my opinion loss on the true construction of Section 75 is a loss by the carrier such as by abstraction by a stranger or by his own servants or by losing them from vehicles in the course of carriage or by mislaying them so as not to know where to find them and the like. It includes temporary as well as permanent loss. I, therefore, hold that on the true construction of Section 75 of the Indian Railways Act, 1S90, loss for which a railway company is protected from liability must be loss to the railway company itself and it must be loss which occurs whilst the goods are in their capacity as carriers and cannot apply to a loss to the owner and this is clear from *Hearn v. London and South Western Railway Company* (1855) 10 Ex. 703, where it was held that the loss or injury to goods against which a carrier is protected by the 11 Geo. IV and 1 Will. IV, c. 68 (which is practically in the same terms as Section 75) is a loss by the carrier of the articles committed to him or injury to them whilst in his care and not a loss sustained by the owner in consequence of non-delivery of the articles in due time or altogether or the loss of the use of the article by him. I think the interpretation put on the word "loss" by Chatterji J. in *Changa Mal v. the Bengal N.W. Railway Company* (1897) P.R. No. 6 of 1897 is correct where he held that negligent misdelivery of goods to a person other than the owner is not such a loss of goods within the meaning of Section 77. The following authorities were cited at the Bar: *Heugh v. London and North Western Railway Co.* (1870) L.R. 5 Ex. 51; *M' Kean v. M' Ivor* (1870) L.R. 6 Ex. 36; *Stephenson v. Hart* (1828) 4 Bing. 476; *Millen v. Brasch* (1882) 10 Q.B.D and *Morritt v. North Eastern Railway Co.* (1870) 1 Q.B.D. 302. After giving the best consideration to them, the principles deducible from

these authorities are that where the goods are to be delivered to the consignee at his house or at the station or office of the carrier at the termination of the journey depends on agreement and on the usual course of business. If the goods are delivered at the house to which they are addressed the carrier has done all he contracted to do and the mere fact that he delivers to some other person than the consignee at that house is no proof of breach of duty on his part. But if he delivers at any other place to any person other than the consignee he does so at his peril. But where the carrier is not bound to deliver at the house of the consignee his liability as carrier ceases when he has brought the goods to the station of destination and has tendered or delivered them within a reasonable time to the consignee or has allowed the consignee reasonable time in which to remove the goods. What that time is must depend upon the circumstances of each particular case.

6. In this case the parcel arrived at Nagpur safely and was delivered by the agent or the railway company to a person other than the consignee and as the loss occurred after delivery to the wrong person, I hold that Section 75 of the Indian Railways Act offers no protection to the defendant Company and therefore the preliminary issue must be found against the defendants and in the negative. Costs of the hearing, of the preliminary issue will be costs in the cause.