

(1953) 03 KAR CK 0004
In the Karnataka High Court
Case No : Regular Appeal No. 193 of 1950

Union of India and Another	Vs	APPELLANT
M. Hanuman Das		RESPONDENT

Date of Decision : 25-03-1953

Acts Referred:

Railways Act, 1890 — Section 75, 75 (1)

Citation : AIR 1954 Kar 180

Hon'ble Judges : Medapa, C.J.; Vasudevamurthy, J

Bench : Division Bench

Advocate : A.R. Somanatha Iyer, General, for the Appellant; V. Krishnamurthy, for the Respondent

Judgement

Vasudevamurthy, J.—This is an appeal by the Union of India and the Agent and General Manager of M. & S. M. Railway, Madras, against the judgment and decree of the Subordinate Judge, Bangalore, granting a decree against them in respect of two bundles of goods which had been entrusted to the railway authorities at Bombay (Victoria Terminus) for transport by rail to Yeshwanthpur near Bangalore City in May 1948.

2. The main and practically the only defence of the defendant-railway was that the plaintiff had failed to make a declaration as regards the contents of the two bundles in dispute as required by Section 75, Indian Railways Act, 1890 (which corresponds to Section 59, Mysore Railways Act) and that as those bundles contained goods worth more than Rs. 300/-, the plaintiff could not recover their value. That defence has been rejected by the Subordinate Judge.

3. Section 75 of the Indian Railways Act provides that-

"....the railway administration shall not be responsible for the loss, destruction or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for

carriage by railway, and, if so required by the administration, paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk."

In this Court the learned Advocate-General who appears for the appellants strongly relied on a case reported in -- "30 Mys CCR 153 (A)". In that case a bale of silk exceeding Rs. 100/- in value was consigned from Maddur to a firm of silk merchants trading in Bangalore City, on a "risk note" form without declaring its value to the railway administration; and it was found, as a question of fact, that the parcel was lost during its carriage by the railway company's agents by road from the railway station to the address of the consignee. The decision in that case turned mainly on the terms of the risk note, form Y, which was exhibited in the case, and the question whether or not the goods had been "lost" within the meaning of Section 75 did not arise for consideration, it being accepted or found that they were lost.

4. It is urged by the learned Advocate General that the goods in the present case have been lost because they are not forthcoming for delivery and in support of his contention he has relied on a case reported in -- Secy. of State Vs. Surjyamal Haribaksh, . The head-note in that case appears rather misleading. What their Lordships have really said in that case is that it must be decided upon the facts of each case whether loss has occurred within the meaning of Section 75. In that case the goods had been mis-delivered on the basis of a forged telegram purporting to be from the plaintiff as also a forged letter written on the plaintiff's printed note-paper addressed to the Station Master at the station from which delivery had to be made. Loss by theft or by means of fraud was, in their Lordships' opinion, clearly a loss within the meaning of Section 75, and it was not necessary that the goods should have been lost only through inadvertence or involuntarily to enable the railway to claim the benefit of Section 75. In support of their view they referred with approval to a decision reported in -- East Indian Railway Co. Vs. Jogpat Singh, . They further held that mere proof of non-delivery was by no means conclusive evidence as to whether or not the loss has occurred.

5. For the appellants reliance was also placed on a case reported in -- Chandrabhan Prakashnath Vs. E.I. Ry. Co., . "That case was decided by a single judge who said that it was only when the articles had been lost by the company that it could claim protection u/s 75. He also observed that

"when a certain article delivered to the railway company is not forthcoming for delivery at the destination "and" its whereabouts are not known, the article is "lost" within Section 75."

Obviously that decision cannot support the rather large claim that is being made in the present case by the railway administration, viz., that merely because the articles are not forthcoming for delivery they must be presumed to have been lost.

6. The learned counsel for the respondent relied on two cases reported in --

Governor-General in Council Vs. Lala Debi Sahai, and -- Governor-General in Council Vs. Mohammad Badr-i-alam and Another, respectively. In the former case it has been held that in a suit to recover damages for non-delivery of a parcel consigned to a railway if the defendant claimed protection under the provisions of Section 75 of the Railways Act, and the plaintiff proved non-delivery, it was incumbent upon the defendant to show that the parcel had been lost or destroyed; the defendant must show that everything possible had been done to trace the missing article, that the whereabouts of the article were not known or must adduce some other evidence from which it can be inferred that the parcel had been lost before the Court can hold in its favour that the parcel had been lost. In the latter case it has been held that:

"Such a meaning should be put on the word "loss" in Section 75 as would be "ejusdem generis" in its effect with the implication of the words "destruction or deterioration" which follows."

** ** *

And that

"where it was proved that the consignment had reached a midway station but it was not put into the train again to be despatched to the station of destination, it is not a case of a loss in transit within the meaning of Section 75 (1) and the consignor is not deprived of his right to claim compensation for non-delivery".

We are therefore to see whether in the present case the railway company has proved that the goods have been lost. The plaintiff has examined himself and one witness and has sworn that in spite of repeated demands, the railway company did not deliver the bundles in question. For the railway only one witness has been examined. He was at the time an Assistant parcel Clerk at Gadag Station and was on night duty. He has deposed that he unloaded at Gadag, goods booked from Bombay V. T. to Yesavanthanagar near Hospet; that two bundles were unloaded along with, nine other packets on that date at Gadag; that there was no record to show that the two bundles were again reloaded on the forwarding railway and that he could not say whether those two bundles were reloaded at all. The railway company has not examined any other witness nor has it produced any registers or documents to show what happened subsequently to these bundles.

The company has also failed to show that these bundles were again reloaded into the train, going to Yeshwanthpur which place is of course different from Yesavanthanagar referred to by D. W. 1., Exhibit II is a report said to have been made by the Chief Commercial Manager of M. & S. M. Railway to the Traffic Manager, Mysore Railway. The Officer who is referred to in para. 3 of that report and who conducted the investigation has not been examined. The railway company has not taken the trouble to place before the Court sufficient material to show that the bundles were actually lost. From the evidence of D. W. 1 it is quite possible to assume that the goods are still in Gadag. In this unsatisfactory

state of evidence we think the lower Court was fully Justified. in holding that the railway company had not established the loss which alone would entitle the company to the benefit of Section 75, Railways Act.

7. In the result, this appeal fails and is accordingly dismissed with costs.

8. Appeal dismissed.