

Lalta Prasad and Another Vs Rohilkhand and Kamaun Railway

Court: Allahabad High Court

Date of Decision: May 13, 1926

Hon'ble Judges: Daniels, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Daniels, J.

This appeal arises out of a suit claiming the value of a parcel of thirty seers of silver which was consigned by the plaintiffs-

appellants from Delhi to Pilibhit. The parcel never reached its destination and the plaintiffs claimed its value. Among other defences taken by the

railway one is based on Section 75 of the Railways Act. That section lays down that the railway shall not be liable for the loss of a package

containing any articles mentioned in the second schedule which include the precious metals, unless the consignor has declared its value and contents

at the time of delivering the parcel to the railway. In this case the contents were declared, but the value was admittedly not declared. All that the

plaintiffs said was that the parcel weighed thirty seers. This is not a declaration of value as required by Section 75.

2. In this Court the appellants' learned Counsel finding it very difficult to argue that a declaration of weight was the same thing as a declaration of

value shifted his ground and urged that Section 75 does not apply because it was not proved that the parcel was lost, and suggested that it was

merely a case of non-delivery and that there was no proof that the parcel had been lost within the definition of loss accepted in such cases as the

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railway alleged loss and the first Court found that it was an established fact that the parcel was lost in transit. It is clear from the judgment of the

Court below that the plea now put forward was never raised in that Court and the appellants cannot be permitted to raise it here. The appeal

accordingly fails and we dismissed with costs.