

(1918) 09 BOM CK 0012
In the Bombay High Court
Case No : O.C.J. Appeal No. 4 of 1918

The Great Indian Peninsula Railway

APPELLANT

Vs

Ramchandra Jagannath

RESPONDENT

Date of Decision : 03-09-1918

Acts Referred:

Railways Act, 1890 — Section 75

Citation : AIR 1919 Bom 67 : (1919) 21 BOMLR 6

Hon'ble Judges : Macleod, J; Basil Scott, J

Bench : Division Bench

Judgement

Basil Scott, C.J.—On the 16th of September 1916, the plaintiff" delivered to the defendants and the defendants accepted at the Victoria Terminus Station a parcel containing twenty-four account-books consigned to the plaintiffs firm at Nagpur for carriage from Victoria Terminus Station to Nagpur. The parcel arrived at Nagpur on the 18th September. On the 19th it was misdelivered to a chaprasi from the Nagpur jail who had come for another parcel which was of the same weight and bore a similar number upon it. The parcel, for which the jail chaprasi had come, had been dispatched from Khandwa, also on the 16th of September, in order that the papers contained in it might be destroyed in the Nagpur jail. The plaintiff"s books after being delivered to the Jail chaprasi were taken to the Jail Superintendent and were then destroyed by mistake owing to his thinking that they were the papers consigned from Khandva. The plaintiff submits that the account-books have been lost to him by reason of the negligence of the defendants. In paragraph 6 of his plaint he says the account-books contained in the parcel contained the record of all the dealings and transactions of the plaintiff"s firm with their various customers in respect of the agency business at Nagpur and were the only source from which the plaintiff could ascertain the debtors and creditors of his firm. The plaintiff says that he will be put to a heavy loss which the plaintiff estimates at a sum of Rs. 25,000 by reason of the loss and destruction of the said books and submits that he is entitled to recover the said sum of Rs. 25,000 from the defendants as damages suffered by him by

reason of the defendants' wrongful action. In a letter of claim, dated the 30th October 11316, the plaintiff's pleader states that the loss is roughly estimated at Rs. 21,000 together with interest due thereon at 12 per cent, per month from the due dates.

2. The suit came on for trial before Mr. Justice Kajiji by consent upon the preliminary issue whether the defendants are protected from liability to the plaintiff u/s 75 of the Indian Railways Act of 1890. That section provides that:--

(1) When any articles mentioned in the second schedule are contained in any parcel or package delivered to a railway administration for carriage by railway, and the value of such articles in the parcel or package exceeds one hundred rupees, the railway administration shall not be responsible for the loss, destruction or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for carriage by railway, and, if so required by the administration, paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk.

3. The second schedule referred to in the section under item (i) mentions maps, writings and title-deeds.

4. It is contended for the company that upon the plaint it must be taken that the account-books were writings of a value exceeding a hundred rupees which was not declared to the railway administration at the time of the delivery of the parcel for carriage, and that consequently the defendants are not responsible for the loss or destruction of the parcel. The learned Judge has held upon the issue that the defendants are not protected from liability to the plaintiff u/s 75 of the Act. He held that the value of articles within the Second Schedule means intrinsic value and not the value which for some special reason peculiar to the sender he attaches to the articles. The learned Judge also held that the destruction of the books by the Jail Superintendent by reason of which they could not be recovered was not a loss within the meaning of the section, I am of opinion that the learned Judge is right in his interpretation of the word "value" and wrong in his , interpretation of the word "loss".

5. The evidence in the case is that although the plaintiff is suing for Rs. 25,000 which he estimates as his damage in consequence of the loss of books, the value of the books whether as sheets of paper bound together or as books with writing in them does not amount to a hundred rupees. It is apparent from the last item in the Second Schedule that the section is intended to apply to articles of special value declared by the Legislature in the Schedule or which may be added to the Schedule by notification of the Governor General in Council in the Gazette of India. They must, therefore, be articles free from any premium affectionis on the part of the owner, articles, that is to say, which could be valued by any sufficiently trained expert quite apart from the feelings of the owner. The

conclusion to be derived from the Second Schedule is further reinforced by the side-note to the section in the official publication of the Act. The section is there described as a further provision with respect to the liability of a railway administration as a carrier of articles of special value. It is to be observed also that Sub-section (2) of the section provides that the compensation recoverable in respect of the loss of an article declared under the section shall not exceed the value so declared, and that the burden of proving the value so declared to have been the true value shall lie on the person claiming the compensation. It does not appear to me that the expression "True value" would be appropriate to the value put upon the article by the owner alone and not by any one else on account of sentiment or some special use to which he proposed to put the article.

