UNION OF INDIA

v.

BRIJLAL PURUSHOTTAMDAS

August 30, 1968

[S. M. SIKRI, R. S. BACHAWAT AND K. S. HEGDE, JJ.]

Indian Railways Act, 1890 (9 *of* 1890), *ss.* 74*C*(3), 74*D*, 74*E and* 80—*Goods consigned at owner's risk rate to one railway administration lost through negligence of another railway administration—Liability of administration to which goods consigned—Burden of proving negligence.*

The respondent consigned goods to the Southern Railway to be carried to stations on B.N. Railway, at owner's risk rate. On the goods being lost while at stations on B.N. Railway the respondent sued the Union of India as representing the two railway administrations. The Trial Court decided against the respondent on the technical ground that the required notices were not duly served, but in the respondent's appeal to the High Court the Union of India conceded that the notices had been duly served on the Southern Railway. The respondent elected to ask for a decree against the Southern Railway only. The High Court held that the Southern Railway to which the goods were delivered by the consignor was liable under s. 80 of the Railway Act to pay compensation for the loss, though the loss was due to the negligence or misconduct of the B.N. Railway. The Union of India appealed to this Court. On behalf of the appellant it was urged that (i) the negligence or misconduct of the B.N. Railway could not be fairly inferred from the materials on record and the respondent had not discharged the burden of proof imposed on him by s. 74C(3) of the Railways Act; (ii) the Southern Railway could not be held liable under s. 80 for the loss due to the negligence or misconduct of the servants of the B.N. Railway administration.

HELD : (i) The burden of proof under s. 74C(3) is discharged if the loss or misconduct can fairly be inferred upon the disclosure made under s. 74D. [912 G]

Section 74D envisages a disclosure in the form of a precise statement of how the consignment was dealt with by the administration followed by evidence at the trial in proof of the statement. The section contemplates that the administration should first submit its evidence at the trial and it is only when negligence or misconduct cannot fairly be inferred from such evidence, that the burden of proving the negligence or misconduct shifts to the consignor. [913 D-F]

If the written statement filed by the administration discloses facts which show that in the common course of events the loss would not have happened if proper care had been taken, a presumption of negligence is raised and it is for the administration to rebut it by contrary evidence. In the absence of such evidence the court may draw the inference that the loss was caused by the negligence of the administration. [913 H]

In the present case from the disclosure made by the appellant the negligence of the servants of the B.N. Railway could be fairly inferred. [915 D]

Surat Cotton Spinning & Weaving Mills Ltd. v. *Secretary of State for India*, L.R. 64 I.A. 176 and *Union of India* v. *Mahadeolal*, [1965] 3 S.C.R. 145, referred to.

A (ii) The High Court was justified in holding the Southern Railway liable to pay the compensation. [918 B]

Section 80 provides that in the case of goods booked through over the railway of two or more railway administrations, a suit for compensation for loss of goods can be brought against the administration to which the goods were delivered by the consignor irrespective of the question whether or not the goods were lost on its railway. The suit can be B brought against the other administrations only if the loss occurred on their railways. The liability under s. 80 is statutory. The section overrides all agreements purporting to limit the liability of an administration with respect to through booked traffic. [916 A-B]

Section 74E does not restrict or enlarge the liability to be sued under s. 80. In the case of goods booked at owner's risk the effect of s. 74E is that the consignor cannot recover compensation for loss except upon C proof that the loss was due to the negligence or misconduct of an administration. [917 E-918 B]

Secretary of State & Ors. v. *Afzal Husain,* A.I.R. 1920 Oudh. 70 and *D. H. Rly. Co.* v. *Jetmull Bhojraj,* A.I.R. 1956 Cal. 390, disapproved.

Bengal & N. W. Rly. Co. v. *Haji Mutsaddi & Anr.* 7 I.C. 160, approved.

D *Muschamp* v. *Lancaster Etc. Junction Rly. Co.* 8 M&W 421-151 E.R. 1103, *Jetmull Bhojraj* v. *Darjeeling Himalayan Rly. Co. Ltd.,* [1963] 1 S.C.R. 832, *Union of India* v. *Shamsuddin Waizuddin,* A.I.R. 1958 Pat. 575 and *Chandrasekharam* v. *Union of India,* A.I.R. 1960 Orissa 100, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1145 and 1146 of 1965.

E

Appeals from the judgment and decree dated May 9, 1960 of the Calcutta High Court in Appeals from Original Decrees Nos. 267 and 268 of 1954.

V. A. Seyid Muhammad and *S. P. Nayar,* for the appellant (in both the appeals).

F

Sarjoo Prasad and *B. Parthasarathy,* for the respondent (in both the appeals).

