# Triloki Nath, Manager And Karta Of ... vs Governor-General In Council, E.I. Ry. on 29 September, 1950

## Equivalent citations: AIR1951ALL489, AIR 1951 ALLAHABAD 489

JUDGMENT

Wali Ullah, J.

1. This is an application in revision under Section 23, Small Cause Courts Act, filed by the plaintiff whose claim has been dismissed by the Court below.

2. A consignment of nine bags of tobacco weighing 12 maunds and 4 seers was dispatched from Farrukhabad to Belanganj (Agra) under Risk Note Form A. On arrival at the destination when delivery of the consignment was made it was found that eight out of the nine bags which constituted the consignment were intact but one bag was found cut and resewn. On being reweighed the bag which was found cut was found short in weight by 29 seers. On these facts the consignee, who is the plaintiff, sued the opposite party for damages.

3. The claim was contested by the opposite party on the ground that the bags in which the consignment was despatched were old and repaired and sewing was defective and that consequently loss occurred. But the opposite party was protected from all responsibility by the Risk Note Form A under which the goods were consigned. It was, however, admitted that at the time of delivery one bag was found "slack" and on reweighment was found short in weight by 29 seers. This shortage was attributed to defective condition of the packing. The learned Judge of the Small Cause Court framed one single issue to this effect : "Is the railway liable for the loss?"

4. The plaintiff-applicant Triloki Nath examined himself in support of the claim. No defence evidence was led on behalf of the opposite party. The learned Judge of the Court below held that, inasmuch as, the goods were carried under Risk Note Form A the railway would not be responsible unless misconduct was established. He further held that there was no evidence to show any "misconduct" on the part of the railway or its staff. He, however, definitely found that there was shortage in the goods delivered and that one of the bags was found cut. From these facts, however, he declined to draw any inference to the effect that "misconduct" was established. In view of these facts it was held that the opposite party was not liable. The suit was accordingly dismissed and the parties were ordered to bear their own costs.

5. Against the decision of the trial Court the plaintiff has now come up in revision to this Court. It has been contended on behalf of the applicant that the scope of protection under Risk Note Form A has been completely misunderstood by the learned Judge. It has also been contended that in view of the facts found the Risk Note Form A did not afford any protection to the opposite party. In the

alternative, it has been argued that even if the Risk Note be applicable to the facts of the case the fact that one bag was found cut and 29 seers of tobacco were missing was sufficient material for drawing an inference that there was "misconduct" on the part of the servants of the railway administration. On the other hand, the learned counsel for the opposite party has contended that the case is covered by the risk note. Further, it has been contended that there is a finding recorded by the Court below that no "misconduct" had been established. In the course of their arguments learned counsel for the parties have invited my attention to a number of rulings in support of their contentions.

6. The main question for consideration is whether in view of the facts found the Risk Note Form A affords any protection to the opposite party. Section 72 (1), Railways Act, (IX [9] of 1890) provides :

> "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 shall, subject to the other provisions of this Act, be that of a bailee under Sections 151, 152 and 161, Contract Act, 1872."

Sub-clause (2) of the section, in effect, provides for limitation of the responsibility of a railway administration by an agreement in writing and in a form approved by the Central Government. The forms of agreement approved by the Central Government are the various Risk Note Forms, including Risk Note Form A. Risk Note Form A is used when articles are tendered for carriage which are either already in bad condition or so defectively packed as to be liable to damage, leakage or wastage in transit. The Risk Note Form A itself, in the opening para, contains a recital to the effect that the goods consigned are in bad condition and or liable to damage, leakage, or wastage in transit. Then follows the paragraph which contains the special clause exempting the Railway Administration from liability in certain circumstances. The special clause runs thus :

> "I/We, the undersigned, do hereby agree and undertake to hold the said Railway Administration ...harmless and free from all responsibility for the condition in which the aforesaid goods may be delivered to the consignee at destination and for any loss arising from the same except upon proof that such loss arose from misconduct on the part of the Railway Administration's servants."

The rest of the contents of the Risk Note are not material for purposes of this case.

