
(1927) 08 PAT CK 0022
In the Patna High Court

Tarachand Marwari

APPELLANT

Vs

Bengal Nagpur Railway Co. and Others

RESPONDENT

Date of Decision : 10-08-1927

Acts Referred:

Citation : AIR 1928 Patna 259

Hon'ble Judges : James, J; Das, J

Bench : Full Bench

Judgement

James, J.—The suit out of which this appeal arises was instituted against the E.B. Ry. Co, and two other railway companies for compensation for nondelivery of four bags of dhanias and 23 bags of tamarind. The defendant railways admitted that the goods had not been delivered to the consignee; and the E.I. Ry. Co., by whose line the goods had been carried while they were in transit to their ultimate destination, admitted that they had been lost. The defendants denied liability, pleading that the plaintiff had executed a risk-note in Form B exonerating the carriers from liability for loss of the goods unless such loss should be due to wilful neglect on the part of railway servants. The defendants did not succeed in proving by evidence that the goods had been lost; and on this account the Munsif of Raghunathpur held that they were not entitled to take advantage of the terms of the risk-note executed by the plaintiff. On appeal, the learned Subordinate Judge of Purulia held that it was sufficient for the Railway Company to plead loss and that they were not obliged to prove it before they could take advantage of the risk-note. He, therefore, allowed the appeal, and dismissed the suit. The plaintiff comes up in second appeal to this Court.

2. Mr. S.N. Bose argues for the plaintiff that in the absence of proof of loss, deterioration, or destruction, such as would bring the case within the terms of the risk-note, he is entitled to a decree. It was not proved that the goods had actually been dispatched from Kushthia, after they had been made over to the Eastern Bengal Railway Company; and it is not suggested on behalf of the Railway Companies that loss has been proved in this case. Mr. N.C. Sinha for the

respondents argues that the defendant Company has merely to plead loss; and the onus will then be upon the plaintiff to prove that the loss was caused by some act of dishonesty or wilful negligence on the part of a servant of the Railway Administration.

3. But in the recent case of Nagendra Nath Sen Vs. B. and N.W. Ry. Co. and Another, it was held, following the decision of the Full Bench in the case of Puran Das Vs. East Indian Railway Co., that the Railway Administration must prove that the goods consigned have been lost before they take advantage of the agreement contained in the risk-note to throw upon the plaintiff the onus of showing that the goods were lost by dishonesty or wilful negligence; and that it is not sufficient for the Railway Company to plead execution of the risk-note and to plead loss; they must definitely prove that there has been loss of goods. It is not suggested that in the case with which we are here concerned, the defendant railways did prove that the goods had been lost.

4. Therefore, they cannot take advantage of the agreement contained in the risk-note. The goods were accepted for carriage by railway; they have not been delivered to the consignee; and the carrier must be held responsible for their value.

5. The plaintiff's suit must accordingly be decreed against the Railway Company to whom the goods were delivered for carriage. The appeal is allowed; the decree of the lower appellate Court is set aside; and the plaintiff's suit is decreed against the E.B. Ry. Co. The plaintiff will be entitled to his costs throughout.

Das, J.

6. I agree. This case is free from all complications. The plaintiff in this case sues upon the contract and for damages for nondelivery. I do not think that the proposition is disputed in any of the judgments to which my attention has been drawn that in a case where the plaintiff is suing upon the contract for nondelivery of the goods, the onus is upon the Railway Company to prove the loss of goods.