Mohammad Shafique Vs Union of India and Others

Appeal from Appellate Decree No. 1210 of 1957

Court: Calcutta High Court

Date of Decision: Aug. 10, 1962

Acts Referred:
Evidence Act, 1872 â€" Section 114#Negotiable Instruments Act, 1881 (NI) â€" Section 13#Transfer of Property Act, 1882 â€" Section 130, 132, 137, 2(4), 3

Citation: 67 CWN 279

Hon'ble Judges: Bijayesh Mukherji, J

Bench: Single Bench

Advocate: Shyama Charan Mitter, for the Appellant; Bhabesh Narayan Bose for the contesting Respondents, for the Respondent

Final Decision: Allowed

Judgement

Bijayesh Mukherji, J.
This is a plaintiff"s appeal from an appellate judgment and decree of affirmance dismissing a claim against the Union

of India owing and representing certain railways for compensation for non-delivery of a consignment. The sole appellant Mohammad Shafique and

his brother Mohammad Rafique carry on business under the name and style of Mohammad Shafique and Brothers, a registered firm at Raniganj

within the sub-division of Asansol. They deal in tobacco including what is called makha (mixed) tobacco. With a view to manufacturing makha

tobacca of various qualities, they purchase scents from far and near.

2. On September 27, 1951 the Foreign Scent Supplying Syndicate (shortened in the railway receipt into F.S.S.S.) of Bombay despatched one

case of chemical perfumery christened Satomala from Borivli, a station the abbreviation of which in railway terminology is B.V.I. The case

contained 112 lbs. of Satomala. The destination of this consignment despatched under a parcel way bill No. B/1, 5751-2 dated September 27,

1951 was Raniganj. It was a consignment to self. The railway receipt which is the parcel way bill just stated was endorsed in favour of Mohammad

Shafique and Brothers and for consideration too, the appellants having paid the price thereof : Rs. 16421 - apart from the railway freight and other

charges, to one Shantilal, the proprietor of the consignor firm, Foreign Scent Supplying Syndicate. In terms of measure of Weight prevailing here,

the case of Satomala including its own weight weighed 2 maunds 5 seers.

3. A consignment as that was not delivered at this end to the appellant and his brother. Hence, after observing the due formalities of law, they--

both of them--instituted the suit on November 25, 1952 in the court of a munsiff at Asansol praying for a decree of Rs. 1792/- with costs and

interest: Rs. 1792/- as the price of 112 lbs., of Satomala at the rate of Rs. 16/- a lb.

4. The Union of India representing the four railways--Eastern, Western, Northern & Central--defended the suit on various grounds two of which

need only be noticed: (i) neither being the consignor nor the consignee and there being no privity of contract with any one of the railways, the

plaintiffs had no locus standi to maintain the suit in absence of proof of ownership of the goods consigned and (ii) the defendant could not be

mulcted in damages as the loss complained of was due to leakage of the container in circumstances beyond the control of the railways.

5. The learned munsiff held that the endorsement of the railway receipt passed title to the goods and that the plaintiffs having failed to establish

negligence or misconduct on that part of the railway administration, section 74C (3) of the Railway Act, 9 of 1890, made them immune from any

liability for the loss. In that view, by a judgment and decree dated March 14, 1955 he dismissed the suit.

6. The litigation having been carried on appeal, the learned additional district judge, Asansol, held that a simple endorsement of the railway receipt

could not_ pass title to the goods, ownership of which was not proved by evidence aliunde and that the consignment having been carried at the

railway risk rate, section 74C (3) would not protect the railways in absence of the requisite proof by them of the accrual of the loss for reasons

beyond their control. The learned advocate for the railways before court of appeal conceded the second point. Be that as it may, in the view that

the plaintiffs lacked title, the learned judge by his judgment and decree dated March 13, 1957 dismissed the appeal.

7. Shafique, the first plaintiff, has therefore, come up to this Court in second appeal, his brother and partner Rafiqde figuring as a pro forma

respondent.

8. Mr. Mitter appearing for the appellant addresses me mainly on the controversial point whether or not an endorsement simpliciter of the railway

receipt, a mercantile document of title to goods, is enough to pass title to the goods the receipt represents. Mainly, because he does not confine

himself to that and that alone. He also contends that the finding of fact come to by the last court of facts about no consideration having passed for

the endorsement of the railway receipt is vitiated by errors of law. Mr. Bose appearing for the respondent contends just the opposite. An

endorsement without more can never pass title to the goods. The finding of fact that no consideration passed for the endorsement is too good a

finding to be disturbed by this Court in second appeal. This apart, Mr. Bose has a point of his own. A leaking container containing liquid

perfumery--a fact found by both the courts--absolves the respondent from all liability.