7. In the present case both in the "Goods Consignment Note" as well as in the "Risk Note Form A," the "note" made about the condition of the goods is this : "Bags old and repaired. Sewn defective."

8. From the "special clause" of the agreement noted above it is clear that the Railway Administration is free from all responsibility. for the condition in which the goods are delivered to the consignee at destination and also for any loss arising from the same. The crucial question, therefore, is : What is the proper interpretation to be put upon these words ? The expression "loss arising from the same" obviously means "loss arising from the condition in which goods are delivered to the consignee." What exactly is the meaning of the expression "the condition in which the goods are delivered," in this context, is, therefore, the all important question to be determined. In construing this expression

I must observe that it is necessary to look to the entire document which embodies the agreement between the parties in order to discover their real intention. The note at the top of the Form as well as the opening para, thereof clearly refers to the fact that the parties assume that the articles tendered for carriage are in bad condition or are so defectively packed as to be liable to damage, leakage or wastage in transit. It follows that the "condition" of the articles consigned as well as the "defective packing" are clearly in the mind of the parties when the Risk Note A is signed. When, therefore, the signatory of the Note agrees to hold the railway authorities "free from all responsibility for the condition in which the aforesaid goods may be delivered to the consignee at destination and for any loss arising from the same ... Railway Administration's servants," it must be taken that the agreement between the parties is that exemption from responsibility would exist only where the condition in which the goods are delivered is due either to the fact that they wore already in bad condition at the time of consignment or to the fact that they were so defectively packed as to be liable to damage, leakage or wastage in transit. The loss which occurs from the unsatisfactory condition of the goods at the time of delivery must, therefore, be in a way directly connected with the bad condition of the goods at the start or with such deterioration or leakage or wastage in transit as might naturally follow from the defective condition of the packing. Unless the loss incurred be attributable to one of these two causes, it seems to me, the exemption from responsibility contemplated by the operative portion of the Risk Note would not come into play.

9. Again, it seems to me that the expression "the condition in which the aforesaid goods may be delivered" necessarily contemplates that there has been an actual delivery of the goods. Goods which have not been delivered, i.e. goods which have been lost, while the consignment was in transit, are in reality not goods "delivered." It seems to me, therefore, that the Risk Note Form A does not apply to a case of pilferage at all. It covers only two contingencies : (i) "bad condition" of the goods at the time of delivery, and (ii) damage, leakage or wastage in transit owing to the fact that the goods were defectively packed. In the recitals contained in the Risk Note these are the only two contingencies which are referred to; in the operative part of the Risk Note, therefore, the indemnity given to the Railway Administration extends only to these two contingencies ; (i) the responsibility for the "condition" of the goods on delivery, and (ii) "any loss arising from the same," i.e. arising from "damage, leakage or wastage in transit" due to defective packing.

10. This view of mine receives strong support from what Meredith J. has held in the case of Governor-General of India in Council v. Firm Bishundayal Ram Gourishankar, A.I.R. (35) 1948 Pat. 48. That was a case relating to a consignment of biris in seven packages weighing 5 maunds and 10 seers. At the time of delivery two of the packages were found broken and the weight was found short by 39 seers. In a revision under Section 115, Civil P. C., the case came up before Meredith J. The application in revision was dismissed on the ground that the conditions prescribed by Section 115, Civil P. C., were not satisfied. The learned Judge, however, with a view to clarify the legal position expressed the view that :

> "The word 'loss' as used in Risk Note A cannot refer to any loss of the goods, bat refers to loss arising from the condition in. which the goods are delivered. In other words, the Risk Note A has no application at all to cases of failure to deliver, or to pilferage, because a thing never delivered cannot be said to have been delivered in

> any condition, and, therefore, no question arises of any loss arising from the condition in which the goods are found on delivery. The Railway Administration can never plead the execution of this risk note in bar to a claim based on non-delivery."

