

(1894) 04 MAD CK 0008
In the Madras High Court

Sesham Patter and Another

APPELLANT

Vs

L.S. Moss

RESPONDENT

Date of Decision : 05-04-1894

Acts Referred:

Contract Act, 1872 — Section 151, 152
Railways Act, 1890 — Section 72

Citation : (1894) ILR (Mad) 445

Hon'ble Judges : Muttusami Ayyar, J

Bench : Single Bench

Judgement

Muttusami Ayyar, J.—u/s 72 of the Indian Railways Act, the responsibility of the Railway Company for loss of goods delivered to be

carried by the Railway is, subject to the provisions of that Act, that of a bailee under Sections 151, 152 and 1611 [1] of the Indian Contract Act.

u/s 76[2] of the former enactment, it is not necessary for the plaintiffs to prove how the loss was caused. Act III of 1865, Sections 8[3] and 9[4] are

declared by Section 72 not to affect the responsibility of the Railway Company as defined by the latter section. The plaintiffs must show in the first

instance the alleged loss or deficiency, and then the Railway Company will be bound to show that the loss occurred under circumstances which

would exempt a bailee from responsibility for it.

3. The District Munsif finds that the plaintiffs' allegation that the bags of pepper were cut open and their contents were extracted whilst they

remained in the custody of the Railway Company is not proved. Adverting to the several possible causes of the loss on which the defendant relied,

he finds that they are not made out, but as regards the carelessness of the weighing clerks, he does not record a distinct finding. He eventually

dismisses the suit on the ground that the plaintiffs did not prove their allegation that the bags of pepper were cut open and their contents extracted.

The District Munsif has not tried this suit with reference to the requirements of the Railway Act and recorded distinct findings as to whether the

quantity delivered was proved to be what is alleged in the plaint, or whether the quantity entered in the forwarding note in excess of the quantity

delivered is due to a mistake on the part of weighing clerks, and as to whether the Railway Company has proved any ground upon which they can

be exonerated from liability as bailees. He will submit distinct findings on the questions mentioned above upon the evidence on record within three

weeks of the re-opening of the Court after the Christmas vacation, and seven days will be allowed for filing objections after the finding has been

posted up in this Court.

[1]

[section 151: In all cases of bailment the bailee is bound to take as much care of the goods

baile to him as a man of ordinary prudence would, under

Care to be taken by similar circumstances, take of his own goods of the same bulk,

bailee. quality and value as the goods bailed.]

[Section 152: the bailee, in the absence of any special contract

Bailee when not liable is not responsible for the loss, destruction or deterioration of the

for loss, etc., of thing thing bailed, if he has taken the amount of care of it described

bailed. in Section 151.]

[Section 161 If by the fault of the bailee the goods are not

Bailee's responsibility returned, delivered or tendered at the proper time, he is responsible when

goods are not duly possible to the bailor for any loss, destruction, or deterioration delivered or tendered. of the goods from that time.]

[2] Section 76: In any suit against a railway administration for

Burden of proof in suits compensation or loss, destruction or deterioration of animals or

in respect of loss of any goods delivered to a railway administration for carriage by railway,

merchandise or goods. It shall not be necessary for the plaintiff to prove how the loss, destruction or deterioration was caused.]

[3] [Section 8: Notwithstanding anything hereinbefore contained,

Common carrier liable every common carrier shall be liable to the owner for loss of or

for loss or damage caused damage to any property delivered to such carrier to be carried

by neglect or fraud of him- where such loss or damage shall have arisen from the negligence

self or his agent. Or criminal act of the carrier or any of his agents or servants.]

[4]

Plaintiffs, in suits [Section 9: In any suit brought against a common carrier for against common carriers, the loss, damage, or non-delivery of goods entrusted to him for

loss, damage or non- carriage, it shall not be necessary for the plaintiff to prove that

delivery, not required to such loss, damage or non-delivery was owing to the negligence

prove negligence or criminal- or criminal act of the carrier, his servant or agents.]

criminal act.