9. These are the three points for decision. I take up the second one first. The learned trial judge apparently stresses, among other things which are

of little relevance, that part of the evidence of Md. Ommar, the only witness of the plaintiffs where he says:

This is the railway receipt endorsed by Shantilal, malik of the consignor firm: initialed by him in my presence--marked Ex. 1 and and endorsement

Ext. 1(a). We paid consideration for the goods to Shantilal in our gadi and finds:

And Ex. 1 (a) is the endorsement on the railway receipt made by the consignor in favour of the plaintiff firm--the endorsement being initialed by the

malik of the Foreign Scent Supplying Syndicate, the consignor, with the seal of that firm (vide evidence of P.W.I.). I am satisfied.....that the

plaintiff firm is the owner of the suit consignment and decide the issue accordingly.

the issue being : is the plaintiff firm the owner of the suit consignment?

10. The learned appellate judge upsets this finding for two reasons. First none of the two plaintiffs pledge their oaths. Second it is incredible'' that a

registered firm will pay a sum of over Its. 1600]- without entering it in its accounts.

11. The first reason betrays an error of law. True it is that non-appearance of a party (personally knowing the whole of the circumstances) as a

witness discredits the truth of his case. That is a salutary principle resting on illustration (g) to section 114 of the Evidence Act. But when one like

Mohammad Ommar, a trusted Karmachari of the firm, knowing all about the payment, deposes on oath that he did pay Rs. 1642/- etc. to Shantilal

who had done a business trip from Bombay to Raniganj, it will be wrong to make the presumption the learned appellate judge does only because

of non-examination of any one of the two plaintiffs. Then, there is hardly any evidence that they personally knew about this payment. On the other

hand, the following has been elicited in Ommar''s cross-examination :

I have given the price as prevailing at Raniganj. I paid Rs. 1642/- as price apart from the railway freight and other charges.

12. The accent is on ''I'', i.e., Ommar, not on any of the two plaintiffs. u/s 114 ibid the court may presume the existence of a fact (here nonpayment

of the sum of Rs. 1642/-). Not that the court shall. The evidence of Ommar being what it is, the learned judge does fall into an error of law in

drawing an adverse presumption from non-examination of either of the two plaintiffs. This error is only heightened by failure on his part to consider

that Shantilal, one to be the worst hit by non-payment, has apparently been making no pother about it-- a consideration which makes payment

look so probable. Failure to weigh this constitutes another error of law.

13. The leading case on the effect of non-examination of a party as a witness is Gurbaksh Singh v. Gurdial Singh and another, (1) 32 C.W.N. 119

(P.C.). But there Bhagwan Kuar having borne to her husband a posthumous son was the issue of all issues. The very reasonable challenge to her

to submit to medical examination in order to find out the truth of the condition of her advanced pregnancy was not met Worse, she was spirited

away to foreign territories (as native states then were) and brought back long after the alleged birth of a son--too long for the birth or absence of

birth being detected on medical examination. With odds so heavy against her, at the trial she did not go to the witness-box, though she had been

present in court. Non-examination of such a one depriving her adversary of the crucible of cross-examination must necessarily be the strongest

possible circumstance going to discredit the truth of her case. Nothing like that can be said of the case in hand.

14. The second reason appears to be abrupt and domatic evincing little consideration to what Ommar''s evidence bears in cross-examination:

I did not enter this (payment of Rs. 1642/-) in our khata : the transaction was kept pending till delivery of the goods.

15. Had the learned judge considered this and rejected it, I could not have touched his finding, a pure question of fact as it is. Since he has omitted

to consider it and, worse, proceeded instead on an a priori assumption, a cherished prejudice--the incredibility of a registered firm paying over Rs.

1600/- with no entry in the accounting books-- without considering the evidence of the transaction having been kept pending for good reasons,

here is another error of law which gives me jurisdiction to interfere with the finding of fact. And I interfere by upholding the finding of the learned

munsiff that the appellant''s firm is the owner of the consignment in controversy and by upsetting the finding of the learned additional district judge

to the contrary. On this determination alone, the appeal is bound to succeed substantially. (More of which hereafter).

16. I now proceed to discuss the question of a mere endorsement of the railway receipt passing title to the goods, though it is scarcely necessary to

do so in view of what I have just found. At the same time I owe it to Mr. Mitter and Mr. Bose and to their able arguments to record what I think

about this problem.

