

(1955) 07 CAL CK 0034
In the Calcutta High Court
Case No : A.F.O.D. No. 81 of 1950

Union of India (UOI)

APPELLANT

Vs

Ganesh Lal

RESPONDENT

Date of Decision : 29-07-1955

Acts Referred:

Railways Act, 1890 — Section 72, 72(2)

Citation : AIR 1956 Cal 99 : 60 CWN 157 : (1957) 2 ILR (Cal) 456

Hon'ble Judges : R.P. Mookerjee, J;P.K. Sarkar, J

Bench : Division Bench

Advocate : Bhabesh Narayan Bose, for the Appellant; Nani Coomar Chakravarti, for the Respondent

Judgement

R.P. Mookerjee, J.—The plaintiff respondent obtained a decree for compensation against the Union of India in respect of certain consignments which had been despatched over the Eastern Punjab Railway and the East Indian Railway, but had been delivered in a damaged condition. Only two questions having been raised in this appeal. It is not necessary to refer to all the allegations in the plaint and how they were controverted by the defendant. The defendant Union of India has appealed to this Court.

2. It will be convenient if we deal with the two consignments separately. On 9-7-1947, a consignment in two lots of 225 and 175 bags of onions had been booked at Magatahsil station then on the North Western Railway, which is now known as the Eastern Punjab Railway. They were despatched to Howrah. The point in dispute now before us is whether there was any risk note given by the consignor at Magatahsil.

Although it was alleged by the plaintiff that no risk note had been given, on behalf of the Railway administration it had been alleged that Risk Notes A and B had been signed and made over. No Risk Note was produced. Oral evidence was led, and one of the witnesses for the defendant stated that Risk Notes had been signed on behalf of the consignor at Magatahsil.

The Railway invoices which had been filed by the plaintiff at the time of the delivery of the goods which were partly damaged were also not available. What was produced was the record portion of the Railway receipt. On the said copy of the record kept by the Railway administration letters "A.B.", appear. Lower down in the form the expression "Owner's Risk" also appears.

3. The Trial Court has come to the conclusion that the Risk Notes not having been produced the mere mention of the letters "A.B." taken along with the oral evidence would not be sufficient to prove the terms of the Risk Notes which might have been signed by the party.

4. It has been contended on behalf of the defendant appellant that the presence of the letters "A.B." and the expression "Owner's Risk" on the record portion of the Railway receipt would justify a finding by the Court that the consignor had actually executed Risk Notes A and B in respect of this consignment.

Reliance was placed in this connection on a single Bench decision of this Court in *The East Indian Railway Co. Ltd. Vs. Ram Chabila Prasad*, . We had called for the records of that case so far as they are available now, and it appears that the observations which were made by the learned Judge in that case taken along with the evidence which was tendered do not Justify the general proposition which is attempted to be drawn from the judgment in that case.

The real question on which a decision had been made by the trial Court and came up for consideration on revision in this Court was whether a certain person who had booked the goods had authority from the real consignor to sign the Risk Notes. The decision was based upon the existence or otherwise of the authority of that person.

When the matter came up to this Court in addition to the point referred to above learned Advocates referred to certain notes on the Railway receipt and further to the fact that a lower rate having been accepted there was a question whether having availed of that concession, the consignor was entitled to claim compensation from the Railway authorities. In any view the general proposition as laid down in that decision cannot be accepted.

5. This decision came up for consideration later on in *Bengal and North Western Railway Co. Ltd. Vs. Sobrati Mia and Others*, . Henderson, J. sitting singly doubted the correctness of the decision in the earlier case. He observed that in the absence of a duly executed" Risk Note, the mere fact that the letter "H" was endorsed on the Railway receipt and the goods were booked at a lower rate than usual were not sufficient to establish that the goods had been consigned under a Risk Note.

From the High Court records in this case also which we have examined it appears that oral evidence was attempted to be led in that case also about the execution of the Risk Notes by the plaintiff -- as has been done in the case now before us. The original Risk Notes, however, were not filed by the Railway administration.

The learned Judge, in our view, rightly refused to conclude from the letter "H" appearing in the Railway receipt that Risk Note H had actually been executed in that particular case.

6. When the Railway administration relies on the existence of Risk Notes, it is for them to produce them. Risk Notes are, according to law, filed with them and must be in their custody, Such oral evidence as has been led in the present case or the presence of letters "A.B." or "Owner's Risk" noted on the Railway invoice which also have not been produced would not justify the conclusion that Risk Notes A and B had been regularly and properly executed by or on behalf of the plaintiff.

Even if a Risk Note is produced the question arises in many a case as to who had actually signed the document, what was contained in the completed document and what was the effect thereof. Even if we are to hold that the presence of letters "A.B." on other records would show that some Risk Note had purported to have been filed but that would not be sufficient to exculpate the defendant from liability.

On the execution of Risk Notes A and B legal rights are created in favour of one or disabilities are introduced so far as either party is concerned. It is, therefore, only proper and desirable that the execution of and the contents of Risk Notes should be strictly proved.

7. Reference may in this connection be made to the decision in Ram Das Ram and Others Vs. Dominion of India, . A Division Bench of the Patna High Court held that where the Railway administration produced certain Railway receipts, which referred to Risk Notes, to prove the existence of the Risk Notes by secondary evidence that merely proved that there were such documents.

But that did not prove the due execution of the Risk Notes with particular reference to the conditions to be fulfilled under Sub-s. (2) of Section 72 of the Railways Act. There is a difference between proving the existence of a document and due execution of the contents thereof.

8. We must, therefore, hold that the learned Subordinate Judge was correct in coming to the conclusion that the defendant had failed to prove the existence of Risk Notes A and B.

