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Court : Allahabad

Decided On : Jul-25-1912

Reported in : 16Ind.Cas.369

Judge : Henry Richards, C.J. and; Banerji, J.

Appellant : Narayan Das and anr.

Respondent : The East Indian Railway Co.

Judgement :

1. The facts connected with, this appeal are shortly as follows: Plaintiffs or their agents consigned certain bars of silver for delivery at Allahabad to the Great Indian Peninsula Railway Company at Bombay. The Great Indian Peninsula Railway Company delivered the box intact to, the East Indian Railway at Jubbulpore. When the box was delivered to the plaintiffs or their agents at Allahabad, it was found that one silver bar was missing, valued by the plaintiffs at Rs. 2,044-12-0. There can be no doubt that the silver bar was stolen in the course of its transit between Jubbulpore and Allahabad, either by one or more of the Companies' servants or by an outsider. As to how it was stolen, there appears to be No. evidence. Section 75 of the Railways Act of 1890 provides that when certain articles mentioned in the Schedule II are contained in any parcel or package delivered to the Railway for carriage, and the value of such articles exceeds Rs. 100, the Railway shall not be responsible for the loss, destruction or deterioration of the parcel or package unless the person sending or delivering the

parcel or package to the Railway caused its value and contents to be declared and, * * * if so required by the Railway Company, pay or engage to pay a percentage on the value so declared by way of compensation for increased risk. In the present case, the plaintiffs or their agents signed a risk-note which shows clearly on the face of it that they had been required to pay an increased percentage on the value but had elected not to do so. This being so, the only question which arises in the appeal is whether or not the silver can be said to have been 'lost' within the meaning of the section. It is contended that it would not be lost unless the actual way in which the silver was stolen was proved by the Railway Company. In our opinion, this argument has no force whatever. As already stated, it is absolutely clear from the admitted facts that the silver bar was stolen whilst in transit between Jubbulpore and Allahabad. The package was delivered intact at Jubbulpore and one bar was missing when it was delivered to the plaintiffs or their agents at Allahabad. In our opinion, this was a loss within the meaning of Section 75. The case of Hearn v. The London and South Western. Railway Co. 10 Ex. C. Rep. 793 : 24 L.J. Ex. 180 : 3 C.L.R. 597 : 1 Jur. (N.S.) 286 : 102 R.R. 833 is cited on behalf of the appellants. This case turned upon an argument as to the sufficiency of a plea. In that case, the declaration alleged that the particular goods had not been delivered through the negligence of the Railway Company but there was no allegation that the goods had been lost. A perusal of the judgment in the case clearly shows that if it had been alleged that the title deeds had been actually lost while in transit in the Railway Company the plea of the defendants would have been a good plea.

2. It has also been argued that the risk-note cannot shield defendants unless they show that they took proper care of the package consigned to them. In Our opinion, the present case does not turn upon the construction of the risk-note at all. The article was clearly one of the articles mentioned in the second Schedule and the consignor was bound to declare the value of the article and to pay the percentage mentioned in the section so as to hold the. Railway Company responsible for the loss.

3. In our opinion, the appeal fails and is dismissed with costs including in this Court fees on the higher scale.

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