

**(1926) 05 AHC CK 0037**

**Allahabad High Court**

**Case No:** None

Lalta Prasad and Another

APPELLANT

Vs

Rohilkhand and Kamaun Railway

RESPONDENT

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**Date of Decision:** May 13, 1926

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

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **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 [The Secretary of State for India in Council Vs. Firm Jiwan and Abdullah](#), and [East Indian Railway Company Vs. Firm Kishin Lal Tirkhamal](#). The 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.