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SooperKanoon Citation : sooperkanoon.com/867287

Court : Kolkata

Decided On : Mar-12-1883

Reported in : (1884)ILR10Cal210

Judge : Richard Garth, C.J.;Prinsep, ;Wilson and ;O'Kinealy, JJ.

Appellant : Moheswar Das

Respondent : Carter

Judgement :

Richard Garth, C.J. (Prinsep and Wilson, JJ., concurring.)

1. This is a case referred under Section 617 of the Civil Procedure Code. It is unnecessary for us to express any opinion on any of the points which arise, except on that referring to the relations between the parties arising out of the risk note, which was the agreement under which the goods were received and despatched by the Railway Company, because the learned Counsel on behalf of the Company in the present case has agreed to waive any objections to the suit as brought against the Traffic Manager, in order that he may obtain our opinion on the main point in issue.

2. It appears that twelve tins containing 6 1/2 maunds of ghee were consigned to the Railway Company at Agra for delivery at Ahmedpore. It has been found, that when these tins were delivered, one had been cut open by a knife, and there was consequently a deficiency of some 21i seers in the quantity of ghee contained in

them.

3. For the defendants it is contended that under the terms of the risk note, signed by the plaintiff, they are in no way liable for the loss.

4. The risk note runs as follows: I hold the Railway Company harmless and free from all responsibility in regard to any loss, destruction, or deterioration of, or damage of or to, the said consignment, from any cause whatever, before, during, and after transit over the said Railway or other Railway lines working in connection therewith.' By Section 2 of Act IV of 1879 nothing in the Carriers Act, 1865, applies to carriers by Railway. By Section 10 it is declared that 'every agreement purporting to limit the obligation or responsibility imposed on a carrier by Railway by the Indian Contract Act of 1872, Sections 151 and 161, in the case of loss, destruction, or deterioration of, or damage to, property, shall, in so far as it purports to limit such obligation or responsibility, be void, unless (a) it is in writing signed by, or on behalf of, the person sending or delivering such property, and (b) is otherwise in a form approved by the Governor-General in Council.

5. This agreement, which was signed by the plaintiff, is in a form approved by the Governor-General under Act IV of 1879, Section 10, and its terms leave us no alternative but to hold, that in no case would the Railway Company be liable to account to the consignee for any loss from any cause whatever during the whole time that the goods were in their charge. Similar contracts have frequently been construed by English Courts and full effect has been given to their provisions.

6. The Legislature in this country has, in respect to the matter specified in Section 10, Act IV of 1879, imposed upon the Government the duty of determining beforehand the propriety of any proposed form of contract between any Railway Company and its customers, instead of leaving this to be decided subsequently by Courts of Justice.

7. Under such circumstances, we think the suit should be dismissed by the Judge of the Small Cause Court.

O'Kinealy, J.

8. I agree in the decision delivered by my learned colleague; but I am not quite sure that I agree in all the reasons on which it is based, as I feel some hesitation in assuming that the Contract Act applies to carriers. There is no doubt, if Railway carriers are subject to the provisions of Sections 151 and 161 of the Indian Contract Act, that the conditions required by Section 10 of the Railway Act have been properly complied with. The risk note is admittedly signed by, or on behalf of, the plaintiff, and is in a form approved by the Governor-General in Council. On the other hand, if Sections 151 and 161 do not apply to carriers by Railway, the Railway Companies are in the position of carriers before the passing of the Carriers Act. Whichever view, therefore, is taken of the case, the question for decision is narrowed to this, namely, whether a Railway Company, which is not subject to the Carriers Act, can protect itself by contract from liability for the negligence or misconduct of its agents and servants.

9. This very question was elaborately discussed in the case of Peek v. The North Staffordshire Railway Co. 32 L.J.Q.B. 246. There Mr. Justice Blackburn gave as his opinion that 'the cases decided in our Courts between 1832 and 1854 established that a carrier might, by a special notice, make a contract limiting his responsibility even in the cases here mentioned of gross negligence, misconduct, or fraud on the part of his servants.'

10. This view of the law has been adopted in several later cases. And it may now be taken as settled in England that a carrying company, when not subject to limitation by Act of Parliament, may contract itself from all responsibility arising from the acts of its agents or servants. Looking then at the cases already referred to, I think that under the 'risk note' in this case the owner undertook all risks of conveyance and loss, however caused by the servants and agents of the Company during the journey, and that the latter is not responsible for the abstraction of the plaintiff's ghee. Under these circumstances, our answer to the learned Subordinate Judge should be that the Railway Company is protected by the risk note in question, and that neither it nor the Traffic Manager is liable unless either one or the other has committed some independent wrong in connection with the property, and as no such allegation has been made, that the suit should be dismissed.