6. With regard to the second point as to the meaning of the word "loss", it appears to me that it is sufficiently disposed of by a passage in the judgment of Lord Justice Lindley in *Mitten v. Brasch* (1882) 10 Q.B.D. 142, He says:

Let us consider the question apart from authority, and let, us take first the case of goods permanently lost. The damage to the owner of goods lost is their value, and possibly in some cases further special damage for their non-delivery in proper time, the damage to the owner of goods never delivered is precisely the same as if they had been lost. The Carriers' Act protects the carrier from liability for loss, and it would, simply render the Act nugatory to hold him liable for detention, which is itself the result of the loss for which he is not liable....It is to be observed that the Carriers' Act protects the carrier from "liability for the loss of or injury to" undeclared goods ; the Act does not simply relieve him from paying the value of undeclared goods which he loses; he is relieved from liability for their loss, and it would be to fritter away the Act and to depart from sound principles of construction to hold that loss in the Act only means "value" as distinguished from "loss" and its consequences....The result comes to this ; if goods which ought to be declared and are not declared are lost, whether temporarily or permanently, the carrier is protected from liability for their loss and its consequences.

7. It was made a ground of complaint in the memorandum of appeal that the learned Judge had disallowed a question put to the plaintiff in cross-examination, namely, what amount the plaintiff would have expected to receive from the defendant Company had the plaintiff made a declaration as to the value of the articles at the time they were handed to the defendant Company for carriage, or, in the alternative, the question what would the plaintiff value the books at as writings when consigned. We allowed the questions to be put to the plaintiff during the argument of the appeal and the plaintiff's answer was that their value was Rs. 60 or 70 and they had less value after the accounts had been written in them than they had when purchased. I am, therefore, of opinion that the learned Judge was right in holding that Section 75 did not protect the defendants from liability to the plaintiff", since upon the evidence the books were not of the value of a hundred rupees.

8. It is contended on behalf of the plaintiff that the case must now be tried upon the question of what loss or damage the plaintiff" has suffered in consequence of the misdelivery of the books. It appears to me to be quite clear both from the passage in the judgment in *Mitten v. Brasch*, which I have just referred to, and from *Crouch v. The London and North-Western Railway Co.* (1849) 2 Car. & K. 789 and *Riley v. Horne* (2) (1828) 5 Bing. 217, that the damages recoverable against the Railway Company is the value of the property lost and nothing more, and that although Section 75 does not directly protect the Railway Company since the goods are not of the value of a hundred rupees, it would be entirely inconsistent with the Act to hold that though if the goods had been of a value exceeding a hundred rupees, the true value would be the limit of the defendants" liability, yet, since the goods are of a value less than a hundred rupees, the plaintiff may sue for any remote and consequential damage which he may allege he has suffered from the loss. In my opinion the loss for which the Railway Company are liable must be estimated by the same measure of damage both in cases u/s 75 and in cases to which Section 75 is not applicable. It is, therefore, useless to send back the case for evidence and a finding as to the consequential damages the plaintiff may have suffered; to allow any such consequential damage beyond the value of the goods would be to render the Indian Railways Act contradictory and inoperative in regard to goods of small value.

9. Moreover I am of opinion that the plaint in respect of the claim for Rs. 25,000 is demurrals, for that sum is calculated not upon any loss which has actually been suffered but in reference to a heavy loss which the plaintiff says he will be put to in the future. The most that the plaintiff could claim successfully from the Railway Company, having regard to his evidence, is Rs. 70, and that is a sum for which he has not sued and could not sue in the High Court: see Clause 12 of the Letters Patent.

10. The appeal is allowed and the suit is dismissed with costs.

Macleod, J.

11. On the 16th September 1916 the plaintiff delivered to the defendant Railway Company at the Victoria Terminus Station, Bombay, a parcel containing twenty-four account-books consigned to the plaintiff's firm at Nagpur. After the parcel had arrived at Nagpur it was delivered, on the 19th September, by a mistake of the defendants" parcel clerk to the Superintendent of the Central Jail, Nagpur. The mistake was discovered when the plaintiff's agent came to ask for delivery. Inquiries were made of the Jail Superintendent and it was ascertained that the books had been destroyed. On the 30th October the plaintiff's pleader wrote to the defendants that his client estimated the total loss owing to the loss of the account-books at Rs. 25,000 as it had become impossible for him to claim his dues from his various customers either out of Court or by instituting suits. The defendants, on the 18th December 1916, repudiated the claim on the ground that the parcel came under the head of "writing", an excepted article u/s 75 of the Indian Railways Act, and the contents had not been declared and insured.

