In Re: Chandubhai Fulabhai Patel

Court: Calcutta High Court

Date of Decision: Feb. 7, 1951

Acts Referred: Carriers Act, 1865 â€" Section 8
Presidency Small Cause Courts Act, 1882 â€" Section 38

Citation: (1952) 1 ILR (Cal) 347

Hon'ble Judges: Sen, J; Chunder, J

Bench: Division Bench

Advocate: Hiralal Chakravarti and Radhakanta Bhattacharya, for the Appellant;Amulya Chandra Chatterjee and Kshetra Mohan Chatterjee, for the Respondent

Judgement

Chunder, J.
These six Rules were issued at the instance of Plaintiffs in six applications filed in the Court of Small Causes, Calcutta, u/s 38

of the Presidency Small Cause Courts Act against P.S.N. Company in five cases and the I.G.N. and E.S.N. Companies in the sixth.

2. The facts in issue and the point in dispute are alike. The Plaintiffs in all the six cases sent consignments of goods through the steamer company to

East Bengal, now Eastern Pakistan; in each of the cases there was a forwarding note which was the basis of the contract and Clause 11 is as

follows:

The company undertake to carry goods over their own transport system only. Where goods are accepted by the company for carrying beyond

their own transport system and where goods are either wholly or partly carried by the other carrying administrations, in the matter of carrying

beyond the company''s own transport system, the company act merely as agents for such other carrying administration. The contract of carriage

shall be deemed to have been entered into between the consignor (and the consignee) on the one hand and the one or other of the various carrying

administrations, including the company on the other hand that may at any material time be in control or possession of the goods for carriage to

destination and/or delivery to the consignee and that any liability for loss, damage, destruction, partial or total deterioration, detention and delivery

of the goods shall solely rest on the respective carrying administrations in whose charge the goods may have been placed at the time such loss,

damage, etc. are found to have arisen. Ill case of goods accepted by the company for carrying beyond their own system of transport, the consignor

(and consignee) shall be deemed to have agreed that the company has accepted such goods on the footing that the consignor (and the consignee)

has entered into a series of contracts with the different carrying administrations and that the company will not be liable for any loss, damage, etc,

which may happen when the transit over the company''s system of transport is over and when the goods are not directly under their control.

3. This can leave no room for doubt that the steamer people were contracting as principal so far as transport over their own system was

concerned, but as agents for known principals, that is, the railway companies, so far as transport over the railway system was concerned. The

clause also leaves no room for doubt that so far as transport over the steamer company''s system was concerned, they fully undertook to be liable

for any logs, damage, etc. by themselves or agents or servants, but as far as loss or damage, etc. caused when in transit over the railway system

was concerned, they as agents were not to be liable for loss caused by their principal or the agents or servants of the principal. The liability for the

loss will be that of the railway company as principal.

4. The main contention, it appears before the courts, was that this offended against Section 8 of the Carriers Act. Section 8 of the Carriers Act

reads as follows:

Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for loss of or damage to any property

delivered to such carrier to be carried, where such loss or damage shall have arisen from criminal act of the carrier or any of his agents or servants.

* * *

5. That section lays down two things, first, that the principal is always to be liable for any loss or damage, etc., caused by the principal himself or

the agents of the principal or the servants; secondly, any contract to the contrary will be void. In the present case, in Clause 11 care has

particularly been taken to retain in each case whether the transport system is that of the steamer company or of the railway administration that the

liability of the principal for acts by himself or his agents or servants remains intact. There is nothing in Section 8 or in any part of the law of contract

or of law of carriers by which an agent contracting on behalf of known principal is prevented from restricting his own personal liability for the acts

of the principal or the agents or servants of the principal. Therefore, the Full Bench of the Calcutta Court of Small Causes rightly decided that

Clause 11 did not offend against Section 8 of the Carriers Act. The decisions cited before it do not cover at all the point now raised. They were

cases dealing with principal, absolving himself from liability for the acts of agents or servants which is not the case now before us.

6. Under the circumstances, all the sis Rules are discharged with costs.

Sen, J.

7. I agree.