

(1922) 06 PAT CK 0012

In the Patna High Court

The Bengal North-Western Railway Company

APPELLANT

Vs

Abdul Karim

RESPONDENT

Date of Decision : 20-06-1922

Acts Referred:

Citation : AIR 1922 Patna 419 : 70 Ind. Cas. 747

Hon'ble Judges : Adami, J

Bench : Single Bench

Judgement

Adami, J.—This application arises out of a suit in which the plaintiffs made a claim against the East Indian Railway, the Bengal North-Western Railway and the Eastern Bengal State Railway Companies, in respect of 20 bags of lime consigned by their agent at Dehri-on-Sone, to the plaintiffs at Purnea. The Secretary of State was made a party defendant. The claim was for Rs. 99-4-0 as damages, and consequently the suit was triable by a Court of Small Causes.

2. The Munsif, who was vested with the powers of a Small Cause Court Judge, preferred to try the suit by the ordinary procedure, and gave a decree in favour of the plaintiffs as against the Bengal North Western Railway only for a sum of Rs. 68-15.

3. No appeal lay against this decision, and the only course open to the defendants-petitioners was to move this Court in revision *Indra Chandra Mukherjee v. Srish Chandra Banerjee* 21 Ind. Cas. 120 : 40 C. 537.

4. The bags were despatched from Dehri-on-Sone station under a Risk Note in Form H which, in consideration of the reduced rate, exonerated the Railway Company for loss or damage to the consignment except loss of the complete consignment or of one or more packages forming part of a consignment due either to the wilful neglect of the Railway Administration or to theft by, or to the wilful neglect of its servants or agents.

5. The Munsif found that the 212 bags were safely carried by the East Indian Railway Company as far as Mokameh Ghat where they were made over to the

Bengal North-Western Railway Company for transshipment, so that the East Indian Railway Company were held not to be liable. The Transshipment Book of the Bengal North-Western-Company showed that 212 bags had been taken delivery of by that Railway, and, therefore, the Munsif held that the Bengal North-Western Railway must be held liable for the loss of complete bags found to be short on delivery at Purnea.

6. The contentions raised against this finding are that the Munsif did not consider the whole of the entry in the Transshipment Register which, though in one column 212 bags were shown as received, had an entry in another column to the effect that on weighment the bags were found to be 29 maunds short in weight, and that on failure of the plaintiffs to show wilful neglect by the Railway Administration or its servants or theft by their servants or agents, the plaintiffs could not succeed under the terms of the Risk Note.

7. It is a fact that there is an entry of a shortage of 29 maunds, for which the Bengal North-Western Railway could not be held responsible, and it is also a fact that it was not proved that the loss was due to the wilful neglect of the petitioners or their servants or the theft by their servants or agents, nor is it argued before me that such neglect or theft were sought to be proved by the plaintiffs. It has been held on many occasions by various High Courts in India that in cases where goods are consigned under Risk Notes B or H it is incumbent on the plaintiffs to prove such wilful neglect or theft; I need only refer to the cases of Sheo Barat Ram v. Bengal and North Western Railway Co. 15 Ind. Cas. 56 : 16 C.W.N. 766; East Indian Railway Co. v. Kanak Behary to Haldar 44 Ind. Cas. 69 : 22 C.W.N. 622 and East Indian Railway Company v. Nilkanta Roy 22 Ind. Cas. 679 : 41 C. 576 : Cri.L.J. 142 : 19 C.W.N. 95. Though it may be very difficult for a consignor to prove neglect or theft in these cases, I am bound to follow the above decisions and to find that the decree of the lower Court cannot be sustained.

8. The application is, therefore, granted and the decree of the Munsif is set aside. Hearing fee three gold mohurs.