
(1961) 10 AHC CK 0024
In the Allahabad High Court
Case No : Civil Revision No. 1021 of 1956

Virat Pal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-10-1961

Acts Referred:

Railways Act, 1890 — Section 73, 74A, 77C

Citation : AIR 1963 All 2

Hon'ble Judges : Mithan Lal, J

Bench : Single Bench

Advocate : Radha Krishna, for the Appellant; J. Swarup, for the Respondent

Final Decision : Allowed

Judgement

Mithan Lal, J.—I have heard the learned counsel for the parties.

2. The plaintiff's suit against the railway administration was dismissed on the ground that there being defective packing of the consignment the railway was not responsible for short delivery. This view taken by the learned Judge, Small Cause Court, Aligarh, is not quite correct. In this case a consignment of Aligarh locks was booked from Aligarh to Howrah. In the Forwarding Note and in the Railway Receipt it was noted that "the planks of the cases were weak and loose". The railway administration produced no evidence and the plaintiff found at the time of delivery that the cases were broken and had been re-nailed. The question is whether Section 74-A of the Indian Railways Act gives a complete protection to the railway.

3. The whole law on the point has been discussed in my judgment dated the 30th October, 1961, in Civil Revn. No. 740 of 1959. Two of the important cases on the point are Triloki Nath, Manager and Karta of Triloki Nath Shri Nath Vs. Governor-General in Council, E.I. Ry., and M.K. Manickam Chettiar Vs. Union of India and Another, . In the Allahabad case, the learned single Judge, while discussing the two contingencies of Risk Note Form A, that is bad condition of goods at the time

of delivery and damage, leakage etc., in transit, held that where it was found that there was shortage in the goods delivered and one of the bales was cut and there was no evidence led on behalf of the railway to show how the goods had been handled in transit and the shortage was also not due to any defective packing, then the Risk Note does not afford any protection to the railway administration. In the Madras case it was further laid down that where the damage cannot be attributed either to the defective condition of the goods or the defective packing of the goods, the primary onus of the bailee to show that he had taken such care of the goods as a man of ordinary prudence would take in the case of his own goods must be discharged by the railway administration for denying relief to the plaintiff. In the present case no evidence was produced on behalf of the railway administration and the plaintiff proved that at the time of delivery the cases were found broken and re-nailed. Evidently the loss of the locks was not due to defective packing and unless the loss is the direct result of defective packing, defective packing cannot give protection to the railway administration. If the cases were broken during transit and were re-nailed, the presumption is that there was pilferage of the goods. In any case, the railway administration did not show how the boxes were broken or why they had to be re-nailed. The loss cannot be connected to defective packing and so the learned Judge, Small Cause Court, was wrong in dismissing the suit. The case must therefore be sent back for determination of the damages.

4. The revision is allowed and the order passed by the Judge, Small Cause Court, Aligarh, is set aside. The case is remanded to the learned Judge with the direction to readmit the case to its original number and dispose it of according to law. Costs here shall abide the result.

5. Let the record of the case be sent down to the Court below forthwith.