After a further demand was made on the 23rd January 1917, defendants wrote declining to entertain the plaintiff's claim. The plaintiff, on the 7th September, filed this suit stating that owing to the loss and destruction of the books he would be put to a heavy loss which he estimated at 25,000 rupees, and claiming that sum or such other sum as might seem just to the Court as damages.

12. The defendants in their written statement pleaded that they were protected by Section 75 of the Indian Railways Act.

13. On the 20th December 1917, a consent order was made that the suit should be placed on the board for the trial of the preliminary issue, viz., "whether the defendants are protected from liability to the plaintiff u/s 75 of the Indian Railways Act of 1890?" The trial of this issue came on for hearing before Kajiji J. who decided that the value of the books did not exceed Rs. 100 and that therefore the preliminary issue must be found in the negative. The learned Judge further decided that even if the value of the books was over Rs. 100 the loss occurred after delivery to the wrong person so that Section 75 offered no protection to the defendants.

14. Against this decision the defendants have appealed. Section 75 of Indian Railways Act, 1890, runs as follows:--

75 (1) When any articles mentioned in the second schedule are contained in any parcel or package delivered to a railway administration for carriage by railway, and the value of such articles in the parcel or package exceeds one hundred rupees, the railway administration shall not be responsible for the loss, destruction or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for carriage by railway, and, if so required by the administration, paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk.

(2) When any parcel or package of which the value has been declared under Sub-section (1) has been lost or destroyed or has deteriorated, the compensation recoverable in respect of such loss, destruction or deterioration shall not exceed the value so declared, and the burden of proving the value so declared to have been the true value shall notwithstanding anything in the declaration, lie on the person claiming the compensation,

(3) A railway administration may make it a condition of carrying a parcel declared to contain any article mentioned in the second schedule that a railway servant authorized in this behalf has been satisfied by examination or otherwise that the parcel actually contains the article declared to be therein.

15. It is admitted that the account-books come within the meaning of "writings" which are mentioned in the Second Schedule. I am of opinion that the loss of the books was caused by the negligent act of the defendants' servant in delivering

them to the wrong person, and was not caused after such delivery, Loss includes temporary loss and it does not matter that by an unfortunate accident after the loss by misdelivery the books were destroyed in the jail: see *Millen v. Brasch* (1882) 10 Q.B.D. 142 and *Smackman v. General Steam Navigation Co.* (1908) 13 C C196. There seems to have been some misapprehension in the mind of the learned Judge when he said that on the true construction of Section 75 loss for which a Railway Company is protected from liability must be loss to the Company. The preamble to the Carriers' Act no doubt refers to the losses to carriers resulting from their having to pay monies as compensation for goods lost in the course of carriage, but what they are liable for is the loss by them of the goods. The protection afforded by Section 75 lasts as long as the Railway Company are liable as carriers, and their liability in this case would continue after the goods had arrived at their destination for such reasonable time as would be required for the consignee to come to take delivery. It cannot be contended that the time had expired on the 19th September. Then are the defendants protected by Section 75 of the Indian Railways Act?

16. In my opinion the mere fact that the plaintiff is claiming more than Rs. 100 for the loss of an undeclared excepted article precludes anything but an affirmative answer, or, in other words, bars him from asserting that its value is under Rs. 100, and the question what was the value of the goods does not arise.

17. The object of this section is to protect a Railway Company from liability for the loss, destruction or deterioration of parcels entrusted to them for carriage containing articles of special value exceeding in value Rs. 100 unless they have notice of the contents, so that (a) they can demand a percentage on the value declared by way of compensation for increased risk, (b) they can take extra precautions for the safe carriage of such parcels. The whole object of the section would be defeated if the consignor could claim consequential damages for the loss of an excepted article without insuring it, on the ground that its market value was under Rs. 100.

18. The fallacy of this argument lies in thinking that loss and damages resulting from the loss can be distinguished, so that although the loss may be within the section the damages resulting from the loss are without it.

