

(1926) 12 MAD CK 0087
In the Madras High Court

The South Indian Railway Co. Ltd. and Another	APPELLANT
Vs	
Messrs. V.M.S.P. Bros., by one of its Proprietors Muhammad Mustafa Rowther	RESPONDENT

Date of Decision : 02-12-1926

Acts Referred:

Railways Act, 1890 — Section 72

Citation : 101 Ind. Cas. 55

Hon'ble Judges : Devadoss, J

Bench : Single Bench

Judgement

Devadoss, J.—The plaintiff's suit is for damages for non-delivery of the goods consigned from Ahmedabad under Ex B. The two defendants are Railway Companies; and to the 2nd defendant the goods were consigned and the 1st defendant was to deliver the goods at Tinnevely. The District Munsif dismissed the plaintiff's suit. On appeal the Additional Subordinate Judge, Tinnevely, framed two issues and called for findings on them. After the findings were received, the Subordinate Judge considered the whole case and gave a decree to the plaintiff. The defendant Railway Companies have preferred this second appeal.

2. The first point urged by Mr. V. Viswanatha Sastri for the appellants is that the Subordinate Judge was not justified in raising additional issues and calling for findings on them, inasmuch as the points raised in the additional issues were not specifically raised in the plaint. I cannot say that the appellants were prejudiced by the Subordinate Judge raising additional issues and calling for findings on them inasmuch as an opportunity was given to both sides to adduce evidence on the issues raised. The next contention is that the plaintiff is bound by the terms of Ex. B, the Railway receipt granted by the Bombay Baroda and Central India Railway Co., when they accepted the goods for despatch to Tinnevely. In Ex. B there are letters "O. R. H." The letters "O.R. H." mean owner's risk as per H form". The consignment was by the sender to self. Exhibit I is the agreement or contract entered into between Subodh Chandra Bhopatlal Shah and the Bombay

Baroda and Central India Railway Company. It is signed by one Mohanlal for Subodh Chandra Bhopatlal Shah. The Subordinate Judge has on consideration of the evidence found that Mohan Lal had no authority to execute the Risk Note Ex. I. The main contention of the defendants was that Ex. I was an agreement entered into between the 2nd defendant and the consignor and that the goods though sent in May were sent as per terms of the Risk Note Ex. I. On the finding of the Subordinate Judge that Mohan Lal had no authority to execute the Risk Note the consignor cannot be said to be bound by its terms.

3. What is urged before me is that the man who delivered the goods to the Railway Company for transmission to Tinnevely consigned it under the terms of Ex. I. [A] u/s 72 of the Railways Act, the Railways Administration can enter into an agreement restricting its liability but that agreement under Clause (2) of the Section, will be void "unless it is in writing signed by or on behalf of the person sending or delivering to the Railway Administration the animals or goods." [A] In this case, the evidence is that Mohan Lal delivered the goods for transmission to the 2nd defendant. If the defendant could prove that when Mohan Lal delivered the goods, he told the Railway Administration that he intended that the terms of Ex. I should apply to the consignment or if any officer of the Railway Administration intimated to him when he delivered the goods that the goods were received for transmission under the terms of Ex. I, then, no doubt, the Railway Company would not be liable. But Ex. V which is the consignment note, was prepared by one Bhanji, D.W. No. 2, some days prior to the actual delivery of the goods. He says he was present when the Railway clerk, i.e., the goods clerk, wrote the words "O.R. H." on Ex. V as well as on Ex. B. Bhanji himself has nothing to do with Ex. I. If the defendants could prove that the words "O.R. H." were written, on Ex. V as well as on Ex. B to knowledge of Mohan Lal and that Mohan Lal knew what "O.R. H." meant, then, no doubt, the defendants would have a good case, but the evidence does not show that Mohan Lal was present, when "O.R. H." was written on Ex. V or on Ex. B. [B] In order that the defendants may avail themselves of the provision in Clause (2) of Section 72 it must be shown that the person delivering the goods signed an agreement purporting to limit the responsibility of the Railway Company. [B] Taking the case of the defendants at its best, all that can be said is that the clerk who received the goods intended that the goods should be despatched at the risk of the owner, but that by itself is not sufficient compliance with the provisions of Clause (2) of Section 72. [C] There being no evidence that Mohan Lal consented to or was aware of the letters "O.R. H." it cannot be said that, when he delivered the goods, he intended that the terms of Ex. I should apply to the consignment he was then making. That being so, the Railway Administration cannot avail itself of the provisions of Sub-clause (2) of Section 72. [C] No doubt, a lower rate was charged, and it might be said that the consignor was aware of the fact that the lower rate was charged by reason of the Risk Note, but that would not, in any way, take away the liability of the Railway Company u/s 72 unless it can bring itself within the provisions of Sub-clause (2) of the section. The Subordinate

Judge having found definitely that the Risk Note Ex. I was not executed with the authority of Subodh Chandra Bhopatlal Shah the real consignor of the goods, he cannot be bound by its terms. The proposition that the actual deliverer of the goods can enter into an agreement with the Railway Company for the consignment of the goods at owner's risk or at the risk of the Railway Company is not disputed. As I said above, if the defendants could prove that Mohan Lal who actually delivered the goods, authorised the clerk to enter the letters "O.R. H.", the Railway absence of proof of any such conduct on the part of Mohan Lal, I think the appellants cannot succeed.

4. The second appeal fails and is dismissed with costs.