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**(1935) 02 AHC CK 0026**  
**In the Allahabad High Court**

Secy. of State

APPELLANT

Vs

Firm Narain Das Shyam Lal

RESPONDENT

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**Date of Decision :** 25-02-1935

**Acts Referred:**

Railways Act, 1890 — Section 76

**Citation :** AIR 1935 All 525 : 155 Ind. Cas. 97

**Hon'ble Judges :** Kendall, J

**Bench :** Division Bench

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**Judgement**

Kendall, J.—This is an application on behalf of the Secretary of State for India in Council, through the Agent of the Eastern Bengal Railway and the East Indian Railway for the revision of an order of the Judge of the Small Cause Court, Aligarh, in which the suit of the opposite party for Rs. 32 damages was decreed. The circumstances are stated in the judgment of the trial Court. It appears that the plaintiff had consigned a number of bags of rice for despatch to Aligarh and that when the rice arrived at the station of destination, damage was found to have been caused to the extent of six maunds, and the plaintiff therefore sued for compensation to the amount of Rs. 30, the value of the rice.

2. In decreeing the suit the Judge noticed the evidence brought by the Railway to prove that the wagon was water-tight, and he also noticed that in the Risk Form A, which represented the contract between the parties, a note had been made when the goods were despatched that the bags in which the rice was consigned were in a damaged condition; some were reseeded, others showed signs of probing and damp storage, so that they were liable to deteriorate in transit. Risk Form A is a form that is used when goods are already damaged and it is one of those forms which are known as owner's risk forms, but the Judge in giving the plaintiff a decree has relied entirely on Section 76, Railways Act, in which it is laid down that in a Suit against a railway administration for compensation for deterioration of goods delivered to a railway administration for carriage by railway, it shall not be necessary for the plaintiff to prove how the loss,

destruction or deterioration was caused. This provision was made by the Legislature no doubt: for the protection of plaintiffs who had suffered loss, but who were not in a position to prove in what manner the property had been damaged or destroyed after it had been consigned to the railway, because in the ordinary course of events they are not in a position to know how the loss, has been caused. But the Act has not anywhere provided that a plaintiff is absolved from the duty of proving that a railway administration is liable for causing the loss or deterioration of the goods, and from the terms of the contract it appears that the plaintiff knew of the fact that the goods tendered to the railway were either in bad condition or defectively packed and understood to hold the railway:

harmless and free from all responsibility for the condition in which the aforesaid goods may be delivered to the consignee at destination and for any loss arising from the same except upon proof that such loss arose from misconduct on the part of the railway administration's servants.

3. In the present case the plaintiff did not prove that the loss or damage to the rice had arisen from misconduct on the part of the railway administration's servants, and the Judge apparently believed that he was relieved of the necessity of proving this by Section 76 of the Act. This however only shows that if it is clear that the damage has been caused by the misconduct of the railway servants, it is not necessary for the plaintiff to prove how their misconduct had caused the loss. In this case, from the evidence that was before the Court, it seems to be highly probable that the goods which were consigned in a damaged condition and remained in the train for over ten days had deteriorated, for this reason and not through any misconduct and negligence on the part of the railway administration. At any rate, it is quite clear that the learned Judge misdirected himself as to the law in a matter of this sort, and that his decision is a result of this misdirection. No one has appeared on behalf of the opposite party in this Court. I therefore allow the application, set aside the " decree and order of the trial Court, and direct the plaintiff's suit be dismissed with costs in both Courts.