19. The question of value in the first instance can only arise when a claim is made against a Railway Company for a sum below the limit and the company pleads that the value of the article exceeds the limit, as in *Stoessiger v. The South-Eastern Railway Company* (1851) 23 L.J.Q.B. 203 where it was held that an embryo bill of exchange without the name of the drawer was of no value until filled up by the drawer and in *Blankensee v. London and North-Western Railway Co.* (1891) 45 L.T. 761, where the company pleaded successfully that the value of certain jewellery consigned was the price obtained by the consignor and not the price he paid. Coleridge C. J. said "'Value' means the value to the consignor of the goods"; and Manisty J. said: "Suppose the Act of Parliament had never passed,...and the parcel had been lost, can any one doubt but that the plaintiffs

in an action...could have recovered the amount which the article was worth to them ?" These dicta are important as showing that "value" need not necessarily mean "market value". No doubt in many cases the value of an article to the owner is the "market value" but it would be easy to enumerate articles within the Second Schedule such as plans and manuscripts which may have a special value to the owner beyond the market value, and it seems obvious to me that if he wishes to recover this value he must declare and insure the goods. If, however, a loss occurs the liability of the Company is limited by Section 75(2) to the true value. And whether the "true value" is the "market value" or some special values which the consignor can prove the goods were worth to him is a question which I do not think has yet been decided. The most instructive case of all those cited to us is *Millen v. Brasch* (1882) 10 Q.B.D. 142. The plaintiff's agent delivered to the defendant a trunk to be sent by rail to Liverpool and there shipped by steamer to Italy. By mistake the defendants shipped it to America. The trunk contained, amongst other things, silk dresses and a Seal skin jacket, excepted articles within the Carriers' Act and of a value over ₹10. The plaintiff claimed ₹210 for the loss of the trunk and injury to its contents. Thereafter the defendants recovered back the trunk and delivered it to the plaintiff. They admitted there had been miscarriage, loss of time and injury to the contents. In the lower Court it was held that the goods were lost though the loss was only temporary, that the defendants were liable for the injury to articles under the value of ₹10 but not for the injury to articles over the value of ₹10. Still for the detention of those articles ₹5 were awarded as damages. On appeal the Court differentiated the case of *Hearn v. London and South Western Railway Co.* (1855) 10 Ex. 793 where the company had been held liable for detention as there the goods had not been lost. It was held that as the goods were found to have been lost it was impossible to hold the carriers liable for detention caused by loss. The Act protected carriers from liability for the loss or injury to undeclared goods and did not simply relieve them from paying the value of undeclared goods which they lost. They were relieved from liability for their loss and it would be to fritter away the Act and to depart from sound principles of construction to hold that loss in the Act only meant value as distinguished from loss and its consequences.

20. No doubt in that case the value of the goods was admittedly over ₹10 but the remarks above quoted appear to be an authority for the proposition that a consignor cannot say "The loss of the articles is one thing and the consequences of the loss are another, so that I can sue for the consequential damage without insuring the goods". It must follow that when a consignor makes a claim against a carrier for the loss of excepted goods and the consequences of the loss, he is claiming the value of the goods to him and if his claim is over Rs. 100 he cannot be allowed to say that the loss and the consequences of the loss to any one else would not be worth Rs. 100 and that therefore he was not bound to declare and insure them.

21. That this argument is correct admits of a very simple proof.

22. The plaintiff says "value" means "cost price". Supposing this parcel had contained account-books which had cost Rs. 110 and the plaintiff had not declared them under the Act, it is obvious that the Company would have been protected from liability for their loss and the consequences of their loss. If the plaintiff had declared them he could not have recovered more than Rs. 110.

23. supposing, again, the plaintiff had said to the defendants when the books were consigned, "these books are of the value of Rs. 60 or 70 but if they are lost I may suffer damages to the extent of Rs. 25,000 and if you lose them I shall claim that amount from you". Is it conceivable that the defendants would not have been entitled to refuse to carry them and be responsible for their loss unless a percentage were paid to cover the increased risk? If the plaintiff's contention were, correct the Company would have been bound to carry the books at the ordinary rates. It would be a *reductio ad absurdum* to hold that the Railway Company might be liable to an unlimited extent for the loss of an excepted article under the value of Rs. 100 while their liability for the loss of such an article over the value of 100 was limited to the declared value.

24. In my opinion Section 75 is an absolute bar to an action against a Railway Company for any amount exceeding Rs. 100 for the loss and the consequences of the loss of excepted goods entrusted to them for carriage unless a declaration has been made under the section. Otherwise the risk attached to the carriage of undeclared excepted goods would become intolerable.

25. I agree with the learned Chief Justice, though on somewhat different grounds that the appeal should be allowed and the suit dismissed with costs.