Again, in Gangadhar Ram Chandra, a firm, Y. Dominion of India, A.I.R. (37) 1950 Cal. 394, Das Gupta J. had occasion to consider the scope of Risk Note A with reference to short delivery. In that case a consignment of rape seed bags under Risk Note A was found at the time of delivery to be short in weight as a result of cuts caused in some of the bags through what was described as "flap-door gaps." The consignee sued for compensation for the loss suffered. The defendant Railway failed to prove that the loss was in some way connected with the defective condition of the goods or that the shortage was due to circumstances beyond their control. On a consideration of the scope of the special clause in Risk Note Form A which exempted the Railway Administration from liability, the learned Judge observed at p. 395 : "It is necessary to look to the entire document to decide how far the protection of this clause in Risk Note A extends."

Next, it was observed at p. 396:

> "The very fact that in this case Risk Note A was executed is evidence to show that either the goods were in bad condition when tendered or they were so defectively packed as to be liable to damage, leakage or wastage in transit."

Eventually it was held :

> "For the purpose of Risk Note A, shortage in weight of goods is a condition in which the goods are delivered. It does not follow, however, that once Risk Note A has been executed every case of short delivery will be covered by the saving clause. Before the saving clause can have operation, it must appear prima facie that the loss which actually occurred was in some way connected with the defective condition of the packing."

11. Next, reference may be made to the case of B. N. W. Rly. Co. v. Firm Dassundhi Mal-Bishambar Das, A. I. R. (15) 1928 Lah. 166 : (108 I. C. 177), decided by two learned Judges of that Court, Shadi Lal C. J. and Bhide J. It was held :

> "Risk Notes, under which a Railway claims exemption from liability, have to be strictly proved .... The Risk Note being invalid, the position of the Railways in respect of that consignment was that of an ordinary bailee and it was incumbent on the Railways to show that they took as much care of the goods during transit as a man of ordinary prudence would have done. In the absence of a valid Risk Note damage being proved, it was for the Railways to account for it and show that it was not due to any negligence on their part."

12. As regards the scope of protection conferred by Risk Note A, it was held :

> "Risk Note A confers exemption from liability only in respect of the 'condition' of the goods at the time of the delivery at destination. It cannot confer immunity from liability for loss due to other causes, e. g., loss due to fall in prices resulting from undue delay in transit, or loss due to disappearance of goods due to theft, etc."

13. In this connection, the learned Judges referred to the case of B. N. W. Rly. Go. v. Munna Lal Bishambhar Nath, 46 ALL. 844 : (A. I. R. (11) 1924 ALL. 760), and to the case of E: I. Rly. Go. v. Gopi Krisha, 43 ALL. 534 : (A. I. R. (11) 1924 ALL. 8), decided by learned single Judges of this Court.

14. Again, I may refer to the case of Governor-General in Council v. Gopali, A.I.R. (31) 1944 Oudh 81 : (213 I. C. 7), decided by a learned single Judge of that Court. It was held at p. 82 :

> "The Risk Note above referred to (Risk Note Form A) does not by its terms absolve the defendant in respect of their liability for the loss of a part of the consignment."

15. The view which I am disposed to take in this case is in consonance with the view taken by Braund J. in Civ. Rev. No. 229 of 1944, The Governor-General in Council v. Firm The New Regular Cycle Mart, decided on 24-4-1945.

16. Again, in Qadir Salamatullah v. Governor-General in Council, S. A. No. 2237 of 1946 decided on 12-9-1950 : (A. I. R. (38) 1951 ALL. 438), Mustaq Ahmad J. has taken the same view.

17. Learned counsel for the opposite party has, however, endeavoured to support the decision of the Court below by reference to some earlier decisions of this Court. Reference has been made to the case of Firm Parbhoo Lal Ram Ratan v. B. N. W. Rly. Go. Ltd., A.I.R. (10) 1923 ALL. 234 : (65 I. 0. 583), decided by Ryves J. That was a case relating to twenty-three "Bakoos" of tobacco consigned under Risk Note Form A. The weight consigned to the Railway was 101 maunds. The consignment was found twenty-eight maunds short in weight at the time of delivery. In that case it had been found by the Court below that the tobacco when despatched was raw and wet and was not secularly packed. It had also been found that the shortage in weight was due most probably to the drying up of the moisture originally contained in the tobacco. On a consideration of the Risk Note Form A under which the goods had been consigned, the learned Judge observed :

> "It is stated in the note that the consignment was in bad condition and was liable to damage, leakage and wastage as the 'Bakoos' were old and torn and the contents were wet, and the consignors agreed to hold the Railway Company harmless and free from all responsibility for the condition in which the aforesaid goods may be delivered to the consignee at destination and for any loss arising from the same."