9. After the consignment sent on 9-7-1947, another consignment was despatched by the plaintiff on 22-7-1947. This consisted of 225 bags of onions from the same station Magatahsil to Howrah. In this case, two Risk Notes were produced. They are marked exhibits D and D(1). They are signed by one Amar Nath on behalf of Jagatram Kartar Singh.

A question was raised whether the person signing it had the authority or not to do so on behalf of the sender. It is not necessary to enter into this question as on the evidence of the Goods Clerk, defendant's witness No. 1, who was at Magatahsil, these two pieces of paper had been signed by Amarnath when the

blanks in the printed form had not been filled up.

These blanks had been filled up subsequently by the said Goods Clerk. The Risk Notes are contracts between the parties and the documents having been signed by the executant, the blanks cannot be filled in subsequently. The learned Subordinate Judge has rightly declined to accept that there were Risk Notes properly executed which would be binding on the plaintiff.

10. In the case of both the consignments, therefore, we must proceed on the footing that there are no Risk Notes executed by the consignor. The question is whether as a bailee the Railway administration is liable for the loss. The first part of this question is as to whether there had been inordinate delay in carrying the goods from Magatahsil to Howrah.

It is in evidence and it is the admitted case of the defendant that in the case of one of the consignments the wagons in which the goods were being carried were detained at Khan Alampura yard. One of the wagons was found to be defective. Attempts were made to repair that wagon, but such attempts being unsuccessful, the goods were taken to the platform and afterwards placed in another wagon and carried to Howrah.

If the time which elapsed when the wagons were detained at Khan Alampura be excluded from the total period covered, it appears that about four to five days would be the normal time for carrying the goods from Magatahsil to Howrah.

11. It is contended on behalf of the defendant appellant with reference to two other consignments sent by others from Magatahsil that the time which had been taken in the cases now before us was the time which had been taken in the other two cases also. There had been no complaint with regard to these consignments and we are asked to presume that the goods which were despatched under these two consignments which were also onions had not been damaged even though it took about two weeks to cover the distance.

12. We are next asked as a corollary to this assumption to assume that the consignments in the present case must have been inherently of a defective quality which was responsible for the deterioration during transit. On such evidence only, however, we cannot conclude that the onions despatched in the case now before us were defective ones.

13. Before we further consider this aspect of the case we need refer to the fact that according to the Railway administration the onions are classified as "perishable" goods and according to the witnesses examined on their behalf a special tag has to be attached to each of the wagons which carry "perishables". That precaution is taken for the purpose of warning the Railway officers of the intermediate stations not to detain such wagons.

In the case now before us it has transpired in the course of the evidence that no such notice was fixed to the wagons, and the Railway officers either of Magatahsil or of the detaining station as also at Howrah vouched for the fact that

such notices had not been fixed on these wagons.

14. Moreover, it has transpired from the evidence which has been adduced that in the case of one of the consignments the wagon was found to be defective and was changed at Khan Alampura. What was the nature of the defect has not been disclosed.

15. Further, one of the witnesses examined on behalf of the plaintiff, viz., S. K. Swami. plaintiff's witness No. 1, had definitely stated in the course of examination in chief that the period when these consignments were being carried was during the monsoon. Moreover, the wagons were defective ones and water was dripping down inside the wagon.

This the witness had detected when the goods were being delivered to the consignee at Howrah, in the presence of the Railway Inspector who had been brought in to assess the extent of the damages done to the consignment. It is stated by this witness that he had a discussion with the Inspector and it was on the basis of such discussion that the assessment of damage was made.

It is significant that during cross-examination this witness was not asked any question with regard to the definite statements made about the defective wagon and water dripping inside the wagon.

16. Reference may in this connection be made to the remarks made by the Inspector, (exhibit I), when the goods were delivered. The Claims Inspector has noted that he surveyed 175 bags of onions and water was coming out from all those bags; the bags were found slack and loose due to damages of the contents inside. He had remarked:

"The consignment is in a deteriorated state badly. 28 bags found in good condition, 97 bags assessed at 55 per cent. and 50 bags at 45 per cent. The party agreed to this".

The claims inspector S. K. Chakravarty has not been examined. He would have been the best witness to controvert if it were required to be controverted that the wagons in which the consignments had been brought to Howrah were not defective ones.

17. If we accept the testimony of this witness, and no reason has been assigned why we should not do so, it becomes unnecessary for us to consider the other questions raised with regard! to the earlier stages of the movement of the goods. On the evidence we also concur with the view expressed by the trial Court that the time taken by the Railway administration was longer than it should ordinarily be. On the finding as to the condition of the wagons, there is no escape from the conclusion that the Railway administration is liable for the compensation.

18. As regards the rate at which compensation is to be assessed there has not been much difference. The evidence is practically one sided. That which has been testified by the plaintiff's witnesses has rightly been accepted.

19. It has lastly been contended that the claim made on behalf of the plaintiff and allowed by the learned Subordinate Judge for Rs. 448/- as interest should not have been allowed. As Mr. Chakravarti on behalf of the plaintiff respondent has conceded that interest on the amount of damage cannot be legally sustained, it is not necessary for us to consider the question further.

20. The result, therefore, is that the decree of the trial Court is modified and Rs. 448/- allowed by the trial Court as interest is to be excluded. The rest of the decree is affirmed.

21. In view of the fact that the appellant has succeeded on a very minor point the defendant appellant must pay to the plaintiff respondent seven-eighths of the costs incurred by him in this Court.

22. The decretal amount is to be paid within two months of the arrival of the records in the Court below.

P.K. Sarkar, J.

23. I agree.