

(1925) 10 PAT CK 0004
In the Patna High Court

The East Indian Railway Company

APPELLANT

Vs

Kishun Chand Kasarwani

RESPONDENT

Date of Decision : 27-10-1925

Acts Referred:

Railways Act, 1890 — Section 72(2)(a)

Citation : AIR 1926 Patna 336 : 96 Ind. Cas. 206

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

Bench : Division Bench

Judgement

Ross, J.—This is an appeal by the East Indian Railway Company against a decision of the Subordinate Judge of Ranchi affirming a decision of the Munsif in a suit brought by the plaintiff-respondent for damage for the loss of one bale of cotton piece-goods. It appears that two bales of cloth were despatched from Bombay to Daltonganj on the East Indian Railway and only one bale was delivered. The goods were despatched under Risk Note in Form B.

2. The learned Subordinate Judge held that as the Risk Note was executed by one Narsing, who was not the sender of the goods nor an authorized agent of the sender, the risk note was not an effective contract. He was further of opinion that as the Railway Company--defendant--had not pleaded loss, it was not necessary for the plaintiff to show that the non-delivery was due to wilful negligence on the part of the Company's servants.

3. In my opinion the decision of the learned Subordinate Judge is wrong on both points. It was found as a fact by the Munsif that the goods were delivered to the Railway Administration by Narsing, who signed the risk note. This finding has not been reversed by the Subordinate Judge; and it must be taken that the risk note was executed by the person delivering the goods to the Railway Administration. This comes within language of Section 72, Clause (2)(a), and, in my opinion, the learned Subordinate Judge was wrong in construing that section as meaning that the person sending and the person delivering the goods are necessarily the same. If Narsing delivered the goods on behalf of the sender to the Railway

Administration, then he was the agent for executing the risk note under which the goods were despatched. In this view of the case it is unnecessary to deal with the further argument advanced on behalf of the appellant that the plaintiff had ratified the act of Narsing by taking delivery of one bale of goods under this risk note.

4. With regard to the second point, it is clear that this is a case of loss. The plaintiff in his plaint alleged that only one bale was delivered and that there was shortage. The Railway Company in their defence pleaded that there was no wilful negligence by reason of which the Company was liable for any loss sustained by the plaintiff. The case was clearly a case of loss on the pleadings; and, in view of the terms of Risk Note in Form B, it was for the plaintiff to prove that the loss of one complete package was due to negligence on the part of the Company's servants. No such proof was offered and the plaintiff's claim must, therefore, fail.

5. The appeal is allowed and the suit of the plaintiff is dismissed with costs in both the Courts below, but in the circumstances of the case there will be no costs of the appeal in this Court.

Das, J.

5. I agree.