The Judgment of the Court was delivered by

Bachawat, J. On March 28, 1951 the respondent consigned 10 bales of staple fibre yarn to the Southern Railway at Pudukad G for carriage to Shalimar on the Bengal Nagpur Railway at the owner's risk rate. Of the 10 bales consigned only 5 bales were delivered to the respondent. The respondent filed Suit No. 7 of 1952 against the Union of India representing the two railway administrations claiming damages for non-delivery of 5 bales. On March 28, 1951 the respondent consigned 10 bales of staple fibre H yarn to Podnur on the Southern Railway for carriage to Shalimar on the Bengal Nagpur Railway at the owner's risk rate. Of the 10 bales consigned, only 1 bale was delivered to the respondent. The respondent filed Suit No. 6 of 1952 against the Union of

India, representing the two railway administrations claiming non-delivery of 9 bales. The two courts concurrently held that the loss was due to negligence or misconduct of the servants of the Bengal Nagpur Railway administration. The Trial Court held that the notices under sec. 77 of the Indian Railways Act, 1890 and sec. 80 of the Code of Civil Procedure were not duly served and dismissed the suits. The plaintiff filed two appeals. Before the High Court the Union of India conceded that the notices were duly served on the General Manager, Southern Railway and the plaintiff elected to ask for a decree against the Southern Railway only. The High Court held that the Southern Railway to which the goods were delivered by the consignor was liable to pay compensation for the loss, though the loss was due to the negligence or misconduct of the Bengal Nagpur Railway. The High Court allowed the appeals and decreed the suits. The present appeals have been filed on certificates granted by the High Court.

Two questions have been canvassed in these appeals. Firstly, it is argued that the misconduct or negligence of the servants of the Bengal Nagpur Railway administration cannot fairly be inferred from the materials on the record. Secondly, it is argued that the Southern Railway administration cannot be held responsible for the misconduct or negligence of the servants of the Bengal Nagpur Railway administration.

The case is governed by the Indian Railways Act, as it stood in 1951. The goods were carried at owner's risk rate, and sections 74C(3) and 74D of the Act were attracted. Section 74C (3) provides that in such a case the Railway Administration was not responsible for any loss, destruction, deterioration or damage to the goods from any cause whatsoever "except upon proof that such loss, destruction, deterioration or damage was due to negligence or misconduct on the part of the Railway Administration or any of its servants." As the explanation of the loss is within the exclusive knowledge of the railway administration it is almost impossible for the consignor to discharge this burden of proof. Section 74D lightens this burden and imposes upon the administration in some cases the duty of disclosing to the consignor how the consignment or the package was dealt with throughout the time it was in its possession or control. If the negligence or misconduct can fairly be inferred upon such disclosure the burden of proof under sec. 74C(3) is discharged. Section 74D is as follows :—

"Notwithstanding anything contained in section 74C—

(a) where the whole of a consignment of goods or the whole of any package forming part of a consignment carried at owner's risk rate is not delivered to the

A consignee and such non-delivery is not proved by the railway administration to have been due to any accident to the train or to fire, or

(b) where, in respect of any consignment of goods or of any package which had been so covered or protected that the covering or protection was not readily B removable by hand, it is pointed out to the railway administration on or before delivery that any part of such consignment or package had been pilfered in transit,

the railway administration shall be bound to disclose to the consignor how the consignment or package was C dealt with throughout the time it was in its possession or control, but if negligence or misconduct on the part of the railway administration or of any of its servants cannot be fairly be inferred from such disclosure, the burden of proving such negligence or misconduct shall lie on the consignor."

D Section 74D envisages a disclosure in the form of a precise statement of how the consignment was dealt with by the administration followed by evidence at the trial in proof of the statement The section clearly contemplates that on this matter the administration should submit its evidence first at the trial, and it is only when negligence or misconduct cannot fairly be inferred from E such evidence that the burden of proving the negligence or misconduct shifts to the consignor. In *Surat Cotton Spinning & Weaving Mills Ltd.* v. *Secretary of State for India*(1) and *Union of India* v. *Mahadeolal*(2) the Risk Note B and Z under consideration provided that in certain cases "the railway administration shall be bound to disclose to the consignor how the consignment was dealt with throughout the time it was in its possession or F control and if necessary to give evidence thereof before the consignor is called upon to prove misconduct." Section 74D does not expressly provide that the administration is bound if necessary to lead evidence as to how it dealt with the consignment before the consignor is called upon to prove misconduct or negligence but we think that this obligation is implicit in the duty of G disclosure imposed by the section.

If the written statement filed by the administration discloses facts which show that in the common course of events the loss would not have happened if proper care had been taken, a presumption of negligence is raised and it is for the administration to rebut it by contrary evidence. In the absence of such evidence H the court may draw the inference that the loss was caused by the negligence of the administration.

(1) L.R. 64 I.A. 176. (2) [1965] 3 S.C.R. 145.

