

(1957) 01 PAT CK 0012
In the Patna High Court
Case No : Civil Revision No. 977 of 1953

Union of India (UOI)

APPELLANT

Vs

Bhagwan Sah

RESPONDENT

Date of Decision : 29-01-1957

Acts Referred:

Evidence Act, 1872 — Section 101, 102, 103, 104
Railways Act, 1890 — Section 72, 76

Citation : AIR 1957 Patna 325 : (1957) 5 BLJR 199

Hon'ble Judges : Sinha, J;Dayal, J

Bench : Division Bench

Advocate : P.K. Bose, for the Appellant; Bindabashini Prasad Sinha, for the Respondent

Judgement

Dayal, J.—This is an application in revision by the defendant (Union of India).

2. The material facts are these: The plaintiff-opposite party brought a Small Cause Court Suit (No. 8 of 1953) in the Court of the Munsif, second Court, Muzaffarpur, exercising Small Cause Court Powers, for recovery of Rs. 221 as price of the consignment which the defendant (the Railway Administration) failed to deliver to the plaintiff. The allegation was that the defendant (the Railway Administration) on account of its negligence, had failed to deliver the consignment in question. On 31st October, 1951, two cases of mixed paint had been consigned for delivery to the plaintiff at Muzaffarpur from Howrah. The consignment did not reach the plaintiff and, thereafter, the plaintiff wrote to the Railway Administration and the latter replied that, as the consignment had been burnt due to accidental fire, it was not liable. Then, the plaintiff served the usual notices and instituted the present suit against the Railway Administration on 2nd January, 1953.

3. The defence of the petitioner, on amongst others, was that the Railway Administration was not guilty of negligence on its part as the goods had been lost by accidental fire which was beyond its control.

4. The Court below has held that the consignment had been burnt by accidental fire over which the Railway Administration had no control and that it took all possible steps to extinguish the fire. But the Court below has given relief to the plaintiff on the ground that there had been unreasonable delay on the part of the Railway Administration.

5. Being thus aggrieved, the defendant has preferred this civil revision.

6. Mr. Bose, appearing for the petitioner, has urged that the decision of the Court below was wrong as the consignment had been burnt by accidental fire, which was the proximate cause for the loss. Undue delay was only a remote cause. The goods had not been lost due to undue delay but had been lost due to accidental fire over which the Railway Administration had no control. On the evidence, the Court below has come to a definite finding of fact that the fire was accidental and the Rail-way Administration took all possible steps to extinguish the fire and that, in this matter, it was not guilty of negligence. Mr. Bose has also referred to *Surendra Lal Chaudhuri v. Secretary of State* 25 C LJ 37: (AIR 1918 Cal 892 (2)) (A), in which reliance was placed on *Memphis Railroad Co. v. Reeves*, (1869) 10 Wallace 176 (B), in which it was held.

"The carrier is not liable for a loss by act of God, although he had contracted to start with the goods before he did, and if he had done so the goods would have escaped injury.

The failure of the carrier to comply with such contract would have been only the remote cause of the loss."

7. The principle laid down in *Memphis Railroad Co.*'s case (B), referred to above will apply to the facts of this case also. In that case, the goods were lost due to a sudden violent and extraordinary flood and storm over which the carrier had no control. In the present case also, the loss is due to an accidental fire and the finding is that the Railway Administration had no control over it and that, in this respect, it was not guilty of negligence.

8. The responsibility of the Railway Administration was that of a bailee. Loss or damage to goods entrusted to a bailee is, prima facie, evidence of negligence on his part and the burden of proof, therefore, to disprove negligence lies on him. Here in the present case, the bailee, namely, the petitioner, has discharged the burden of proof inasmuch as it adduced evidence to show that the goods were lost by an accidental fire over which it had no control and, in this regard, the finding of the Court below is that the petitioner took all possible steps to extinguish the fire and that the petitioner was not negligent.

9. The Court below has relied on *Dominion of India v. Rupchand Heerachand* AIR 1953 Nag 169 (C). That case has no application to the facts of the present case. There, potato had been consigned and, because of undue delay, the consignment had deteriorated on the date of delivery. Thus, it is clear that, in that case, undue delay was the immediate cause of the deterioration and loss. Here, in the

present case, undue delay is only the remote cause and the proximate cause is the fire, in regard to which the finding of fact is that the petitioner had not been negligent.

10. For the reasons given above, it appears to me that the decision of the Court below is wrong and erroneous and must be set aside. The rule is accordingly made absolute. There will be no order for costs.

Sinha, J.

11. I agree.