In these circumstances it was held that the Railway was not responsible for any loss which occurred.

18. Next, reference was made to the case of Bansi Ram v. B. N. W. Rly. Co., A. I. R. (16) 1929 ALL. 124 : (51 ALL. 480), decided by Sulaiman J. In that case, a consignment of three bundles of corrugated iron sheets weighing eight maunds and four seers was despatched. Its weight at

destination was found to be two maunds seven seers short. The Risk Note under which the consignment had been sent was Risk Note Form A as amended in 1924. On a consideration of the saving clause in the Risk Note, the learned Judge held :

> "The expression 'loss arising from the same' in Risk Note A means 'loss arising from the condition in-which the goods are delivered', and shortage in weight is a condition in which the goods are delivered and is covered by the saving clause."

19. In support of his view, the learned Judge wont on to observe :

> "When a bundle is insecularly packed any goods comprised in it may slip out and be lost on the way. There can be no necessary inference that it has been stolen, much less that it has been stolen by a servant of the railway company concerned."

20. It would be observed that the view that "a shortage in weight is a condition in which the goods are delivered" involves some straining of the word "delivered" for, as observed by Meredith J. in Governor-General of India in Council v. Firm Bishundayal Ram Gouri Shankar, (A.I.R. (35) 1948 Pat. 48), (ubi supra), "a thing never delivered cannot be said to have been delivered in any condition."

21. The crucial question, however, remains whether such a condition of goods at. delivery is contemplated by the special agreement between the parties. The learned Judge has not considered the matter any further. The whole tenor of the agreement, indeed the very basis of it, militates against such a construction of the saving clause as contained in the agreement. With great respect, I am not able to follow that decision.

22. The last case referred to by learned counsel for the opposite party is that of Secretary of State v. Rup Ram Audh Behari Lal, A. I. R. (18) 1931 ALL. 135, where Dalai J. had to deal with a claim for loss caused to a consignment of goods. There were five bales of cloth consigned and all of the five bales were delivered. There was, however, a shortage due to some goods slipping out of some of the bales. In that case Risk Note Form A had been used. Two earlier decisions of this Court were cited before the learned Judge in support of the plaintiff's claim viz., E. I. Rly. Co. v. Firm Makhan Lal Bindesri Prasad, A. I. R. (10) 1923 ALL. 605 : (45 ALL. 575) and E. I. Rly. Co. v. Kishan Lal Tirkhmal, A. I. R. (11) 1924 ALL. 7 : (45 ALL. 530). The learned Judge, however, distinguished those cases on the ground that they were concerned with short delivery of bags or bales and relied on the decision of Sulaiman J. in the case of Bansi Ram, (A. I. R. (16) 1929 ALL. 124 : 51 ALL. 480) (ubi supra).

23. From the above discussion of relevant case law it would appear that the preponderance of authority is in favour of the view which I am inclined to take in the present case.

24. As mentioned above, in the present case, the learned Judge of the Small Cause Court has definitely found that there was shortage in the goods delivered and that one of the nine bags was found cut. There was no evidence led on behalf of the opposite party to show how the goods had

been handled in transit. Prom these facts, in my view, it is clear that the shortage was not due to any defective packing nor was it due to damage, leakage or wastage incidental to transit. I accordingly hold that the Risk Note does not afford any protection to the Railway Administration. As a bailee of the goods consigned, it was incumbent on the opposite party to prove that loss had occurred in spite of due care and caution taken by the Railway Administration. No evidence to that effect having been led by the Railway Administration, it follows that they have failed to discharge the onus that lay upon them.

25. The application in revision must, therefore, be allowed. I set aside the decree passed by the Court below and decree the claim with costs in both Courts.