
(1933) 03 AHC CK 0036
In the Allahabad High Court

Secy. of State

APPELLANT

Vs

Madhuri Das-Narain Das

RESPONDENT

Date of Decision : 30-03-1933

Acts Referred:

Railways Act, 1890 — Section 72

Citation : AIR 1933 All 477 : (1933) ILR (All) 625

Hon'ble Judges : Niamatullah, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Niamatullah, J.—This is an application in revision by Secretary of State for India in Council against a decree passed by the Judge of the Small Cause Court at Allahabad in a suit brought by a plaintiff opposite-party for damages arising out of late delivery of a consignment sent by G.I.P. Railway from Lalitpur to Naini. The consignment was under risk note B, which implies that in consideration of payment of a lower freight the railway company is relieved of its responsibilities as bailee to a certain extent. The circumstances leading to the institution of the suit which has given rise to this application in revision are briefly as follows:

The consignment in question arrived at its destination, Naini, on 19th August 1931. The name of the consignee entered in the railway receipt was that of the firm Madhuri Das Narain Das, the plaintiff opposite-party. The railway receipt described the relative consignment as No. 23, which implied that the consignment also bore the same number, so that at the time of delivery the consignee could assure himself as regards the identity of the consignment which he had to take delivery of. As already stated, the consignment was under risk note B. Another consignment addressed to the plaintiff opposite-party had arrived two days earlier, i.e., on 17th August 1931. Through some misunderstanding, the nature of which it is not necessary to mention, he paid not only the freight due in respect of that consignment but also the freight payable in respect of the consignment in question. The plaintiff opposite-party

arranged for delivery being taken on 19th August 1931. The person deputed by him for that purpose proceeded to the railway station and demanded delivery of the consignment. The consignment consisted of a number of canisters of ghee. The railway official showed his readiness to hand over a number of canisters said to be those mentioned in receipt presented by the plaintiff's man; but the latter discovered that the canisters bore No. 93 and not 23, as mentioned in the railway receipt. He entertained some doubt regarding the identity of the consignment. Accordingly he requested that "open delivery" be made. In other words, he desired that the contents of the canisters be examined by him in the presence of the railway official giving him delivery of the same. The canisters would have to be opened for the purpose of examination. The railway official noted this request for transmission to the higher authorities as he could not allow the canisters to be opened on his own responsibility before delivery was taken. On 25th August 1931 the plaintiff sent a letter to the Divisional Traffic Manager, G.I.P. Railway, Jubbulpore, complaining that a great delay had occurred in the delivery of goods. The circumstances in which open delivery was insisted upon were mentioned in detail. The letter also contained a warning that the prices of ghee had gone down and were going down still further and that the railway company would be responsible for any loss occasioned by the delay. It was not delivered till 1st September 1931, when an inspector came to Naini and allowed the plaintiff's men to open the canisters to satisfy himself regarding the contents. This was done and delivery of the goods taken on behalf of the plaintiff. Between 19th August 1931 and 25th August 1931 the price of ghee went down considerably, the difference amounting to Rs. 150-7-0, which he claimed by the plaintiff together with interest amounting to Rs. 16.

2. The only ground on which the plaintiff's claim, as stated in the plaint, is based is that delivery should have been made on 19th August 1931 and that unwarranted delay which resulted in loss of the plaintiff was attributable to the railway staff. It was pleaded in defence that the plaintiff was not justified in refusing to take delivery on 19th August 1931 except after examining the contents of the canisters.. It was admitted on behalf of the defendant that No. 23, entered in the railway receipt, was the result of a mistake and that the contract number which the consignment bore, viz., No. 93, should have been noted in the receipt. The lower Court held that the railway administration was responsible for the loss occasioned to the plaintiff in consequence of late delivery, inasmuch as the mistake in the receipt as regards the number of the consignment amounted to a misconduct on the part of railway officials. On this finding the suit has been decreed.