17. What, after all, is the railway receipt I see here? It is a receipt for 112 lbs. of liquid perfumery received. That apart, it is a document embodying

a contract of carriage of the said 112 lbs. of liquid perfumery from Borivli to Raniganj. Yet it is still more. It is a mercantile document of title to

goods (the aforesaid 112 lbs. of perfumery again), as the explanation to section 137 of the Transfer of Property Act, 4 of 1882, substituted by the

Amending Act 2 of 1900, explains. It is a document of title to goods, as section 2(4) of the Sale of Goods Act, 3 of 1930, defines the expression.

The benefit receivable under such a railway receipt qua a contract of carriage is an actionable claim within the meaning of section 3 of the Transfer

of Property Act. That being so, it is assignable but without the fetters sections 130 and 132 ibid, for examples, impose; section 130 providing a

particular mode of transfer (only by the execution of an instrument in writing) and section 132 making the transfer subject to all the liabilities and

equities to which the transferor was subject on the date of the transfer. Without these fetters-- because these are two amongst other sections which

forego section 137 in chapter 8 ibid. And in terms of section 137 they (sections 130 and 132) do not apply to any mercantile document of title to

goods which a railway receipt is. The benefit is therefore capable of being assigned in any manner and the question of privity of contract, Mr. Bose

stresses, cannot necessarily bulk large. In the circumstances, an endorsement simpliciter on the railway receipt, the endorsement here reading:

Please deliver

To illegible

Sk. Md. Shafique

& Brothers

Seal of the

Foreign Scent

Supplying Syndicate,

Bombay 28.

Within the Space in the seal is reiterated :

To Md. Shafique

and Brothers

Sc (the initials of

Shantilal going by

Ommar"s evidence),

clearly shows the intention of the transferor (Shantilal of Foreign Scent Supplying Syndicate of Bombay) to transfer the rights under the contract of

carriage the railway receipt embodies, to the plaintiff firm. Qua a document of title to goods, the endorsement without more conveys the title to 112

lbs. of liquid perfumery to the endorsee-- the plaintiff firm.

18. This is one way of looking at the problem. But there is another way still. True, the railway receipt is not a negotiable instrument. It is neither a

promissory note nor a bill of exchange nor a cheque. And these are the only types of negotiable instruments within the meaning of section 13 of the

Negotiable Instruments Act, 26 of 1881. But section 137 of the Transfer of Property Act comes full circle back. So does section 132 along with

section 130 ibid. Result : the load of sections 130 and 132 is not there on the assignment of the railway receipt here. An assignee in good faith

which the plaintiff firm is--the holder of the railway receipt in due course (to emulate the language associated with negotiable instruments)--is not

subject to any of the liabilities and equities to which his transferor, the Foreign Scent Supplying Syndicate, was subject as respects the said railway

receipt on the date of transfer. How far is that from negotiability? Not very. So, though not a negotiable instrument under the Negotiable

Instruments Act, it is negotiable all the same, thanks to section 137 of the Transfer of Property Act. Say, it is a quasi-negotiable instrument. Again,

how the mercantile community treats a railway receipt is such a notorious fact that I can take judicial notice of it. A mercantile document of title to

goods,--the statutes proclaim a railway receipt to be that--it passes from one to another by a mere endorsement. To take an example from one out

of so many reported decisions, (2) AIR 1947 169 (Bom.) (where Bhagwati, J., as his lordship then was, does not think an endorsement without

more good enough to pass title: more of which hereafter) reveals four endorsements--one, by Shamji Bhanji & Co., the plaintiffs, to National

Cotton Trading Co., two, by National Cotton Trading Co. to Messrs. Sidhuram Ganesh Das; three, by Messrs. Sidhuram Ganesh Das to

Shahjada Abdul Hakim; four, by Shahjada Abdul Hakim back to the plaintiffs. All these endorsements were in 1942. The endorsement under

consideration in this appeal was in 1951. The trading community has not remained static all these years. On the contrary, it is forging ahead. To

quote Hidayatulah, C.J. (as his Lordship then was) from Shah Mulji Deoji v. Union of India, (3) AIR 1957 Nag. 31, 41:

I may point out that the trading community is sometimes ahead of the law and tries to invest with negotiability other and new documents.

19 A little below:

In my opinion, the matter has become so settled that even if it was necessary to prove a custom that a railway receipt is a negotiable document, it is

not necessary to prove such a custom today.

