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Court : Kolkata

Decided On : Jun-24-1931

Reported in : AIR1932Cal257,137Ind.Cas.445

Appellant : Moolji Sicka and Co.

Respondent : B.N. Ry. Co. Ltd.

Judgement :

Jack, J.

1. In this case a Rule was issued calling on the B. N. Ry. Co. to show cause why the order of the learned Judge of the Small Cause Court, Sealdah, dismissing the petitioner's suit for damages on account of the destruction by fire of goods made over to the company at Pendrai for dispatch to Gondia on 3rd May 1929 should not be set aside. The Rule was granted on the ground that the finding of the Court below was without reference to material evidence, namely, the documentary evidence in the case, the evidence on the defendant's side and the admissions made in the written statement and in the correspondence. I have looked through the evidence referred to and have found that the only important point arising out of the documentary evidence in favour of the plaintiff is the fact that the plaintiff had ascertained that waggons were available and was allowed to stack 81 bags of biri leaves for dispatch to Gondia outside the goods shed on 3rd May and a further 69 bags on 4th May. The learned Judge states that nobody corroborates any of the

allegations of plaintiff's witness 1 and does not 'refer to the correspondence. It seems likely therefore that in fact he did not consider whether there was any corroboration in the correspondence. The learned Judge was, of course, not obliged to refer to the [evidence under Order 20, Rule 4, but if he does so and his reference indicates that he did not consider a material portion of the evidence I think this Court is entitled to interfere. In the present case it seems that the learned Judge in the Court below ought to have considered whether apart from the making over of the consignment note the conduct of the Station Master or the station staff indicates that these bags were received by the company for dispatch. This case has been pending for a long time otherwise I might have felt inclined to send it back for a rehearing from this point of view. But all the evidence offered on this point is on the record and the petitioner having been given an opportunity of putting the evidence before me, I think that I should dispose of the matter here. Issue 1 was:

Did the plaintiff's man deliver to the Station Master at Pondrai 150 bags of biri loaves and were they accepted by the said Station Master on 3rd May 1929.

2. Issue 2 was can the plaintiff got damages for nondelivery of those bags.' Issue 1 was decided against the plaintiff and it was therefore not necessary to decide issue 2.

3. As to the conduct of the Station Master the learned Judge in the Court below says:

I get from the Station Master that Pandwe Rang did not give him any consignment note nor the bags on 3rd May 1929, nor were they accepted by him nor did he get....the bags carried to the godown.

4. This evidence he seems to have accepted. Under Section 72, Railways Act, the responsibility of a railway administration for the loss, destruction or deterioration of animals or goods delivered) to the administration to be carried by railway is that of a bailee under Sections 151, 152 and 161, Contract Act. In this case I have to consider at what point the responsibility of the Railway company commences. Under Section 149, Contract Act, 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. Therefore I have to consider whether what was done by the consignor had the effect of making over these goods to the charge of the railway administration so as to make them responsible as bailees. Under the company's rule 27 the railway administration is not accountable for any articles unless they are booked and a receipt is given to the consignor. But it has been held in the case of *Jalim Singh v. Secy. of State* [1904] 31 Cal. 951 that this rule is inconsistent with the Railways Act, and that the Railway company are liable for the custody of the goods delivered to them whether a receipt has been granted or not, inasmuch as the company's responsibility in spite of the rule referred to, remains that of a bailee from the time the goods were made over to them.

5. In the present case inasmuch as 81 bags of biri were completely ready for dispatch and stacked (obviously with the knowledge and consent of the Station Master) in front of the goods shed on 3rd May and remained there during the night after an arrangement had been made with the company for the supply of waggons for their dispatch to Gondia, I think that it must be taken that these goods were actually delivered to the company. It must be remembered that under Tariff Rule 79 the company was entitled to wharfage for these goods. In this connexion the case of *Narsinggiri Manufacturing Co. v. G. I. P. Ry. Co.* [1919] 51 I.C. 809 may be referred to and also the cases of *Mannalai v. E.I. By. Co.* A.I.R. 1923 All. 71 and *Ram Chandra v. G. I. P. Ry. Co.* A.I.R. 1915 Bom. 24. In the last case it was held indeed that a delivery to be carried by railway would mean something more than a mere depositing of the goods on the railway premises and that it involves some sort of acceptance by the railway, a taking as well as a giving and that, whether, such a taking has occurred, is a matter which depends on the course of business, and the facts of each particular case, but that it certainly may be completed before a railway receipt is granted. It is true that in each of the cases mentioned something more was done than merely placing the goods at the station. But I am inclined to think that in the present case when the 81 bags were stacked outside the goods shed and remained there for the night, this cannot have been done without an arrangement with the railway staff. There is no suggestion that anyone on the part of the consignor remained in charge of the bags during the

night of 3rd May, and it seems to me that the conduct of the company's servants in allowing the consignor to stack the bags there and keeping as they did a record of the number, shows that they accepted these goods for dispatch having already arranged for the provision of waggon and agreed to dispatch them to Gondia.

6. On behalf of the company the case of *Hardayal Ram v. B. & N. W. By. Co.* A.I.R. 1929 Pat. 296 has been referred to, but is distinguishable. In that case it was held that the lower Court having found as a fact that in the circumstances of that case the mere acceptance of the consignment note was not equivalent to acceptance of the goods by the company and that the goods had not been delivered to the Railway company, this finding could not be challenged in second appeal. The question whether the goods were actually delivered or not is of course a question of fact, and I entered into it in this case only because it seemed to me that the Court below neglected to consider material evidence.

7. The second point for consideration is whether the plaintiff is entitled to damages on account of the destruction of the goods. Under Section 151, Contract Act, the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would under similar) circumstances take of his own goods of] the same bulk, quality and value as the] goods bailed. The onus was of course on the company to show that they took such care of the goods. In the present case the goods were stacked in the open, and the evidence seems to show that while no one knew exactly how they had caught fire, the fire must have been caused by some passer-by throwing a burning cigarette or cigar end on the ground where they were. The statement of the plaintiff that the goods were actually carried to the godown has not been accepted, and the evidence seems to show that it must have been with the consent of the consignor that the goods were stacked where they were. There is no suggestion that there was anything unusual or dangerous in stacking the bags of biri leaves in the open. What is ordinary diligence must; be considered having regard to the habits of business and the general customs of the community and in the present case I think, taking all the circumstances into account that the facts do not show that the company failed to exercise ordinary care. There is no evidence that these goods were particularly inflammable or that there was any reason to suspect that a lighted cigarette might be thrown near the

bags by a passer-by. Considering the customs and habits of business of the country I do not think that the conduct of the company in allowing these bags to remain in the open pending their dispatch shows that they failed to exercise ordinary diligence, and therefore, I hold that the company was not liable in this case for damages.

8. This rule is accordingly discharged. In the circumstances, I make no order as to costs.

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