
(1937) 08 MAD CK 0021
In the Madras High Court

The M. and S.M. Ry. Co. Ltd.

APPELLANT

Vs

Garimella Satynarayana and Sons and Another

RESPONDENT

Date of Decision : 05-08-1937

Acts Referred:

Citation : AIR 1938 Mad 206 : (1937) 46 LW 790 : (1937) 2 MLJ 798

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—These two appeals arise out of two suits brought for the recovery of damages for non-delivery of the goods

entrusted to the first defendant the M. & S.M. Railway Company through the second defendant their out-agency contractor. Both the receipt of

the goods and non-delivery are admitted. The Railway Company sought to escape from their obligation by relying upon the Risk-note Form B in

pursuance of which the goods were entrusted to them for carriage. They pleaded that the goods were lost by fire while they were kept in a shed

near the Nidadavole railway station and therefore they were not guilty of any misconduct and that unless misconduct is proved against them they

cannot be rendered liable. The lower Subordinate Judge found that the Railway Company failed to prove that the goods were lost by fire. He

came to the said conclusion on a consideration of both the oral and documentary evidence in the case. Mr. Somasundaram sought to canvass that

finding before us. We have gone through the said evidence and we see no reason to disturb the said finding. Only three witnesses were examined in

support of the alleged loss by fire. They are D.W. 2, D.W. 3 and D.W. 5. The specific case sought to be proved through the said oral testimony is

that the goods were sent from Palacole where they were entrusted to the second defendant's agent on or about the 23rd January, 1928, to

Nidadavole for entrainment and for three days they were taken to the railway station but on account of the non-availability of wagons they could

not be booked and they were brought back to the shed and kept there till the night of the 6th February, 1928, on which night there was a fire and

the goods were lost. D.W. 5 does not know anything personally about the storage of the goods. D.W. 2 is the booking clerk of the second

defendant. He is unable to state on what dates the goods were taken to the railway station and brought back. All that he says in his evidence is that

the goods were put in the shed but he does not say when. He does not further say that the goods were continued to be kept there until the 6th

February and were in the shed when the fire occurred. D.W. 3 is a night watchman who is said to have watched the shed on the night when the fire

occurred but he does not know specifically about the existence of these goods in the shed that night. He says that there is a second watchman

whose business was to check the bundles but that second watchman has not been called and there is no evidence that these goods were checked

on the 6th and were found to be existing there before the fire occurred. There is no documentary evidence produced in support of the fact that

these goods were there that night. It is alleged that the registers which might have thrown light on this fact were destroyed, but the evidence shows

that the registers were being kept in a box and there is nothing to show that the box itself was destroyed. No doubt Mr. Somasundaram relied

upon a telegram alleged to have been sent immediately after the occurrence and a report made by the second defendant to the first defendant to

the effect that 35 cloth bundles were destroyed by fire. It is interested testimony on which no Court could act. The learned Subordinate Judge

taking all these circumstances into consideration came to the conclusion that the Railway Company failed to discharge the obligation which rested

on them to prove that the goods were destroyed by fire. Mr. Somasundaram contended that the second witness having stated that the goods were

taken back from the Railway Station to the shed, there is a presumption that the goods must have continued to remain in the shed. We do not think

that there is any such presumption in law. There is evidence in the case that the shed was not kept locked or maintained in such a manner as to lead

to the inference that the goods could not be lost except by fire. The way in which the shed was maintained may also lead to the conclusion that the

goods might have been stolen. So, under such circumstances we cannot say that the inference drawn by the lower Court is wrong.

2. The question now is, the Railway Company having failed to prove that the goods were lost by fire could they escape their, obligation to

compensate the plaintiffs for loss for nondelivery. Mr. Somasundaram contends that all they have to do is to allege some loss and adduce some

evidence and it is incumbent upon the plaintiffs to allege and prove misconduct and for this he relies on the Risk-note. Under, the Risk-note no

doubt the Railway Company is freed from all responsibility for any loss of the consignment arising from any cause what ever except upon proof

that such loss arose from the misconduct of the Railway administration's servants. But there is a proviso which has been introduced recently and

which considerably modifies the obligations of the Railway Company. Under the proviso in the case of non-delivery of the whole consignment

where such non-delivery is not due to accidents to trains or to fire, the Railway administration is bound to disclose to the consignor how the

consignment was dealt with throughout the time it was in their possession or control and to give evidence in respect thereof and if misconduct on

the part of the Railway administration cannot be inferred from such evidence then only the burden of proof is shifted to the consignor. A similar

Risk-note Form B was the subject of interpretation before their Lordships of the Judicial Committee in a recent case AIR 1937 152 (Privy

Council) . Their Lordships clearly lay down there that there is a distinct obligation on the part of the Railway Company to give full disclosure of

how the goods have been dealt with by giving necessary evidence and explain what that necessary evidence should be. The evidence according to

their Lordships must be all the evidence which the Railway administration considers desirable to avoid a fair inference of misconduct keeping in

mind the provisions of Section 114 of the Evidence Act.

3. In view of this recent pronouncement it is clear that a Railway Company will be liable if they fail to account as to how the consignment was dealt

with or from the evidence adduced in regard thereto an inference of misconduct can be presumed or if misconduct is proved. The loss by fire in

this case has been relied upon by the Railway Company for two reasons: (1) to escape the obligation imposed upon them by the proviso, and (2)

to show how the consignment was dealt with. Now the finding is that the Railway Company has failed to satisfactorily establish that the goods were

lost by fire. From this it follows that they have failed to account as to how they dealt with the goods during the time they were in their possession

and control and as observed by their Lordships in the said case if the administration fails to take the opportunity to satisfy the demands of the

consignor to fulfil their obligation of disclosure so far as endorsed by the Court they will be in breach of their contractual obligation of disclosure.

Therefore having failed to account for the loss of the goods and for the non-delivery thereof the Railway Company is liable. The decision of the

lower Court awarding damages is therefore correct. Mr. Somasundaram objects to the award of interest from the date when the loss is alleged to

have occurred. We think that the lower Court is not right in giving interest on damages from the date of the alleged loss. We therefore modify the

decree of the lower Court by awarding interest at six per cent, on the amount of damages awarded from the date of the plaint. In other respects

the decrees of the lower Court are confirmed and the appeals are dismissed with costs.

4. With regard to the memorandum of cross-objections in Appeal No. 347 of 1931 we think Mr. Lakshmanan is right in his contention in regard to

the costs allowed to the second defendant and We allow the appeal in regard thereto as we think that the award of costs is not justified.

C.R. Ps. Nos. 463 to 471 of 1931.

5. Following our judgment in Appeals Nos. 347 and 348 of 1931, we dismiss these Revision Petitions with costs and fix the Advocate's fee at Rs.

10 in each except in C.R. Ps. Nos. 465 and 468 where we fix it at Rs. 20 in each.