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In Re: Baroda and Central India Ry. Company

Court: Bombay High Court

Date of Decision: April 5, 1923

Acts Referred: Railways Act, 1890 â€" Section 76

Citation: AIR 1925 Bom 96

Judgement

1. The plaintiff sued to recover the price of goods short delivered by the defendant Company. The claim was decreed by the First Class

Subordinate Judge in the Small Cause Court, Suit No. 174 of 1922, at Nadiad. The plaintiff had signed a risk note in the usual form, and he has

not even proved that there had been a loss of one or more complete packages out of the consignment of 63 bags of sugar. That would be sufficient

to dispose of the suit. But beyond that, even supposing one or more complete packages had been missing and not delivered still the plaintiff would

have to show that the loss was due to the wilful neglect of the Ry. Co., or its servants.

2. But the Judge has completely misunderstood the nature of the case, as he said that the burden was on the defendant to show how the loss had

arisen or could have arisen. The contract between the parties is contained in the Risk Note and Section 76 of the Indian Railways Act has no

application.

3. The Rule, therefore, must be made absolute and the Plaintiff''s suit must be dismissed with costs throughout.