20. At page 42:

The custom is established because it has been accepted for years in India by the Courts in India, and one single dissenting view against that

proposition (his Lordship is referring to S.R.M.S. Arunachalam Chetty v. Ko Po Yan and others, AIR 1923 Ran. 1) cannot, in my opinion,

destroy the law merchant which has developed in this country.

The law is made certain, if not from 1900, at least after 1930 and it is not necessary to go to custom any more.

21. 1900 is the year when the present section 137 of the Transfer of Property Act was brought on the statute book by the amending Act 2 of

1900. And 1930 is the year when the Sale of Goods Act, defining in its section 2 (4) the expression ""document of title to goods"", --an expression

which includes a railway receipt--became the law of the land.

22. In the same case: (3) Shah Mulji Deoji"s Tambe, J. to whom the matter is referred to, because of difference of opinion between Hidayatullah,

C.J. and Kushalendra Rao, J., observes at page 46:

I agree with my Lord the Chief Justice''s opinion that the matter has become so settled that it is no more necessary to prove such a custom by

other evidence.

23. So whatever way the endorsement on the railway receipt before me may be viewed, whether as a transfer of the rights and benefits under a

contract of carriage or as a transfer of ownership of goods which this mercantile document of title thereto stands for or as a step forward in the

process of negotiability, the railway receipt possessing all the essential characteristics of negotiability provided for by section 137 of the Transfer of

Property Act and the law merchant, the unqualified endorsement I see here does convey title to the appellant and does thereby confer on him the

right to sue.

24. Of the number of authorities cited before me, those which take the view recorded above form the majority with varying emphasis on this

nuance or that, though the view is rendered obiter in some cases because of findings which precede or follow such a view. And one at least goes a

vast deal more holding as it does that a consignee who is not even the owner of goods but to whom the goods are consigned for sale on

commission basis is entitled to sue for loss caused by the damage to the goods in transit. This is the full bench decision of the Allahabad High Court

in (4) Dominion of India as owner of G.I.P. Rly. and Another Vs. Gaya Pershad Gopal Narain, . Other decisions coming under this majority group

are AIR 1944 363 (Nagpur) [where Bobde, J. holds that the endorsement on the back of the railway receipt by the Standard Vacuum Oil

Company, both the consignor and the consignee, in favour of the plaintiff entitled him to claim delivery of the goods and, adequate delivery failing,

to bring the suit for compensation]; Firm Premsukh Rampratap v. Governor General in Council, (6) ILR 1946 Nag. [where Niyogi, J. finds the

bale of cloth not delivered actually purchased by the plaintiff and holds (an obiter) that, that apart, a railway receipt is a mercantile document of title

and an endorsee thereof, the plaintiff being the second endorsee, has sufficient interest in the goods covered by it to maintain an action for damages

against the railway company who issued it]; Sheo Prasad Vs. Dominion of India, [where Malik, C.J. and Sapru, J. observe that a railway receipt

being a mercantile document of title to goods, it is possible to transfer the title in goods to the endorsee by mere endorsement, (another obiter), but

upholds the dismissal of the suit by the judge, Small Cause Court, Allahabad, because of the admission that the title to the goods remained in the

consignor and that the plaintiff endorsee is only the custodian for sale on commission--a view (the latter one dismissing the action) which is upset by

the full bench in Dominion of India v. Gaya Pershal noticed already]; Erachshaw Desabhai Kerawalla v. Dominion of India, (8) AIR 1955 M.B. 70

where Newaskar, J. holds, Samvatsar, J. agreeing, an endorsement simpliciter conveying sufficient interest in goods to the endorsee and thereby

conferring on him the right to file a suit]; Union of India v. Taherlal Isaji, (9) [1956] 58 Bombay Law Reporter 650 (where Shah, J. and Vyas, J.

hods as much on a review of a number of authorities]; Shah Mulji Deoji''s case (3) (supra) [where Hidayatullah, C.J. holds an assignment of a

railway receipt creating a right in rem, the strongest title known to law, and therefore conferring on the assignee the right to sue] and two more

Madhya Pradesh cases; Union of India and others v. Gangaji Kalyanji (10), Managing Agents (Martin & Co.) v. Seth Deokinandan and another,

(11) Union of India (UOI) and Others Vs. Gangaji Kalyanji, [in each of which a bench of two judges, Hidayatullah, C.J. being in both, holds an

endorsement without more conferring on the endorsee the locus standi to maintain a suit].

