

(1934) 05 MAD CK 0058
In the Madras High Court

South Indian Railway Co. Ltd.

APPELLANT

Vs

Nanjiah Narayanaswami Pillai

RESPONDENT

Date of Decision : 08-05-1934

Acts Referred:

Citation : AIR 1934 Mad 652 : (1934) 40 LW 625

Hon'ble Judges : Beasley, C.J

Bench : Division Bench

Judgement

Beasley, C.J.—In this petition I am only concerned with one of the two consignments of goods and it is the first consignment. The goods were put on the B.N. Ry at Shalimar and then in the course of transit were handed over to the G.I.P. Ry. and then by the G.I.P. Ry. to the M. & Section M. Ry. and at Jalarpet by the M. & S.M. Ry. to the defendants in the suit, the S.I. Ry. It is not necessary to go into the details relating to the arrival of the goods at their destination on the S.I. Ry. It is sufficient to say that on being unpacked the goods were discovered to have suffered damage. The plaintiff's case was that they had been damaged in the course of the railway transit, having been delivered to the forwarding railway company, namely the B.N. Ry. Company, in an undamaged condition he sued the S.I. Ry. Company for damages. In the course of the trial evidence was let in as to the damaged condition of the goods on their arrival. But there is no evidence at all as to where they were damaged or upon which company's railway system they were damaged. Evidence such as this of course it is practically impossible to get. It would not be possible for the consignor or consignee to know in any ordinary course at what particular spot or upon which particular railway the goods were damaged unless he travelled with the goods himself throughout the whole of the transit.

2. This difficulty however is provided for by Section 80, Railways Act, which provides that in such a case as this a suit can be brought against the first Railway Company, that is to say the Railway Company, which first receives the goods for carriage to their destination, unless it can be shown where the goods in

fact were damaged. In such a case there is the alternative given to the consignee or consignor, as the case may be, to sue that particular Railway Company. In this case, there being no proof about where the goods were actually damaged, the suit, so far as it relates to the first consignment, should have been brought against the B.N. Ry. Company, the first receiving Company; and in the absence of the proof already referred to the B.N. Ry. Company cannot be held liable for the damage sustained to the goods. The District Munsif however has held them liable. For the reasons before mentioned he was clearly wrong. Therefore this petition must be allowed and the decree, BO far as it relates to the first consignment, must be set aside and that part of the respondent's claim dismissed. The petitioners will get their costs of this petition and also proportionate costs in the District Munsif's Court.