

**(1959) 11 PAT CK 0008**  
**In the Patna High Court**  
**Case No : Civil Revision No. 393 of 1957**

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|--------------------------|----|------------|
| The Union of India (UOI) | Vs | APPELLANT  |
| North West Coal Co. Ltd. |    | RESPONDENT |

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**Date of Decision :** 27-11-1959

**Acts Referred:**

Railways Act, 1890 — Section 72

**Citation :** AIR 1960 Patna 167

**Hon'ble Judges :** B.N. Rai, J

**Bench :** Single Bench

**Advocate :** P.K. Bose, for the Appellant; S.B. Sanyal, for the Respondent

**Final Decision :** Allowed

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## Judgement

B.N. Rai, J.—This application u/s 25 of the Provincial Small Cause Courts Act by the Union of India is directed against the judgment dated 31-1-1957, passed by the Subordinate Judge, Dhanbad, exercising Small Cause Court powers.

2. The relevant facts for understanding the point raised on behalf of the petitioner may shortly be stated as follows. On 13-5-1954, the North-West Coal Company, Limited (hereinafter called the Coal Company), booked a consignment of steam coal from Pathardih Railway station to Mandwar Mahua Road Railway Station to be delivered to the Jaipur Oil and General Mills (hereinafter called the Oil Mills), who were mentioned in the railway receipt as consignee. The consignment did not reach the destination. The Oil Mills thereafter laid a claim on 20-10-1954, before the Chief Commercial Superintendent, Eastern Railway, for a sum of Rs. 412 representing the price etc. of the coal booked for delivery to them. On 3-11-1954, the Coal Company put in their claim to the General Managers, the Eastern, the Northern, and the Western Railway for an amount of Rs. 355-6-0.

On 22-11-1954, the Railway Company sent a letter to the Coal Company requesting them to send the railway receipt, the Bijak and a letter of authority

from the Oil Mills to enable the Railway to pay the compensation to them. On 18-1-1955, the Coal Company sent the railway receipt and the Bijak to the Railway. On 16-5-1955, the Railway wrote to the Coal Company informing them that their claim cannot be entertained as the claim preferred by the consignee was superior to theirs. After sending notice, the Coal Company filed Small Cause Court Suit No. 84 of 1956 for realisation of Rs. 355-6-0 from the Railway Company, now represented by the petitioner before this Court. The suit was contested by the defendant, who pleaded, inter alia, that the compensation had been rightly paid to the consignee on 16-7-1955.

3. The learned Small Cause Court Judge has held that as the railway receipt was still in possession of the plaintiff, the title in respect of the coal had not passed to the consignees. The payment of the compensation money to the consignee, therefore did not absolve the Railway. In this view of the matter, the Court below has decreed the small cause court suit. The petitioner has thereafter come up in revision before this Court.

4. Learned counsel for the petitioner contended that the Railway Company as a carrier was responsible only to the consignee or to the ultimate endorsee for the purpose of delivering the articles consigned under the railway receipt. According to him, as the railway receipt in question was not endorsed by the consignee in favour of the plaintiff, and as the plaintiff had failed to produce a letter of authority from the consignee, the Railway Company was justified in paying the compensation money to the consignee.

5. Learned counsel for the plaintiff opposite party on the other hand contended that the plaintiff had sent a notice through their lawyer to the Railway asking them not to pay the amount to the consignee as the title in respect of the consignment still remained with the consignor. According to him, any payment by the Railway to the consignee did not absolve the defendant from payment of the compensation to the consignor.

6. In my opinion, the contention raised on behalf of the petitioner is well founded and must prevail, I agree with learned counsel for the petitioner that the Railway had rightly paid the compensation to the consignee in the facts and circumstances of the present case. I further agree with him that the notice sent by the plaintiff's lawyer on 30-7-1955, asking the Railway not to pay the compensation to the consignee was of no avail as the payment had already been made to the consignee on 16-7-1955. In my opinion, in the facts and circumstances of the case the Railway was not concerned as to whether the title in the goods had really passed to the consignee or was still in the consignor. If the plaintiff has any claim against the consignee, he may be at liberty to enforce that claim in a properly constituted suit if the law permits him to do so. In the present action, however, the plaintiff cannot succeed as against the defendant. In my opinion, the court below has wrongly decreed the suit.

7. The result is that the judgment and decree passed by the court below is set

aside. This application is allowed. In the circumstances of this case, however, each party will bear its own costs in both the courts.