In the present case 14 packages were not delivered to the respondent and such non-delivery was not due to any accident to the train or to fire. The case therefore fell within cl. (a) of sec. 74D. The packages were carried by the Southern Railway and the Bengal Nagpur Railway administrations and the two administrations became bound to disclose to the respondent how the packages were dealt with throughout the time they were in their possession or control. The Union of India representing both the administrations filed separate written statements in the two suits. It made a fuller and more detailed disclosure in the written statement filed in Suit No. 6 of 1952. The written statement did not mention any transhipment at Raipuram (Madras) but at the trial it was proved that the consignments were transhipped at Raipuram in wagon No. 37933. The wagon was carried upto Waltair where the Southern Railways ended. Thereafter the wagon was carried over the Bengal Nagpur Railways.

In the written statement in Suit No. 6 of 1952 the Union of India pleaded that the consignments were correctly received at Vizianagram whence they went loaded in wagon No. 37933 in sound condition. The train was last checked at Danton and all seals were found intact. The wagon in due course reached Contai Road where the train was detained for 22 minutes and the guard kept a proper watch on both sides of the train. After starting from Contai Road the guard noticed some bales lying on the left side of the track between Contai Road and Bakhrabad. He stopped the train at Bakhrabad, the next station. When the train stopped he saw 4 men running away on the left side with torch lights. On checking he found the door of wagon No. 53304 open. After all necessary steps regarding this wagon were taken, the train started. As the staff at Bakhrabad station was short, no arrangement could be made for picking up the bales lying near the railway track. On arrival at Kharagpur he found the door of wagon No. 37933 open and the seal card hanging on the ring. The wagon was checked and the suit packages were found missing. The defective condition of its seal escaped the notice of the guard earlier. Presumably wagon No. 37933 was interfered with between Contai Road and Bakhrabad and the bales lying by the side of the track were dropped from this wagon. Three bales were recovered but the party refused to take delivery. The loss of the bales was due to theft in transit when the train was on the run between Contai Road and Bakhrabad.

It is surprising that after having made this disclosure the appellant did not call the guard or any other witness from Contai Road or Bakhrabad. The guard was present in court at the hearing of the case. At the close of the evidence an application for adjournment was moved by the appellant stating that the rough journal book of the guard was mislaid and some time was neces-

A sary to trace it. The adjournment was granted. On the adjourned date the guard was not examined nor was the book produced and no explanation was given for this omission. Having regard to the disclosure made in the written statement, it was for the appellant to prove that it had kept proper watch over the wagon while the train was detained at Contai Road and had taken proper care of the package lying on the track. Three packages were later recovered but no evidence was led to prove that they were offered to the respondent. The appellant called witnesses from Raipuram, Bhadrak and Kharagpur. The witness from Raipuram found wagon No. 37933 to be in good condition. No witness from Vizianagram was called. The witness from Bhadrak checked the wagon and found the seal intact. The written statement shows that the seal was checked at Danton. Danton is about 126 kilo-metres away from Bhadrak. No witness was called to prove that the seal was found intact at Danton. The witnesses from Kharagpur found that the wagon was without seal and rivet on one side. Had the wagon been properly fastened and secured it is not likely that the packages would be so easily taken out at Contai Road. From the disclosure made by the appellant, the negligence of the servants of the Bengal Nagpur Railway administration may fairly be inferred. The administration was negligent : (i) in not properly riveting the wagon; (ii) in not keeping watch over the train at Contai Road; (iii) in not taking proper care of the packages lying on the track between Contai Road and Bakhrabad and (iv) in not delivering the packages subsequently recovered by it to the consignor.

B

C

D

E

The next question is whether the respondent can claim compensation for the loss under s. 80 from the Southern Railway to which the packages were delivered by him. Section 80 is as follows :—

F

> "Notwithstanding anything in any agreement purporting to limit the liability of a railway administration with respect to traffic while on the railway of another administration, a suit for compensation for loss of the life of, or personal injury to, a passenger, or for loss, destruction or deterioration of animals or goods where the passenger was or the animals or goods were booked through over the railways of two or more railway administrations, may be brought either against the railway administration from which the passenger obtained his pass or purchased his ticket, or to which the animals or goods were delivered by the consignor thereof, as the case may be or against the railway administration on whose railway the loss, injury, destruction or deterioration occurred."

G

H

The section provides that in the case of goods booked through over the railway of two or more railway administrations, a suit for compensation for loss of the goods can be brought against the administration to which the goods were delivered by the consignor irrespective of the question whether or not the goods were lost on its railway. The suit can be brought against the other administrations only if the loss occurred on their railways. The liability under sec. 80 is statutory. The section overrides all agreements purporting to limit the liability of an administration with respect to through booked traffic.