3. It has been argued before me by the learned advocate for the applicant that the consignment being under risk note B, the railway administration could not be held responsible for any loss which might have resulted to the plaintiff. Reference has been made to Section 72, Railways, Act, which provides that the responsibility of a railway administration for the loss, destruction or deterioration of goods delivered to the administration to be carried by railway shall, subject to

the other provisions of this Act, be that of a bailee under Sections 151, 152 and 161, Contract Act, 1872. Sub-section (2) of the same section provides that an agreement purporting to limit that responsibility shall, in so far as it purports to affect such limitation, be void, unless it is in writing signed by or on behalf of the person consigning or delivering to the railway administration the goods and is otherwise in a form approved by the Governor-General in Council. It is not disputed that the risk note B employed in this case, is in accordance with the form approved by the Governor-General in Council. It is also not disputed that the general liability of the railway administration, referred to in the earlier part of Section 72, is subject to the limitations imposed by the risk note B. The note contains the following clause:

We, the undersigned, do in consideration of such lower charge, agree and undertake to hold the said Railway Administration harmless and free from all responsibility for any loss, destruction or deterioration of or damage to, the said consignment from any cause whatever, except upon proof that such loss, destruction, deterioration or damage arose from the misconduct of the Railway Administration's servants.

4. Then follow certain provisos, which it is not necessary to mention for the purpose of this case. It is argued that the loss complained of by the plaintiffs is covered by the indemnity clause quoted above. I do not think this contention is sound. The clause in question protects the railway administration against claim, for damages arising out of "loss or destruction or deterioration or by damage to the goods, and cannot be applicable to a case where the claimant is damnified, not by loss, destruction or deterioration of the goods themselves but by some act of the railway administration or its employees not affecting the condition of the consignment or the goods consigned. Obviously the note is intended to protect railway administration where goods in whole or in part are lost or destroyed or spoiled otherwise than through misconduct of the railway administration or its employees.

5. The plaintiff's case has no reference, whatever to anything having happened to the goods themselves which arrived safely at their destination. The plaintiff was entitled to take delivery of the goods on 19th August 1931, when he presented the railway receipt. He was also entitled to take delivery of the consignment according to the description thereof given in the railway receipt. The railway officials however offered to deliver goods bearing a different number. The plaintiff had reason to doubt the identity of the canisters which he was asked to take delivery of. The railway receipt in his possession entitled him to insist on delivery of a consignment bearing No. 23. It does not appear to have been so represented, but it was clearly implied in the action of the railway employees, who offered the canisters bearing No. 93, that the number entered in the railway receipt was wrong and that the correct number which should have been entered in it was 93. The plaintiff was justified in not accepting this assurance, except after an examination of the canisters to satisfy himself whether they contained

ghee or something else. As a prudent man, the plaintiff was justified in insisting on the contents being examined before he could give a discharge to the railway administration. In case the contents did not turn out to be ghee, as mentioned in the railway receipt, delivery would have been lawfully refused and the fact would have been noted by the railway official, so that no dispute could arise in future as to whether the contents turned out to be something different from ghee. In these circumstances the plaintiff was within his rights in insisting on the consignment bearing the same number as given in the receipt being delivered to him or in the alternative on permission being given to him to examine the contents before taking delivery of the goods so as to give a discharge of the railway administration. I have been told that open delivery could not be given by the station master at Naini on his own responsibility and that, according to the rules by which he was bound, he had had to make a reference to the higher authorities who were to arrange for the presence of some responsible railway official for open delivery to be given. It is argued that the delay was not unreasonable in the circumstances of the case, as sometime would lapse before the presence of such official could be arranged for with due regard to the exigencies of the railway administration. Assuming only such a rule does exist; it is a departmental rule and cannot bind third persons, who are entitled to insist on their legal rights. It was clearly the duty of those representing the railway either to deliver the goods the description of which tallied with that entered in the railway receipt or to afford an opportunity to the plaintiff to examine the contents with a view to satisfying himself as regards the identity of the goods. If therefore through negligence or otherwise, the railway administration could not deliver the goods on due date, or even within a reasonable time after that date, it must be held to be liable for any loss which the plaintiff suffered. The important fact, which should not be lost sight of in this connexion, is that the entire difficulty with which the plaintiff and also the railway officials at Naini were confronted on 19th August 1931 arose out of the mistake committed by the clerk who prepared the railway receipt. The railway administration must be held responsible for the action of one of its employees. The learned Judge has expressed the opinion that the mistake amounted to a misconduct. This was because the learned Judge thought that the risk note B protected the railway administration in the absence of evidence establishing misconduct on the part of the railway administration or its employees. I have taken a different view of the risk note B and do not think it necessary to hold that the mistake amounted to a misconduct. I may however note that the word "misconduct" occurring in risk note B is of wider import than the popular sense in which that word is used. Want of proper care and caution may amount to misconduct within the meaning of the risk note B. A mistake in the preparation of the railway receipt which throws doubt on the identity of the consignment to which it relates is a misconduct in the above sense. In the view of the case I have taken, this application for revision is dismissed with costs.