

Deepchand Kherajmal by Partner D. Ramchand Vs Union of India (UOI) and Another

Court: Madras High Court

Date of Decision: Feb. 1, 1978

Acts Referred: Railways Act, 1989 " Section 77, 77B

Citation: (1979) ACJ 75 : AIR 1979 Mad 88

Hon'ble Judges: S. Suryamurthy, J

Bench: Single Bench

Advocate: Sundararajan and Sivaswamy, for the Appellant; P.S. Srisailam, for the Respondent

Final Decision: Dismissed

Judgement

S. Suryamurthy, J.

This is a civil revision petition against the judgment of the New Trial Bench of the Court of Small Causes, Madras

allowing an appeal preferred against the judgment of a learned single Judge of the Court of Small Causes decreeing Small Cause Suit No. 2850 of

1973 instituted by the revision Petitioner against the Southern Railway, Madras by its General Manager and the Chief Commercial Superintendent

(Claims) Southern Railway, Madras for the recovery of a sum of Rs. 721.40 being the value of the contents of a parcel of nylon art silk consigned

on 26th September, 1972 by the revision Petitioner and lost in transit. The only question that has to be considered is whether the revision Petitioner

is entitled to claim their value in view of the provisions of Section 77(b) of the Indian Railways Act read with Schedule II. The fact that there was a

short delivery of the nylon art silk goods consigned by the revision Petitioner is not in dispute. The goods were consigned on 26th September,

1972 under a way bill No. C 287501 but no declaration as required by Section 77B(1) of the Railways Act was made by the revision Petitioner.

The New Trial Bench held that the provisions of Section 77(B)(1) of the Railways Act read with entry No. (1) in the second Schedule are

applicable to the instant case and therefore allowed the appeal. The learned Judges of the New Trial Bench were of the opinion that art silk

includes art silk of the kind consigned by the revision Petitioner. The revision Petitioner contends that the word "silk" has not been used in a generic

sense so as to include art silk and hence the view of the New Trial Bench cannot be sustained. The question whether art silk is also silk within the

meaning of entry (1) in the second schedule to the Railways Act need not be considered now because of an entry made in the same second

schedule by S.O. 121 dated 9th January, 1971 by which terylene, tericot, terewool and nylon and their fabrics have also been included among the

articles to be declared and insured in accordance with the provisions of Section 77-B. Therefore the Railway administration is not responsible for

the loss sustained by the revision Petitioner. Hence the civil revision petition is dismissed. There will be no order as to costs.