25. To this may be added Alliance Assurance Co. Ltd. v. Union of India and another (12) 63 C.W.N. 806 which reveals an attempt to non-suit

the plaintiff, the holder of the railway receipt as an endorsee, on the ground that assignment at 2, Hare Street. Calcutta of the said receipt, not

negotiable nor a negotiable instrument confers no jurisdiction to this Court (in exercise of its ordinary original jurisdiction), the contract of carriage

having been from Bangsabati to Delhi, both places falling outside of its jurisdiction. P.B. Mukhorji, J. however, considers such an approach ""not

fundamentally sound"" and observes at page 811 :

But the point is that the railway receipts are themselves documents of title and can be negotiated and transferred.

26. It is indeed common learning that they are being negotiated and transferred everyday wherever merchants move about and do business. To use

with adaptation the language of Bowen, L.J., on the legal effect of the transfer of a bill of lading in Sanders Brothers v. Maclean and Co., (13)

[1883] 11 Q.B.D. 327, 341, a cargo on land while in the hands of the carrier is necessarily incapable of physical delivery. During the period of

transit, the railway receipt by the law merchant is universally recognized as its symbol and the endorsement and delivery of the railway receipt

operates as a symbolical delivery of cargo. Property in the goods passes by such indorsement and delivery of the railway receipt. The railway

receipt is but a key which in the hands of a rightful owner is intended to unlock the door of the warehouse in which the goods may chance to be.

27. I have not hesitated to borrow this language on the law touching the transfer of a bill of lading to illustrate the law and its effect on the transfer

of a railway receipt, because it (a railway receipt) now stands on the same footing with a bill of lading. To quote Tambe, J. again from (3) Mulyi

Deoji''s case supra :

I may add that the mercantile world had accepted the railway receipt along with a number of other documents as negotiable document even prior

to the year 1900, and for that reason the Legislature assimilated them with negotiable instruments in section 137 of the Transfer of Property Act

(former section 139)..... The object and reasons for amending the former section 139 read :--

But.....the exceptions contained in the present section 139 require considerable extension. In section 13 of the Negotiable Instruments Act,

1881, the definition of "negotiable instrument" includes only bills, notes and cheques and does not include the ever increasing class of negotiable

instruments which the usage of the money market recognizes as such.....

So, again, a saving is required for mercantile documents of title to goods, such as bills of lading etc., which form a class quasi-negotiable

instruments"" (Gazette of India, July 15, 1899, p. 92).

In my opinion, these observations can be judicially noticed in proof of the customs which is of a public nature. By itself they are sufficient to

establish negotiability of a railway receipt by custom.

28. To counter the effect of all these decisions Mr. Mitter cites, Mr. Bose refers me, among others, to a decision of Mitter, J., sitting in ordinary

original civil jurisdiction of this Court : (14) Hari Mohan Dutil v. Dominion of India, 57 C.W.N. 167, and to an unreported decision of Lahiri, J. (as

his Lordship then was) in (15) Ramniwas Kumarka Ltd v. Union of India : Civil Revision No. 3565 of 1955 decided on July 2/3, 1956. The

decision in each of these cases rests on what Lord Wright observes delivering the opinion of the Board in AIR 1938 52 (Privy Council) :

The railway receipt, though a document of title, was in form merely an authority to take delivery of the goods and the possession of such a

document contained no representation that the holder had any implied authority or right to dispose of the goods. It was, at the best, an ambiguous

document. Its possession no more conveyed a representation that the merchants (C.K. Narayan Iyer and Sons are being referred to as such) were

entitled to dispose of the property than the actual possession of goods themselves would have conveyed any such representation. It is not like a

negotiable instrument; the possession of the railway receipt is no more significant for this purpose than the possession of the goods would have

been. It is clear that no plea of estoppel could be raised in the cases where the merchants pledged the goods themselves after having obtained

delivery under the railway receipt.

29. I have reproduced from Lord Wright"s opinion a little more than what Mitter, J., or Lahiri, J., reproduces, with a view to getting a clear idea of

the context in which these observations have been made. The merchants pledged 35 railway receipts with the Central Bank of India Ltd.

(hereinafter referred to as the first bank) and obtained advances on them. In accordance with the practice which had grown up, the first bank"s

godown-keeper handed over the railway receipts back to the merchants in order to avail himself of their services. The merchants took delivery of

the goods and pledging the goods themselves with the Mercantile Bank of India Ltd (hereinafter referred to as the second bank) obtained

advances from the second bank. This was resorted to when the first bank started placing its stamp on the railway receipt at the time of the pledge.

