

(1912) 03 AHC CK 0012
In the Allahabad High Court

Sham Manohar and Another

APPELLANT

Vs

Great Indian Peninsula Railway

RESPONDENT

Date of Decision : 19-03-1912

Acts Referred:

Citation : (1912) ILR (All) 422

Hon'ble Judges : Banerji, J

Bench : Single Bench

Judgement

Banerji, J.—This was a suit for damages for non-delivery of three packages consigned by the plaintiff at the Etawah Railway Station for despatch to Jhansi. On the 23rd of May, 1910, the plaintiff booked six packages for despatch from Etawah station to Jhansi. Three of these were delivered and the other three were not delivered. In respect of the articles contained in the packages not delivered, the present suit was brought. The defendants to the suit were the East Indian Railway, The Oudh and Rohilkhand Railway and the Great Indian Peninsula Railway. The suit was withdrawn against the Oudh and Rohilkhand Railway; it was dismissed against the East Indian Railway, but a part of the claim has been decreed against the Great Indian Peninsula Railway. This application for revision has been filed on behalf of that railway. The first contention of the applicants is that having regard to the provisions of Section 80 of the Indian Railways Act (Act IX of 1890), the claim could not be decreed against this railway unless it was proved that the goods were lost on that railway. This contention appears to be well founded. Section 80 provides that a suit for compensation -- among other things--for loss of goods booked through or over the railways of two or more railway administrations may be brought either against the railway administration to which the goods were delivered by the consignor or against the railway administration on whose railway the loss occurred. In the present case, the goods were delivered by the plaintiff to the East Indian Railway. Therefore, in accordance with the provisions of that section, the Great Indian Peninsula Railway, would not be liable unless the loss occurred on that railway. It was denied by that railway that the goods ever came to its possession. The plaintiffs,

therefore, were bound to prove that the -goods came into the possession of the Great Indian Peninsula Railway and that the loss occurred on that railway. No evidence was given on the point and the court below does not find that the loss occurred on that railway. I fail to understand, how, in view of the provisions of Section 80 to which the learned Small Cause Court Judge has referred; he could make a decree against the Great Indian Peninsula Railway without finding whether the loss had occurred on that railway. On this ground alone the applicants are entitled to have the suit dismissed. It is also urged, that in view of the provisions of Section 75 of the same Act no compensation could be allowed, in respect of any of the articles contained in the lost packages, inasmuch as a part of the goods contained in those packages were articles, which, under the second schedule to the Act ought to have been insured. The court below has excluded from the claim the value of those articles only which contained gold and silver tissue and lace. But the Section clearly shows that the protection afforded by the section extends not only to the articles containing tissue and lace (which ought to have been insured), but also to all the other articles contained in the parcels in which the articles first mentioned were placed. This was held by the Bombay High Court in *Pandlik Udaji Jadhav v. 8. M. Railway Company* I LR(1909) all 827 and is justified by the language of the Section . The plaintiff in his deposition admitted that the three parcels not delivered to him contained the articles of which he gave details in the court below. Therefore, on both these grounds mentioned above, the suit ought to have been dismissed against the Great Indian Peninsula Railway. I allow this application, set aside the decree of the court below and dismiss the claim as against the applicants with costs in both courts.