

**(1918) 02 CAL CK 0039**

**Calcutta High Court**

**Case No:** None

The East Indian Railway Co.

APPELLANT

Vs

Kanak Behary Halder

RESPONDENT

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**Date of Decision:** Feb. 8, 1918

**Acts Referred:**

- Railways Act, 1890 - Section 76

**Citation:** 44 Ind. Cas. 691

**Hon'ble Judges:** Richardson, J; Beachcroft, J

**Bench:** Division Bench

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### **Judgement**

1. This is a Rule issued at the instance of the East Indian Railway Company Ltd., calling upon the opposite party to show cause why the judgment and decree of the Small Cause Court Judge of Burdwan, dated the 11th July 1917, should not be set aside on certain grounds mentioned in the petition. The Rule relates to a consignment of 170 bags of flour and sooji which was delivered short at Burdwan by 7 bags. The decree awards the opposite party damages for the short delivery in accordance with the claim. The ground which has been taken on the petitioner's behalf is that the learned Small Cause Court Judge has misapplied the law inasmuch as he has thrown the burden of proving the cause of the loss or nondelivery on the petitioner.

2. It appears that the goods were carried under a risk-note in form B. When goods are so carried, the consignor in consideration of the reduced freight charged, engages to hold the Railway Company harmless and free from all responsibility for any loss, destruction or deterioration of, or damage, to the said consignment from any cause whatever except for the loss of a complete consignment or of one or more complete packages forming part of a consignment, due either to the wilful neglect of the Railway administration, or to theft by or to the wilful neglect of, its servants, transport agents or carriers employed by them before, during and after transit over the said Railway."

3. As these words stand, they have the effect of throwing the burden of proving in what manner a particular consignment or part of a consignment is lost, on the consignor or the person claiming damages from the Railway Company. This view is in accordance with two previous decisions of this Court in Sheo Barat Ram v. Bengal and North Western Railway Company 15 Ind. Cas. 56 : 16 C.W.N. 766 and East Indian Railway Company v. Nilkanta Roy 22 Ind. Cas. 679 : 41 C. 576 : 19 C.L.J. 142 : 17 C.W.N. 95.

4. The learned Pleader appearing for the opposite party, has in the course of his argument laid stress on the provisions of Section 76 of the Railways Act. The same argument was used in the second of the two cases cited and used without success. The learned Pleader has suggested that that case is distinguishable because it was a case relating not to the loss of a complete package but to the loss of the contents of a tin. The learned Judges though they held no doubt that the delivery of a tin with the contents missing, was not the loss of a complete package, nevertheless were clearly of opinion that assuming that there was loss of a complete package, the burden of proving how the loss was caused, lay on the consignor and not upon the Railway Company. The cases cited by the learned Pleader are distinguishable. In the case of Sesham Patter v. L. M. Moss 17 M. 445 : 6 Ind. Dec. (N.S.) 308 do question arose as to the special contract incorporated in form B. The same observation may be made with regard to the case of Surendra Lal Chaudhuri v. Secretary of State 38 Ind. Cas. 702 : 25 C.L.J. 37. As to the case of Akhil Chandra Shaha v. India General Navigation and Railway Co. Ltd. 29 Ind. Cas. 260 : 21 C.L.J. 565, the liability dealt with there, was not the liability of a Railway Company but the liability of a common carrier. Under the Railways Act of 1890, the liability of a Railway Company differs from that of a common carrier. That decision, therefore, has no bearing.

5. In view of the authorities to which I have referred, this Rule must be made absolute. The petitioner is entitled to his costs which we assess at one gold mohur.

Beachcroft, J.

6. I agree.