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**(1938) 09 AHC CK 0008**

**Allahabad High Court**

**Case No:** None

Kallu Singh

APPELLANT

Vs

Secretary of State

RESPONDENT

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**Date of Decision:** Sept. 19, 1938

**Citation:** AIR 1939 All 55

**Hon'ble Judges:** Mulla, J

**Bench:** Division Bench

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

Mulla, J.

This is an application in revision by the plaintiff in a suit for damages in the Court of the Small Cause Court Judge at Agra. The applicant despatched two consignments of sirki from Belanganj to Antri on the G.I.P. Railway. Each consignment was contained in a wagon, and it is an admitted fact that the consignments safely reached their destination. It appears however that the consignments were unloaded at Antri station and while the goods were lying there within the station premises, they somehow caught fire. On these facts the applicant brought a suit for damages against the defendant company, the G.I.P. Railway, through the Secretary of State for India. Several pleas were taken in defence, and the learned Small Cause Court Judge framed no less than eight issues including one to the following effect:

Whether the defendant is guilty of any negligence or misconduct?

2. One of the pleas taken by the defendant company was that Risk Note "B" afforded a complete protection to the company against all loss caused by fire. That plea was made the subject of another issue which runs as follows:

Whether Risk Note "B" protects the railway?

3. The learned Judge has recorded a judgment in which he has apparently dealt with all the issues from 2nd to 8th, but as a matter of fact he has dismissed the suit purely on the ground that the Risk Note "B" under which the consignments in question were despatched afforded complete protection to the defendant company against all loss caused by fire. Hence this application in revision. The simple argument on behalf of the applicant is that the learned Judge has totally misinterpreted the language of Risk Note Form "B" under which the consignments in question were despatched. The relevant portion of the Risk Note runs as follows:

...in consideration of such lower charge, agree and undertake to hold the said railway administration harmless and free from all responsibility for any loss, destruction or deterioration of, or damage to, the said consignment from any cause whatsoever, except upon the proof that such loss, destruction, deterioration or damage arose from the misconduct of the railway administration's servants.

4. From this, it is perfectly clear that where-a consignment is despatched at "owner's risk" under Risk Note, Form "B," the consignor agrees that he shall not hold the railway company responsible for any loss, destruction, deterioration or damage to the consignment, except where it is proved that such loss, destruction, damage or deterioration was caused by the misconduct of the railway administration's servants. It is important to note that the clause which I have cited above says "from any cause-whatsoever," which obviously includes fire also. There is however a Proviso which, follows this general provision in the Risk. Note and runs in the following terms:

Provided that in the following case:

(a) Non-delivery of the whole of the said consignment or of the whole of one or more packages forming part of the said consignment packed in accordance with the instructions laid down in the tariff or, where there are no such instructions, protected otherwise than by paper or other packing, readily removable by hand and fully addressed, where such non-delivery is not due to accidents to trains or to fire, the railway administration shall be bound to disclose to the consignor how the consignment was dealt with throughout the time it was in its possession or control and, if necessary, to give evidence thereof, before the consignor is called upon to prove misconduct; but if misconduct on the part of the railway administration or its servants cannot be fairly inferred from such evidence, the burden of proving such misconduct shall be upon the consignor.

5. The learned Small Cause Court Judge seems to be of the opinion that Clause (a) of the Proviso affords complete immunity to the railway company if the loss, destruction or damage is caused by fire. I have not the slightest hesitation in holding that this view is entirely wrong. Having regard), to the scheme of the Risk Note and upon a fair interpretation of the language used therein, it is perfectly clear that the railway company cannot be held responsible for any loss, destruction or

damage in the case of a consignment which is entrusted to it under Risk Note "B" until it is established by the plaintiff that such loss, damage or destruction was caused by some misconduct on the part of the railway company's servants. There is no exception made in the case of loss, destruction or damage caused by fire. All that the Proviso means is that in certain cases the onus of proof which is laid upon the plaintiff of proving misconduct on the part of the railway company's servants need not be discharged in the first instance; if, for instance, the whole of a consignment disappears and is not delivered to the consignee, it lies in the first instance upon the railway administration to disclose to the consignor how the consignment was dealt with throughout the time it was in its possession or control, and if the circumstances so disclosed by the railway company can fairly lead to the inference that there was misconduct on the part of its servants, there shall be no burden of proof upon the plaintiff. There is absolutely no justification for the view taken by the learned Small Cause Court Judge that in the case of a consignment destroyed by fire the railway company is exempted from all liability, even though it is proved that the fire was due to or the result of some misconduct on the part of its servants. The result therefore is that I allow this application with costs in this Court and setting aside the decree passed by the learned Small Cause Court Judge, direct that the other issues in the case shall be heard and decided in accordance with law.