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**(1923) 10 MAD CK 0031**  
**In the Madras High Court**

The Madras and Southern Mahratta Railway Co., Ltd.

APPELLANT

Vs

B. Krishnaswami Chetty

RESPONDENT

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**Date of Decision :** 24-10-1923

**Acts Referred:**

**Citation :** AIR 1925 Mad 133 : 79 Ind. Cas. 137

**Hon'ble Judges :** Odgers, J

**Bench :** Division Bench

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## **Judgement**

Odgers, J.—This is a revision petition to revise the judgment of the Subordinate Judge of Bezwada in a suit wherein the plaintiff sued the

Madras and Southern Mahratta Railway Company for damages for the loss of a bale of towels which was consigned to him by one Ayyalu Naidu

of Madras for carriage to Bezwada. The bale was lost or rather was not delivered to the consignee. The value of the article conveyed is claimed as

Rs. 261-5-7 plus Rs. 1-8 0. The plaintiff also claimed the estimated profit on the sale of this bale in Bezwada Rs. 37-8-0. The latter item, I think,

he is not entitled to recover as there is no evidence that he put the railway on notice that this amount would be claimed.

2. The consignor unfortunately consigned these goods under the Risk Note Form B under which he undertakes to hold the Railway Company free

from all responsibility for loss except for loss due to the wilful neglect of the Railway Administration or to the theft by or to the wilful neglect of its

servants. Wilful neglect is whittled down not to include fire or robbery from a running train. The Risk Note it is obvious, throws all the onus on the

plaintiff. But the defendants in the lower Court assumed the onus of proving that the loss had been caused by robbery from a running train. The

learned Subordinate Judge held that the defendant Company had failed in this statement, and Mr. Srinivasagopalachari who appears for them does

not make any effort to say that this finding is wrong. One would have thought that the Railway would have been content to let the plaintiff try to

discharge the extremely heavy onus that lies upon him under this contract. The learned Subordinate Judge says:

The special plea raised by the defendant has not been proved. I am inclined to hold that the bale was lost by the negligence, etc., of the defendant.

3. It was obviously practically impossible for the plaintiff to prove wilful negligence by the Railway Company, I have examined the evidence and all

that was proved was that when the train was stopped at Ongolo and the Guard, D.W. 2, went to check the seals he found the doors of one of the

covered vans open and 4 articles missing and the plaintiff's bale was one of them. One is very much tempted to think that where the Railway

Company has 5 or 6 of its servants travelling in the train it is not necessary to look to any outside agency to found a case of theft.

4. But I cannot say that that has been established by evidence. In a similar case in B.B. and C.I. Railway Co. v. Ranchhodlal Chotalal & Co.

(1919) 43 Bom. 769, which also arose on this Risk Note B the learned Judges point out that though the defendants have failed to prove theft from

the running train, the onus, is, of course, still on the plaintiff to prove neglect or theft by railway servants. This they point out, should have been

done before any question is reached of robbery from a running train as that, namely, robbery from a running train, is an exception to wilful neglect.

5. It has also been established in Narayana Aiyar v. The South Indian Railway Co. Ltd. AIR 1924 Mad. 388 that the onus is upon the plaintiff to

establish how the loss or deterioration was caused though there the Risk Note was in Form H. The case in The Madras and Southern Mahratta

Railway v. Muttai Subba Rao (1920) 43 Mad. 617 cited by the learned Counsel for the defendant does not seem to me to touch the case. I am,

therefore, with great reluctance constrained to come to the conclusion that the plaintiff has no remedy on this Risk Note B on the evidence as it

stands. The suit must therefore, be dismissed. The question is whether I should inflict costs on the plaintiff the defendant, as stated attempted to

prove loss by robbery from a running train and assumed that onus at the trial and failed. This is, as I pointed out wrong.

6. I do not think that the plaintiff suffered any prejudice from that procedure, but on the whole, I am inclined to dismiss the suit without costs.