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Court : Allahabad

Decided On : Nov-20-1922

Reported in : AIR1923All449; (1923)ILR45All235; 74Ind.Cas.248

Judge : Muhammad Rafiq and ;Lindsay, JJ.

Appellant : Lachmi Narain and ors.

Respondent : Bombay, Baroda and Central India Railway Company

Judgement :

Muhammad Rafiq and Lindsay, JJ.

1. This appeal arises out of a suit brought by the plaintiffs appellants for the recovery of damages, on the allegation that they had made over certain goods for despatch to the respondent company and that by the neglect of the latter the goods had been lost.

2. One of the objections taken to the suit was that no delivery of the alleged lost goods-had been made to the respondent company.

3. Both parties gave evidence. The court of first instance was of opinion that the goods had not been delivered to the railway company-and therefore no claim for

damages could be maintained against them. The claim was accordingly dismissed.

4. On appeal the decree of the first court was affirmed.

5. The plaintiffs came up in second appeal to this Court and the case was heard first by a Bench of this Court on the 19th of July, 1922. On that date an argument was advanced on behalf of the plaintiffs appellants that some important evidence in the possession of the respondent company, though required by the plaintiffs appellants and summoned at their instance, had not been produced and tendered by the respondent company. By an order dated the 19th of July, 1922, the Bench hearing the appeal adjourned the case with a direction to the respondent company to produce certain documents. One of the railway clerks has been produced today with two documents and has been examined. The documents that he has produced are called the tally book and the receipt register, which is really a file of receipts.

6. The contention on behalf of the plaintiffs appellants is that they sent one large package containing cloth to the railway station at Hathras for despatch to Farrukhabad on the 23rd of December, 1919. One Maharaj Kishore, a servant of the broker, approached the Goods office clerk of the Hathras railway station with a request that the said package be accepted for despatch to Farrukhabad. Brij Bihari Lal, the loading clerk, filled up a number in the forwarding note presented by Maharaj Kishore. The number was 675. The forwarding note was returned to Maharaj Kishore with a request to call the next day and have the package marked with the number entered in the forwarding note, and obtain a railway receipt. The package in question, it seems, was not brought to the railway station by Maharaj Kishore but sent there by the plaintiffs and deposited in a tin shed within the premises of the railway station. According to Maharaj Kishore, those goods which the railway authorities do not accept are deposited in a tin shed within the premises of the railway station and are watched by a man appointed by the owner of the goods. Maharaj Kishore, without waiting till the next day, got the contractor's man to put the number 675 on the package. During the night of the 23rd of December, 1919, the package in question was stolen. The next morning a formal

report was made to the railway police who took up the investigation at once. Twelve pieces of cloth and the covering, commonly known as 'bardana,' were discovered by the wire fencing of the station compound. The other pieces were never traced. According to the Sub-Inspector, the 'bardana' bore the number 675. The position taken up by the plaintiffs appellants is that the giving of the number 675 by the loading clerk was sufficient to amount to the registration of the goods offered and to the delivery of the goods. We think that on the evidence of Maharaj Kishore the plaintiffs appellants have no case. The mere fact that the loading clerk filled up what is called the serial number in the forwarding note, without doing anything further, would not amount to the delivery of goods to the railway by the consignor. Section 149 of the Contract Act defines delivery of goods in the case of bailees. It is as follows: 'The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.'

7. On the evidence in the present case we are unable to find that anything was done by the plaintiffs consignors which would amount to putting the goods in question in the possession of the railway or any person authorized on behalf of the railway. The appeal therefore fails and is dismissed with costs.