

(1924) 07 CAL CK 0023
In the Calcutta High Court

The East Indian Railway Co. Ltd.

APPELLANT

Vs

Ram Chabila Prasad

RESPONDENT

Date of Decision : 21-07-1924

Acts Referred:

Railways Act, 1890 — Section 72

Citation : AIR 1925 Cal 915

Hon'ble Judges : Chotzner, J

Bench : Division Bench

Judgement

Chotzner, J.—The suit out of which this Rule has arisen is one instituted by the plaintiff, opposite party for the sum of Rs. 279-0-0 for damages for non-delivery of goods, namely, a bale of cloth which had been booked from Howrah to Kulti. The consignor was a firm of the name of Kanti Lal Mohan Lal in whose name the receipt was given and it was endorsed in favour of the plaintiff.

2. The plaintiff's case was that the defendant Company were negligent in looking after the property with the result that the goods were stolen and consequently never delivered to him. He further alleged that he had executed no risk-note in the form "B" and even if any such form was executed it was done without proper authority.

3. In their written statement the Company admitted the loss but pleaded that it was not due to any misconduct or neglect on the part of their servants and further that in view of the fact that the bale was booked under risk note "B" they were absolved from any liability.

4. The learned Subordinate Judge observed that the risk-note in the form purported to have been signed by one Nanda Lal who was stated by the Company to have a letter of authority to act on behalf of the firm Kanti Lal Mohan Lal the consignor. That letter, however, was not produced by the Company. The learned Judge therefore concluded that Nanda Lal had no authority to execute the risk-note. From that it followed that the goods were not

covered by any risk-note and as the whole consignment was lost he came to the conclusion that the Company was liable. He accordingly made a decree in favour of the plaintiff in (full.

5. The learned Vakil on behalf of the Company contends that the burden of proving negligence on the part of the Railway servants is upon the plaintiff that all that the Company has got to show is that ordinary care was taken during the transit of the goods and that that has been done. Secondly, he urges that the case is covered by the risk-note in the form "B" and therefore the provisions of Section 72 of the Railways Act which impose the duty of a bailee upon the Company have no application to the present case.

6. The teamed counsel who has appeared on behalf of the opposite party contends fully that no risk note in the form "B" was executed by his client that if it) is found that Nanda Lal did execute the risk-note it has not been shown by the Company that he had any authority so to do. He further contends that if the goods are not covered by the risk-note the company are in the position of a bailee as laid down in Section 72 and the onus is therefore upon them to prove that they have taken reasonable care in safeguarding the property. He urges that that onus has not been discharged and therefore the decree should not be disturbed.

7. Now it is plain, that the opposite party, the plaintiff, sued upon his Railway receipt. In that railway receipt the risk-note is specifically mentioned and it is also clear that the goods were by reason of the existence of that risk-note carried at a much reduced rate. The Company therefore, did not occupy the position of a bailee as laid down in Section 72 of the Act and the onus is upon the plaintiff to show negligence on the part of the company. No doubt it is very difficult for him to do so; and as was pointed out by Lord Buckmaster in the case of *H.C. Smith, Ltd. v. Great Western Railway Company* [1922]1 A.C.178 ""It is often impossible for a trader to know what it is that has caused the loss of his them between the time when ho delivered goods into the hands of the Railway Company's servant and the time when they ought to have been delivered at the other end of the journey." The onus, however, still remains upon the plaintiff and here it is apparent that he has failed to discharge it. It is of no avail to say that no risk-note was executed or if it was executed it was done without authority, because the plaintiff's case is founded upon that railway receipt which definitely refers to the risk-note and it was in pursuance of that contract that the goods were received, booked and despatched. The railway receipt is the basis upon which the plaintiff's claim is founded. Were it not so, to use Lord Buckmaster's words again (at page 188) "he would be suing outside the only contract upon which he would have been entitled to recover".

8. The result, therefore, is that the Company are entitled to succeed. The Rule is accordingly made absolute and the suit dismissed with costs. I assess the hearing fee of this Rule at one gold mohur.