

**(1930) 12 CAL CK 0002**

**Calcutta High Court**

**Case No:** None

Mafat Lal Gogal Bhai

APPELLANT

Vs

The Bombay Baroda and Central  
India Railway Company, Ltd., and  
The Secretary of State for India  
in Council

RESPONDENT

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**Date of Decision:** Dec. 15, 1930

**Citation:** 131 Ind. Cas. 31

**Hon'ble Judges:** Pearson, J; Charu Chunder Ghose, J

**Bench:** Division Bench

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### **Judgement**

1. The question involved in this appeal is what is the precise meaning and effect of a Risk Note, being Risk Note "A", signed in circumstances detailed below. It appears that one package of 54 bales of piece-goods was consigned by one Monilal Barilal to the plaintiff under Invoice No. 12 dated 14th September, 1923. A further package of 58 bales of piece-goods was consigned by the same consignor to the plaintiff under invoice No. 14 on the 21st September, 1923. Both the consignments were from Nadiad Station on the B.B. and C.I. Railway to Sealdah on the E.B. Railway. They were carried in a through wagons which reached Sealdah on the 6th or 7th October, 1923. On arrival of the consignment, it was found that 12 bales out of the consignment of 54 bales and 25 bales out of the consignment of 58 bales had been damaged. Thereupon the plaintiff took delivery of the non-damaged bales only. After a survey had been made of the damaged bales, the plaintiff took delivery of the damaged bales and then gave the usual notices to the Railway Companies concerned claiming damages. The plaintiff's claim not having been admitted, the suit out of which this appeal has arisen was brought by the plaintiff on the 16th September, 1924. The trial Court decreed the suit on the 7th September, 1927, for Rs. 4,133-9-0 against the B. B, and C.I. Railway Company but dismissed the suit against the Secretary of State, the owner of the E.B. Railway. The B.B. and C.I. Railway Company preferred an appeal to the lower Appellate Court making the

Secretary of State a party respondent.

2. The appellant at the hearing before us did not wish to press his claim against the Secretary of State. He is accordingly dismissed from the record. The appellant must pay the costs of the Secretary of State. The lower Appellate Court has allowed the appeal of the B.B. and C.I. Railway Company and dismissed the suit. The present appeal is against the judgment, and decree of the lower Appellate Court. Various points were discussed in the Court below, but the main question which has been canvassed before us is whether or not the appellant is entitled to any relief having regard to the language of Risk Note "A." It is, therefore, incumbent on us to examine the terms of Risk Note "A." The two Risk Notes are in exactly the same language; one of such Risk Notes is set out below: "Whereas the consignment of 54 bales C.P. goods tendered by us as per forwarding order No. 392 of this date, for despatch by the B, B and C.I. Railway Administration or their transport Agents or carriers to Calcutta, Sealdah Station (and for which we have received Railway Receipt No. 23926 of same date) is in bad condition or liable to damage, leakage or wastage in transit as follows: Not damaged (?) to be protected from damp and rain. We the undersigned do hereby agree and undertake to hold the said Railway Administration and all other Railway Administrations working in connection therewith, and also all other transport agents or carriers employed by them respectively, over whose Railways or by or through whose transport Agency or Agencies the said goods may be carried in transit from Nadiad Station to Calcutta, Sealdah Station harmless and free from all responsibility for the condition in which the aforesaid goods may be delivered to the consignee at destination and for any loss arising from the same".

3. It appears to us that having regard to the express terms of the Risk Note the appellant cannot contend that the conditions of the packing of the damaged bales was satisfactory. If the sender agrees that the condition of the package is not satisfactory he cannot afterwards turn round and say that the packages were in good condition.

4. The next point is whether the Railway Company has got an absolute indemnity under the terms of the Risk Note, Now, it appears to be clear from the Risk Note that one of the conditions of the contract between the parties was that the Railway Administration would not be held responsible for the condition of the goods until the same are delivered at destination or for any loss arising from the same. It appears that the outer covering of the packages was not made secure against damp and rain. That being so, the only question is whether there was any wilful negligence on the part of the Railway Company or their servants in the transit of the goods. On this point there is an express finding by the lower Appellate Court that there was no wilful negligence on the part of the Railway Company or their servants. That being so, the plaintiff is out of Court in view of the contract between the parties and the Railway Company is not liable for the amount claimed. In the result, it follows that,

on the facts found, the present appeal is without substance and must be dismissed with costs.