Before that the railway receipts were pledged twice over--with the first bank and thereafter with the second bank, absence of the first bank''s

stamp facilitating such a course. Fraud was out. The first bank sued the second for conversion. The plea of estoppel was set up to defeat such an

action. The plea failed.

30. Now, let the passage reproduced be re-read in this context. Estoppel connotes representation. The 35 railway receipts--mere possession

thereof without any endorsement in favour of any one of the two banks--bore no representation one way or the other. The merchants were either

the named consignors or endorsees from the named consignees. So nothing more can be read into this decision save failure of the defence of

estoppel on the basis of possession in the usual course of business by the pledger of the railway receipts. A case, even though decided by the Privy

Council, is an authority for the proposition it decides on facts before it. This case therefore is an authority for the plea of estoppel coming to little on

the foot of more possession of railway receipts. It is no authority for a railway receipt not being clothed with all characteristics of negotiability by

endorsement inspite of section 137 of the Transfer of Property Act, section 2(4) of the Sale of Goods Act and the law merchant. With great

humility and greater respect, I shall not therefore go by the two decisions Mr. Bose cites. I shall not, because, with great humility and greater

respect again, I do not find in the Privy Council decision what Mitter and Lahiri, JJ. find.

31. It now remains for me to notice two more cases Mr. Bose cites, Shamji Bhanji and Co. v. North Western Railway Co., (2) AIR 1947 Bom.

169, the decision of Bhagwati, J. (as his Lordship then was), appears to be distinguishable. The plaintiffs, Shamji Bhanji and Co., the consignors,

became the last endorsee after successive endorsements.

32. As consignors, they entered into the contract of carriage with the railway company and were therefore the only person entitled to maintain the

suit, endorsement or no endorsement. So what his Lordship says about a mere endorsement not good enough to pass title to the goods is an obiter

dictum. As a matter of fact, the suit culminated in a decree for Rs. 40,000/-.

33. In (17) Chhangamal Harpaldas and another v. Dominion of India and another, Shah and Palnitkar, JJ. no doubt lay down that a bare

consignee, not a party to the contract and not the owner of the goods, cannot maintain a suit. But in (9) Union of India v. Taherlal Isaji, 58

Bombay Law Re-porter 650 just touched already, Shah and Vyas, JJ. hold that the transferee as the owner of the goods or having some interest in

the goods is entitled to file a suit. In the latter decision the emphasis is on a bare consignee as distinguished from a transferee. But are the

consignees so bare as that? As commission agents of the consignors the plaintiffs as consignees had some interest at any rate. And according to the

full bench decision of the Allahabad High Court : (4) Dominion of India v. Gaya Pershad (supra), that is enough to confer locus standi on the

consignee to institute a suit. With respect, I prefer to go by that.

34. Upon a review of these cases and on principles of the law discussed above, the conclusion I have come to is that the endorsement I see on the

railway receipt here entitled the appellant and his brother to institute the suit they did.

35. The point Mr. Bose raises admits of an easy answer, even though he relies on the following passages from Disney on the Law of Carriage by

Railway, eighth edition. At page 8 :

Again, the carrier is not responsible for diminution of liquids caused by evaporation or leakage, which no ordinary and reasonable care on his part

could prevent;.....

36. At page 64 :

In order that a railway company may become responsible to the full extent of their contract for the goods entrusted to them, there are certain

obligations which must be observed by the consignor. The first of these is to see that his goods, if they are of a nature to require packing, are

properly and securely packed.

37. For one thing, the contract of carriage here has been at the railway risk rate, as found by the learned appellate judge and as conceded before

him by the learned advocate for the respondent. For another thing, the forwarding note (exhibit D) does nowhere record the fact, if that, of

defective or improper packing. Once these two facts--railway risk rate and good packing--are remembered, simply because the container is found

leaking at the destination, the railway administration cannot take advantage of the doctrine of ""inherent vice"". Let them show first that they treated

the consignment in transit as a prudent bailee would. Nothing of the kind has been disclosed. So their liability is there.

38. It appears from evidence that the appellant in a manner refused to take delivery of 12 lbs., of liquid perfumery the container contained at

Raniganj. Therefore, the price thereof (Rs. 16 X 12 = Rs. 192) he shall not recover. The residue (Rs. 1792 minus Rs. 192= Rs. 1600) he shall. In

the result, the appeal succeeds so. Be it allowed. The judgment and decrees of both the courts are set aside. And the suit be decreed in part for

Rs. 1600/- with corresponding costs throughout. The respondents do satisfy this decree within six months from today.