There was never any doubt that the railway company which contracted to carry goods partly over its own railway and partly over the railways of other carriers was responsible for the goods for the whole journey unless it limited its liability by agreement. (see *Muschamp* v. *Lancaster Etc., Junction Rly. Co.*)(1). The only doubt was about the responsibility of the other companies over whose railway the goods were carried. Before sec. 80 was enacted there was elaborate case law on the question whether they could be held liable in tort or by recourse to the doctrine of agency or partnership. Section 80 now places the liability of all the railway administrations concerned on a firm statutory footing.

In *Secretary of State & Ors.* v. *Afzal Husain*(2), Lindsay J.C. held that the G.I.P. Rly. to which the goods had been delivered for carriage to a station on the O & R. Rly. was not liable for loss occurring on the O & R. Rly. due to the negligence of the latter railway. In *D. H. Rly Co.* v. *Jetmull Bhojraj*(3) the Calcutta High Court held that the G.I.P. Rly. to which the goods had been delivered for carriage to a station on the Darjeeling Himalayan Rly. was not responsible for the loss occurring on the latter railway. It may be mentioned that the actual decision in the Calcutta case was reversed by this Court on another point in *Jetmull Bhojraj* v. *Darieeling Himalayan Rly. Co. Ltd*(4). We think that the Oudh and the Calcutta cases were not correctly decided. They ignore the clear wording of sec. 80. If it was the intention of the legislature to give a right of suit only against the administration on whose line the loss occurred it would have said so. The section gives a right of suit against the administration to which the goods are delivered by the consignor and it matters not that the loss occurred while the goods were being carried by another administration and was due to the negligence of the latter. In *Bengal & N. W. Rly Co.* v. *Haji Mutsaddi & Anr.*(5) the Allahabad High Court rightly held that the B. & N.W. Railway to which the goods were delivered for carriage to a

(1) 8 M & W. 421-151 E.R. 1103.
(2) A.I.R. 1920 Oudh 70.
(3) A.I.R. 1956 Cal. 390.
(4) [1963] 1 S.C.R. 832.
(5) 7 I.C. 160.

A station on the E. I. Railway was liable to pay compensation for the loss, though the loss occurred on the latter Railway.

The appellant argued that under sec. 74E the respondent must be deemed to have contracted with the Bengal Nagpur Railway only for the carriage of the goods over that railway's line and that he had no remedy against the Southern Railway. B The contention is based upon a misreading of sec. 74E. The material part of that section runs as follows :—

> "When any animals or goods tendered to a railway administration for carriage by railway have been booked through over the railways of two or more railway administrations or over one or more railway administra- C tions and one or more transport systems not belonging to any railway administration, the person tendering the animals or goods to the railway administration shall be deemed to have contracted with each one of the railway administrations or the owners of the transport systems concerned, as the case may be, that the provisions of D secs. 73, 74A, 74B, 74C, 74D and 75 shall apply, so far as may be, in relation to the carriage of such animals or goods in the same manner and to the same extent as they would have applied if the animals or goods had been carried over only one railway administration."

It is to be observed that sec. 72 defines the general responsibility E of a railway administration as a carrier of goods. Sections 73, 74A, 74B, 74C, 74D and 75 contain special provisions limiting the general responsibility as defined in sec. 72. The effect of s. 74E is that in the case of goods booked through over the railways of two or more administrations the consignor is deemed to have contracted with each one of them, that those special provi- F sions shall apply, so far as may be, in relation to the carriage of goods in the same manner and to the same extent as they would have applied if the goods had been carried over only one administration. In the present case, the goods were carried at owner's risk rate over the railways of two administrations and having regard to s. 74E, the provisions of secs. 74C(3) and sec. 74D apply to each administration as if the goods were carried over G only one administration. In view of secs. 74C(3) and 74D the consignor cannot recover compensation for loss except upon proof that the loss was due to the negligence or misconduct of an administration. If loss due to such negligence or misconduct is proved, he may under s. 80 sue the administration to which the goods were delivered by him or the administration on whose H railway the loss occurred. Section 74E does not enlarge the liability of the administration to which the consignor did not deliver the goods and such administration can be sued only if the loss occurred on its railway. Accordingly, in *Union of India* v.

Shamsuddin Waizuddin(1) the Patna High Court held that where the goods had been delivered to the Mysore railway for carriage to a station on the Eastern Railway, the latter was not made liable by sec. 74E for loss occurring on other railways. This decision was followed in *Chandrasekharam v. Union of India*(2). Likewise s. 74E does not restrict the liability imposed by s. 80 on the administration to which the goods were delivered by the consignor. That administration is liable to be sued under sec. 80 for the loss whether or not the loss occurred on the railway of another administration. It follows that the High Court rightly decreed the suits.

In the result, the appeals are dismissed with costs.

G.C. *Appeals dismissed.*

(1) A.I.R. 1968 Pat. 575.
(2) A.I.R. 1960 Orissa. 100.