(1926) 04 AHC CK 0020

Allahabad High Court

Case No: None

Secretary of State		APPELLANT
	Vs	
U.P. Glass Works of Chandausi		RESPONDENT

Date of Decision: April 26, 1926

Hon'ble Judges: Daniels, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Daniels, J.

This revision raises a question of the liability of a railway company under the new form of risk-note H approved by the Government of India, Tinder Section 72(2)(b) of the Indian Railways Act and published in the Gazette of India, part I, page 651 of the Gazette for 1924. The risk-note B and risk-note H are substantially identical both in the new and in the old form, so that rulings which apply to the one form are applicable to the other also. Risk-note B refers to a particular consignment, risk-note H to all consignments sent by a particular consignor under a common agreement.

2. The facts are very simple. The plaintiff consigned fifteen tons of coal under risk-note from Jayramdi No. 3 Colliery siding (Sitarampur station) to Bahjoi (O. & R, Ry.). At destination five tons were found to be short and only ten tons were delivered. The line being a Government line, the plaintiff Company sued the Secretary of State for the value of the shortage. The learned Judge of the Small Cause Court decreed the suit on the view taken in a number of authorities, of which East Indian Railway Company Vs. Firm Kishin Lal Tirkhamal may be taken as an example, that "loss" means actual loss of goods "by the railway company, and that where the plaintiff merely alleges short delivery, it lies on the railway company to give some evidence of loss before they can claim the protection of the risk-note. Ghelabhai Punsi Vs. The East Indian Railway Company, is the leading case on the point.

3. All these rulings were based on the old form of risk-note. The learned Government Advocate contends that they are inapplicable to the new form. The main provision protecting the railway from responsibility for "loss, destruction of or damage to the said consignment" is the same in both cases, but the exception has been replaced by two provisos the language of which is materially different. The words "wilful neglect" have been replaced by the word "misconduct." Under the old form the burden of proving "wilful neglect" was in all cases on the consignor, though it might of course be proved by circumstantial evidence. In the new form there are two provisos which run as follows:

Provided that in the following cases: (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, (b) pilferage from a package or packages forming part of the said consignment properly packed as in (a); when such pilferage is pointed out to the servants of the Railway Administration on or before delivery, 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 lie upon the consignor.

4. The learned Government Advocate argues with much force that the word "non-delivery" has been deliberately inserted to make it clear that nondelivery is to be treated as a case of loss. If non-delivery is not equivalent to loss within the meaning of the agreement, such non-delivery cannot by itself in any case lay on the consignor the burden of proving misconduct. It would therefore be futile and meaningless to provide that where non-delivery is of the whole consignment, or of the whole of one or more packages, the railway company must show in detail how the consignment was dealt with before the burden of proving misconduct can be cast on the consignor. A proviso is in its nature an exception to what precedes, but if "loss, destruction, deterioration or damage'' on the one hand and non-delivery" on the other are two quite different things, then the so called proviso is not a proviso at all and deals with matters outside the scope of the general rule. It is also significant that the words

non-delivery of the whole of the said consignment or of the whole of one or more packages forming part of the said consignment,

correspond to the words

except for the loss of a complete consignment or of one or more complete packages forming part of a consignment,

in the superseded form.

5. The respondent''s contention is that the railway is protected by the proviso in the event of non-delivery of the whole consignment, but it is not protected in the event of short delivery, unless the portion undelivered consists of a complete package or packages. This construction is contrary to the policy on which these risk notes have always been framed. The policy underlying them has always been to give complete protection for the loss of part of a consignment not consisting of an entire package or packages (possibly because such loss is especially difficult both to prevent and to detect), but only partial protection against the loss of the entire consignment.

6. The effect of the new form of agreement, in my opinion, is that the railway is liable for non-delivery of the entire consignment or of one or more complete packages if they fail to disclose in detail how they have dealt with the consignment, or if the effect of such disclosure gives rise to a presumption of misconduct or if misconduct be otherwise proved, but is protected from liability for loss, including non-delivery, of part of a consignment not consisting of one or more complete packages. In this view the rulings relied on by the Court below are no longer applicable and the suit must be dismissed. I accordingly allow the revision and dismiss the suit with costs. As this is a case of first impression and the revision has been filed in order to obtain a decision as to the effect of the amendment of the risk-note, I direct that the parties bear their own costs in this Court.