

(1921) 09 MAD CK 0004
In the Madras High Court

The Great Indian Peninsula Railway Company Ltd.	APPELLANT
Vs	
Chella Ram Gianchand	RESPONDENT

Date of Decision : 27-09-1921

Acts Referred:

Railways Act, 1890 — Section 75

Citation : AIR 1921 Mad 510 : (1921) 14 LW 614 : (1921) 41 MLJ 603

Hon'ble Judges : Spencer, J;Ramesam, J

Bench : Full Bench

Judgement

Spencer, J.—I agree with the majority of the judges of the Small Cause Court and with the decision in Sudarshan Maharaj Nandrum v. East

Indian Railway Company ILR (1919) All. 76 .

2. The plaintiff described the articles in respect of which he made his claim as ""shawls "" and in my opinion it is a consideration of no consequence

that the particular shawls which were lost were not Kashmir shawls, nor made of wool nor articles of comparatively high value provided that the

value of the articles in the parcel exceeded Rs. 100 in all.

3. The use of the words ""special value"" in the marginal note to Section 75 of Act IX of 1890 and in Clause" (s) of the second schedule in my

opinion must not be taken to imply that only articles falling within the descriptions of the schedule which are of exceptional value, must be declared.

4. As pointed out by Mr. Justice Stuart in Sudarshan Maharaj Nadrum v. East Indian Railway Company I.L.R.(1919) All. 76 the words ""lace

watches"" and ""Government stamps"" may include articles of comparatively small intrinsic value.

5. Generally speaking all the articles in the list are articles which may have a

special value ; and it is for that reason that it was found necessary to secure Railway companies from exaggerated claims being made after the loss or destruction of parcels by enacting that all articles of these classes should be declared, I so that the Railway Company may know before they undertake the conveyance of them to what extent they will be liable in the event of the articles being lost or destroyed, and to enable the Railway Company to recoup themselves for the special care and risk that attends the carriage of articles that may in many cases be valuable articles by levying a higher rate for such parcels.

Ramesam, J.

6. I agree. The only question to be decided" in this reference is whether the goods consigned are ""shawls"". If they are ""shawls"" Section 75 of the Indian Railways Act applies and the plaintiff is not entitled to recover. If we are to interpret the term ""shawl"" with reference to the restricted sense

(No. 1 given by Murray) it will be confined to (Cashmir) shawls and I do not see how it can cover shawls of high value but made of material other than the hair of the Kashmir goat as Dr. Pandalai seems to think.

7. Again I do not think we are at liberty to interpret the term ""shawls"" with reference to the use of the phrase "articles of special value" in the marginal note to Section 75 and in, Clause (s) of the second schedule. With great deference to the learned judges who decided the case (Sarat

Chand Bose v. Secretary of State for India ILR 39 Cal. 1029). I am unable to agree with their reasoning. It may be that that case is correctly

decided, if Alwans are not "shawls". Dr. Pandalai seems to think that, if the extended sense of the term as given in the dictionaries ("Murray and

Webster,) is allowed to control the meaning of the term as used in the Act, there will be ""a revolution in the conditions of carriage of textiles in

India."" I do not think there is any ground for this apprehension. The second or extended sense as given in the dictionaries is not a definition (in the

sense that one can substitute it for the term as its equivalent but only an attempt to give a description so as to show that the restricted sense has

been latterly departed from. If the second sense as given by Murray or Webster is taken as definition every piece of upper cloth used by the

middle classes in Southern India (almost always made of cotton) will be a shawl, but I do not think they will ever be held to be Shawls"" within the

meaning of the Act. In each case it must be found whether the goods are known as "shawls". In this case there is no doubt that the goods lost are shawls. It is at this stage that the description of the goods in the plaint is of help, I am not to be understood as saying that the plaintiff is estopped by his own language in the plaint from contending that they are not shawls. If as a matter of fact, the plaint description is erroneous, he may be at liberty to show it. But in this case it is clear that it is not erroneous and that his description is in perfect consonance with the extended use of the term "as" given in the dictionaries. In this case, therefore, there is no doubt that the goods lost are "shawls" and the plaintiff is not entitled to recover.