

(1936) 04 MAD CK 0007
In the Madras High Court

The South Indian Railway Co., Ltd.

APPELLANT

Vs

Krishnaswami Naidu and Brothers

RESPONDENT

Date of Decision : 24-04-1936

Acts Referred:

Railways Act, 1890 — Section 80

Citation : AIR 1936 Mad 878 : (1936) 44 LW 313 : (1936) 71 MLJ 325

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—This appeal relates to a consignment of till seeds sent from Mysore to Palghat in 101 bags. The weight of the consignment was

recorded on the railway pass as 181 maunds 32 seers, and was found at Erode to be 171 maunds 1 seer. It arrived at Palghat on 8th March,

1930 and Respondent, the consignee, on examining the bags found what he considered to be traces of their having been tampered with en route.

He asked for the bags to be re-weighed, whereupon the goods clerk informed him that they had been re-weighed already, and that the result was

164 maunds 27 seers. He thereupon refused to take delivery unless he were given by the clerk a memorandum of the weight and condition of the

bags. The clerk refused to accede to this request, and after some correspondence with the Railway Officials the consignee persisted in his refusal

to take delivery and the consignment was sold by the railway. The consignee then sued the South Indian Railway Company for the value of the

consignment and damages for loss of profits. His claim was dismissed by the first, Court and a decree was given only for the sale proceeds less the

expenses incurred by the Railway Company in storing the goods and conducting the sale. On appeal the Principal Subordinate Judge of Palghat

decreed Plaintiffs claim for damages and the full value of the consignment as paid to the consignor. This is a Second Appeal by the Railway

Company.

2. There are two grounds, it seems to me, upon which this appeal must be allowed. In the first place the respondent has misconceived his remedy.

His contract was with the Mysore Railway, and unless Section 80 of the Railways Act is applicable, it is the Mysore Railway alone which he can

sue. The learned Subordinate Judge holds that the refusal of the Railway Company to deliver the goods on respondent's terms at Palghat can be

construed as "loss" within the meaning of Section 80. I entirely fail to see how that can be so. He also holds that the action of the South Indian

Railway Company is a tort and not necessarily a breach of contract. I am again unable to agree with him. Any liability in respect of these goods

must in my opinion arise from breach of contract, and if that is so, Section 80 of the Act itself and two Allahabad decisions *Chunni Lal v. The*

Nizam's Guaranteed State Railway Company Ltd. I.L.R.(1906) 29 All. 228 and *Kokamal v. Great Indian Peninsular Railway* (1912) 11 A.L.J.

775 note are clear authority for the position that it is only the company to whom goods were consigned under the contract which can be sued.

3. And even if the South Indian Railway Company were otherwise liable, it does not appear to me that they have been guilty of any breach of duty.

The law on this subject has been considered and Laid down in *Bhullan Mal Asa Ram Vs. Secy. of State and Another*, . It is there held that in

delivering goods a Railway Company is bound to comply with the reasonable directions of the consignee. The learned Subordinate Judge holds in

the present case that all the consignee wanted was some slip of paper containing the actual weight found at Palghat. This appears to me to be in

itself a reasonable request, though I am doubtful whether even without such a memorandum the consignee would have been justified in refusing to

take delivery when he knew, as he says he knew on the 10th, and when he could have easily ascertained on the eighth itself, that a record of the

weight as 164 maunds had been made in the Railway's books. But the learned Subordinate Judge I should say is in error in holding that this is all

that respondent wanted. It is clear, from para 3 of the plaint, from para 2 of his memorandum of appeal in the Subordinate Judge's Court, and

from passages in his evidence that respondent also insisted upon a record also being made and handed to him of the condition of the bags, and this,

of course, means when analysed, that unless the clerk's remarks agreed with respondent's own opinion of the condition of the bags, he would still

have refused delivery. It seems to me that this cannot be construed as a reasonable request, and that, on the authority of *Kokamal v. Great Indian*

Peninsular Railway (1912) 11 A.L.J. 775 note which in this respect is not shaken by *Bhullan Mal Asa Ram Vs. Secy. of State and Another*, the

clerk was right in refusing it. The appeal must therefore be allowed, and the decree of the District Munsif restored with costs payable throughout to

the appellant.

(Leave to appeal refused).