

Mohansing Chawan Vs. Henry Conder General Traffic Manager G.i.P. Railway Company and anr.

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Court : Mumbai

Decided On : Aug-07-1883

Reported in : (1883)ILR7Bom478

Judge : West and ;Nanabhai Haridas, JJ.

Appellant : Mohansing Chawan

Respondent : Henry Conder General Traffic Manager G.i.P. Railway Company and anr.

Judgement :

West, J.

1. The railway company in this case were bound to deliver the particular bags which, they received from the plaintiff's firm for carriage. They did not deliver them, nor did they, so far as the evidence goes, announce their inability to deliver them on account of having lost them either in transit or by misdelivery to some one not entitled. On the other hand, they took from the plaintiff's agent receipts for the full number of bags as arrived at their destination, and gave gate passes for delivery. The natural presumption under such circumstances is that all the goods arrived, and that the railway company was in a position to deliver them. We are asked to infer from the mere non-delivery that they could not be delivered, because they

were lost; but that is an affirmative fact of which the company ought to have given evidence. Prima facie, the responsibility rested on the company, and the non-delivery of the goods might arise from other causes than loss. Had the company announced to the plaintiff that his goods were lost, that might have helped the defendants' case; but no such announcement was made, and the plaintiff could only tell that goods received and carried for him were not delivered. Under these circumstances we do not think that a loss never intimated, and not in any way proved, can be gathered by inference from mere probability, so as to make Article 30 of Schedule II of the Limitation Act bar the plaintiff's suit. We, therefore, reverse the decree of the District Court and restore that of the Subordinate Judge, with all costs on respondents, adding six per cent interest per annum on award of Subordinate Judge from date of his judgment till satisfaction of this decree.

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