

**(1912) 12 CAL CK 0004**

**In the Calcutta High Court**

**Case No :** Rules Nos. 5717, 5718 and 5719 of 1912

The East Indian Ry. Co.

APPELLANT

Vs

Shiv Prosad Bhakat and Others

RESPONDENT

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**Date of Decision :** 16-12-1912

**Acts Referred:**

**Citation :** (1912) 12 CAL CK 0004

**Final Decision :** Dismissed

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## **Judgement**

1. (sic) instance of the E. I. Ry. Coy., Defendants in three Small Cause Court suits, calling on the Plaintiffs to show cause why the decrees passed in their favors should not be set aside and the suits dismissed. The facts are as follows: The Plaintiffs dispatched consignments each of several tins of ghee for carriage by the Defendant Company's railway upon the special terms as to rates and liability contained in the Risk-note, Form "B." The Risk-note was signed by or on behalf of the Plaintiffs, and it is conceded that it is in the form sanctioned by the Governor General in Council as required by sec. 72 (2) (b) of the Railways Act, 1890. On arrival at their destination it was found that some of the tins has been cut open and there was a shortage in their contents. For compensation for these shortages the three suits were brought and the Small Cause Court has granted the Plaintiffs decrees holding that the Defendant Company are liable in spite of the special contract made between the parties. In this view he is clearly in error, and the question is so amply covered by authority that it is unnecessary for us to discuss it at any length. It was suggested by the learned pleader that the contract embodied in the Risk-note was contrary to public policy. This question has also been considered in more than one case and decided in favor of the Railway Coy. It may be pointed out that the Risk-note in its present: form is not so wide as it previously was. There is now an exception with regard to loss of a whole consignment or one or more complete (sic) out of a consignment. That, (sic) does not affect the present case of Moheswar Das v. Carter I. L. R. 10 Cal. 210 (1883), E. 1. Ry. Coy v. Bunyad Ali I. L. R 18 All. 42 (1895) Toonya Ram v. E. 1. Ry Coy. I, L. R 30 Cal. 257 11902 Tippanna v. Southern Maratha Ry Coy. I.

L. R. 17 Bom 417 (1892) and Mulji Dhanji Seit v. The Southern Maratha Ry. Coy. 14 Mad. L J. 396.

2. The Rules must be made absolute, the decree set aside, and the suits dismissed with costs. The Defendant Company must have their costs of these Rules, hearing-fee in each case one gold mohur.