

(1926) 05 PAT CK 0007

In the Patna High Court

The East Indian Railway Co. and Another

APPELLANT

Vs

Chinmay Charan Sanyal

RESPONDENT

Date of Decision : 06-05-1926

Acts Referred:

Citation : AIR 1926 Patna 395 : 96 Ind. Cas. 1037

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

Bench : Division Bench

Judgement

Das, J.—This appeal arises out of a suit instituted by Chinmay Charan Sanyal for recovery of Rs. 820-G as against the Bengal and North-Western Railway Company and the East Indian Railway Company. The material facts are these:

Messrs. A.Q. Ansari and Co. despatched one wagon of unslaked lime weighing 517 maunds 10 seers from Dehri-on-Sone to Samastipur, per the East Indian Railway Company. The consignment was to Messrs. Ansari and Co. as consignees. The plaintiff became the holder of the rail way receipt in due course and claimed the consignment from the Bengal and North-Western Railway Company.

2. The findings of fact are that the consignment actually reached Samastipur about the end of July, 1921, and that the Bengal and North-Western Railway Company offered to deliver the goods to the plaintiff on the 2nd February, 1922. The plaintiff refused to take delivery of the goods on the ground that they had deteriorated in value and were perfectly useless to him. On these facts he claimed a decree as against both the Railway Companies.

3. The learned Munsif took the view that no responsibility attached to the East Indian Railway Company, but he thought that there was gross negligence on the part of the Bengal and North-Western Railway Company, and, on this ground, he gave a decree for the amount claimed as against the Bengal and North Western Railway Company and dismissed the suit as against the East Indian Railway Company.

4. The Bengal and North-Western Railway Company appealed, and it appears that the plaintiff did not appeal against that portion of the judgment of the Court of first instance by which the suit was dismissed as against the East Indian Railway Company.

5. The learned District Judge heard the appeal of the Bengal and North-Western Railway Company, and while agreeing with the view of the Court of first instance that that Company was liable to make good the loss sustained by the plaintiff, he thought that the East Indian Railway Company was equally liable to the plaintiff. In the result he has passed a decree as against both the Railway; Companies, and we have two appeals before us, one by the East Indian Railway Company and the other by the Bengal and North-Western Railway Company.

6. I will first consider the appeal of the East Indian Railway Company. There can be no doubt whatever that the decision of the learned District Judge is right and must be affirmed.

7. There was evidence before the Court upon which the Courts below came to the conclusion that there was an express con. tract that the goods were to be sent via Benares Cantonment, but the East Indian Railway Company did not send the invoice along with the goods to the Railway Authority at Samastipur. The result was that, although the goods arrived about the end of July, 1921, the goods could not be identified as belonging to the plaintiff till the 2nd February, 1922. The East Indian Railway Company relies on the contract contained in the Risk Note. The learned District Judge has pointed out that as the goods were diverted from the agreed route the case was taken out of the special contract contained in the Risk Note. The learned District Judge also took the view, that there was gross negligence on the part of the East Indian Railway Company in so far as they did not send the invoice to the Bengal and North-Western Railway Company. It is not necessary for me to express any final opinion on the first point decided by the learned District Judge, because I am clearly of opinion that the plaintiff has satisfactorily established that there was negligence on the part of the East Indian Railway Company.

8. It was then contended that the first Court having dismissed the suit as against the East Indian Railway Company and the plaintiff not having appealed against that portion of the decree, it was not competent to the lower Appellate Court to pass a decree against the East Indian Railway Company. But all the parties were before the Court, and it is obvious that complete justice could not be done between the parties except by adjudicating on the rights of all the parties that were before the Court.

9. It is pointed out before us that if the East Indian Railway Company is really guilty of negligence, then the Bengal and Northwestern Railway Company would be entitled to contribution from the East Indian Railway Company and that that right should not be prejudiced by the fact that the plaintiff was satisfied with the decree as against the Bengal and North-Western Railway Company and did not

think it worth his while to appeal against that part, of the decree which dismissed the suit as against the East Indian Railway Company. There was complete jurisdiction in the lower Appellate Court to pass the decree which it did against the East Indian "Railway Company. The only question is whether the jurisdiction was properly exercised. I am of opinion that it was, and I must dismiss the appeal of the East Indian Railway Company with costs.

10. I will now deal with the appeal of the Bengal and North-Western Railway Company.

11. It is contended that the negligence was of the East Indian Railway Company and that the suit as against the Bengal and North-Western Railway Company must fail, because the cause of action in the plaint is not based on tort. It is quite true that there is no privity of contract between the plaintiff and the Bengal and North-Western Railway Company, but it is not disputed that an action in tort is maintainable against the Bengal and North-Western Railway Company, provided a case to that effect is made in the plaint.

12. Now all that is necessary for the plaintiff to allege in the plaint is that there was some duty upon the Bengal and North-Western Railway Company to deliver the goods to him and that there was a breach of duty on their part. Now all these allegations are to be found in the plaint. The plaint alleges that the goods were consigned to Samastipur and that, therefore, we must take it that there is an allegation that the Bengal and North-Western Railway Company in this matter were acting as the agent of the East Indian Railway Company. Then there is the fifth paragraph of the plaint which alleges as follows:

That thereafter this plaintiff sent his men several times to the delivering station for taking delivery of the consignment of unslaked lime but no delivery was given to the plaintiff's men by the defendant Railway Companies.

13. There is a clear allegation of a breach of duty on the part of the Bengal and North-Western Railway Company entitling the plaintiff to damages if the allegations made by him were made good.

14. It was then contended that on the merits a decree should not have been passed against the Bengal and North-Western Railway Company. The argument is to the effect that it was impossible for them to identify the goods in the absence of the invoice; but, as the agent of the East Indian Railway Company, it was clearly its duty to make enquiries from the East Indian Railway Company to ascertain the real facts in connection with this particular consignment. It is true that it gave some evidence to show that inquiries were made by it; but with reference to this the learned District Judge says as follows:

They should therefore, have taken prompt steps to ascertain from the possible sources to which consignment the goods related. The evidence, however, shows that they took no steps till September. They must have known by this time that goods are such as were liable to deterioration during the monsoon period. Even

then there is no evidence to show the nature of the enquiry as the documents are not before the Court and the defendants did not make any case that they were entitled to give secondary evidence. The evidence of enquiry said to have been made also shows that it was of the most perfunctory character.

15. In my opinion, the learned District Judge was right in passing decree as against both the Railway Companies and the appeal of the Bengal and North-Western Railway Company must be dismissed with costs--five gold mohurs in each case.

Adami, J.

16. I agree.