

(1931) 07 CAL CK 0007
In the Calcutta High Court

S. Wazir Mohammad

APPELLANT

Vs

Bengal Nagpur Ry. Co. Ltd. and Another

RESPONDENT

Date of Decision : 10-07-1931

Acts Referred:

Citation : AIR 1932 Cal 492

Hon'ble Judges : Jack, J;Costello, J

Bench : Full Bench

Judgement

Jack, J.—This appeal has arisen out of a suit for recovery of Rs. 1,330, on account of 95 bundles of mangoes consigned to the Madras Southern Mahratta Railway at Kalahasti Station for delivery at Howrah, a station on the Bengal Nagpur Railway. Instead of delivering the man-f.;oo8 at Howrah the Bengal Nagpur Railway sold them by auction at Bitarani Road Station as a breach of the line occurred owing to floods and it became impossible to deliver them at Howrah before they had wholly deteriorated. The price thus obtained was only Rs. 168-4-0. The mangoes were consigned under risk note in Form B which makes the railway company only liable for deterioration or damage due to misconduct of the servants of the railway administration. The question therefore for decision in this suit is to what extent, if at all, the loss incurred by the plaintiffs was due to misconduct of the railway servants.

2. The mangoes were consigned as follows: 26 bundles on 28th July; 32 bundles on 29th July; 25 bundles on 30th July; 12 bundles on 31st July.

3. The breach of the line occurred on the night of 29th July about 1,000 miles from Kalahasti station. It is clear therefore that the last two consignments were despatched some time after the breach had occurred. The Station Master at Baitarani Road Station alleges that he could not wire about the breach until 4th August; but the Courts have not accepted this and have found that wires could be sent all along as well as goods by a round about route. It seems clear therefore that the company were at fault in not sending intimation of the breach on the night of the 29th to the sending and delivering stations. As regards the

first two consignments it is not clear that their failure to do so caused any loss to the plaintiffs, but as regards the last two consignments, had prompt steps been taken, these consignments would certainly not have been dispatched by the route on which the breach had occurred. Therefore I hold that the railway company is liable for the loss of those two consignments as it was caused by misconduct on the part of their servants. It is urged that had the company informed the consignee he could have made better arrangements for the disposal of the mangoes. There is however no evidence that he could have disposed of them at a higher rate, nor do the findings show that the railway company could have disposed of them at an earlier date to greater advantage. I think therefore that the company is not liable for the loss incurred on the first two consignments though they should undoubtedly have given notice to the consignee before selling them on 3rd August. It is not clear however that in respect of the last two consignments loss was also not caused by their failure to communicate with Calcutta. It is possible that there would have been time for the plaintiffs to arrange for the sale of these two consignments elsewhere as they had not been so long in transit. The plaintiffs have given evidence of the value of the mangoes, and in the absence of rebutting evidence their price must be assessed accordingly. I hold therefore that the plaintiffs are entitled to the price realized for the first two consignments and to the value of the last two consignments at Rs. 14, per bundle, viz., Rs. 39, Rs. 48 and Rs. 518: total Rs. 605.

4. As the loss is due to the misconduct of the servants of the B. N. By. Co., Ltd., plaintiff will get a decree against the B. N. Ry. Co., for the amount stated with proportionate costs and interest at 6 per cent, per annum from the date of the suit. His claim as against the other defendant is dismissed.

Costello, J.

5. I agree.