

CIVIL REVISION.

Before Mukerji and Mitter JJ.

MOOLJI SIKKA & CO.

v.

BENGAL NAGPUR RAILWAY CO., LTD.*

1929.

Feb. 1.

Risk Note—Forwarding Note—Railway receipt—Date—Consignments
—*Railways Act (IX of 1890), s. 72, sub-s. (2), cls. (a), (b).*

Where Risk Notes are taken on the basis of existing conditions, they are operative.

The Risk Notes, the Forwarding Order and the railway receipt need not bear one and the same date.

So long as it is established that the Risk Notes, the Forwarding Note and the railway receipt refer to the particular consignment in question, the railway company is amply protected.

E. I. By. v. Jot Ram Chandra Bhan (1) dissented from.

Mahabarsha Bankapore v. Secretary of State for India in Council (2) distinguished.

CIVIL RULE obtained by Messrs Moolji Sikka & Co., plaintiffs.

The facts of the case, out of which this Rule arose, appear fully in the judgment of the Sealdah Small Cause Court Judge which was as follows:—

“This is a suit brought by the plaintiff for recovery of compensation from defendant railway company on account of damage to some *birhis* carried over the defendant’s line. The plaintiff alleges that the goods were booked from Gondia to Shalimar, that 2 baskets and 16 bags of *birhis* were damaged by wet when in transit over the defendant’s line and that this was due to negligence of defendant’s servants. The defendant contests the suit and denies liability.

“The points raised for decision are: (1) Whether the goods in question were damaged when in transit over the defendant’s line, (2) whether the consignment is covered by Risk Notes A and B and whether they protect the defendant from liability, and (3) whether the damage is due to negligence and misconduct on the part of defendant’s servants, and (4) what amount, if any, plaintiff can get.

“First point. The defendant denies that the goods were damaged in transit; there is absolutely no evidence to show that the goods were damaged before they were booked; there is no mention of any such thing in any paper filed in this case. This part of defendant’s story cannot be accepted.

“Second and third points. It is common ground of the parties that the goods were damaged. The railway receipt, consignment

*Civil Revision, No. 1000 of 1928, against the decision of A. T. Pal, Judge, Small Cause Court, Sealdah, dated May 9, 1928.

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“note and the certificate, produced by the plaintiff, show that the
 “consignment was carried at owner's risk and was covered by Risk
 “Notes A and B. In the plaint, not a word is said about the Risk
 “Notes, there is no denial of Risk Notes, nor is any question raised
 “about their validity. The evidence on behalf of the defendant
 “proves that the Risk Notes A and B were executed by plaintiff's
 “agent at Gondia, who brought the goods. Risk Note A was taken
 “because the packing condition was not fulfilled and the Note B
 “because reduced freight was paid. These notes are perfectly valid
 “documents and are binding on plaintiff. Some discrepancy between
 “the date of the railway receipt and that of the Risk Notes has been
 “pointed out by plaintiff. This is not material. The Risk Notes
 “were executed in respect of the consignment in question and the
 “date is the same as that of the consignment note itself. I hold
 “that the Risk Notes are operative.

“Under the conditions in the Risk Notes, defendant will be liable
 “in case of misconduct on the part of his servants. In the plaint,
 “it is said that the goods were carried in a defective wagon; the
 “nature of the defect is not stated in his evidence; the plaintiff says
 “that the wagon had wooden roof with holes in it and that water was
 “dropping through the holes when the goods were being unloaded at
 “Shalimar; it is significant that there is no mention of this in the
 “plaint and the evidence on this point does not appear to me to be
 “satisfactory. The onus of proving misconduct lies on the plaintiff
 “and I find that he has failed to prove this. So the defendant can not
 “be made liable for the damage. *

“Fourth point. The plaintiff is not entitled to get any relief.
 “Hence it is ordered that the suit be dismissed with costs.”

The plaintiff company then moved the High Court and obtained this Rule.

Mr. Surendramadhab Mallik and Mr. Prabodhchandra Mallik, for the petitioner.

Mr. Rameshchandra Sen and Mr. Jitendrakumar Sen Gupta, for the opposite party.

Cur. adv. vult.

MUKERJI AND MITTER JJ. A wagon-load of *birhis*, consisting of 353 bags and 4 baskets, was booked by the petitioners from Gondia to Shalimar on the B. N. Ry. and, when delivery was taken, 16 bags and 2 baskets were found damaged by water. The claim in the suit, to which this Rule relates, was for recovery of compensation for the damage aforesaid. The trial Judge dismissed the suit, holding that, as the consignment was covered by Risk Notes A and B, the railway company were protected from liability. The petitioners have then obtained this Rule.

In support of the Rule, several grounds have been urged. In the first place, it has been contended that

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as the petitioners took delivery after the damages had been assessed and a certificate of such assessment showing the amount of it as Rs. 334-8 as. had been given to the petitioners and after the Chief Station Master at Shalimar had promised to make good the amount, the railway company are under a disability to plead the Risk Notes. In answer to this contention, it is enough to say that nothing has been proved which would go to raise an estoppel of this nature against the company. Nextly, it has been urged that the goods were not carried in the proper vehicles enjoined by the rules, and so there was misconduct on the part of the company's servants which would deprive the company of their protection under the Risk Notes. The finding on this point as recorded by the Subordinate Judge is against the petitioner. Thirdly, it has been urged that the conditions under which the Risk Notes could be taken were non-existent and so the Risk Notes are not operative. What is said under this head is that Risk Note Form A is to be used when articles are tendered for carriage in bad condition or so defectively packed as to be liable to damage, leakage or wastage in transit, but that, in point of fact, no packing conditions were in existence at the date of despatch of the goods, and that Risk Note Form B is to be used only when there is an alternative rate quoted for the goods in the tariff and the consignor avails himself of the lower rate, while at the date of the despatch *birhis* had only one rate. Neither of these matters appears to have been specifically raised in the court below. In view, however, of the importance of the case, we have allowed the parties to go into these matters. We find that the arguments, so far as these matters are concerned, are based on some erroneous suppositions: The Forwarding Note itself bears the endorsement "Packed in bags" and baskets instead of boxes as required by the packing conditions prescribed,—showing that such rules did exist at the time. The tariff rates produced before us show that there were alternative rates and the petitioners availed themselves of the lower rate.

The Risk Notes, therefore, were taken on the basis of existing conditions, and, in our opinion, were operative. Nextly, it has been contended that the agreement to limit the liability of the company was void, as the Risk Notes were not duly executed within the meaning of section 72, sub-section (2), clause (a) of the Indian Railways Act. We find ourselves unable to agree in this contention, because the Risk Notes have been proved to have been signed by the plaintiffs' agent at Gondia, who delivered the goods to the railway administration. Lastly, it has been urged that the agreement is void, in that it was not in a form approved by the Governor-General in Council, as it must be, under section 72, sub-section (2), clause (b). The defect that is pointed out is that, whereas in the approved forms of Risk Notes A and B it is stated that the Risk Notes, the Forwarding Order and the railway receipt must bear one and "the same date," here the Risk Notes bore date, the 13th July, 1926, and the railway receipt, the 15th July, 1926. Reliance for this contention has been placed upon a decision of Tekchand J., in the case of *E. I. Ry. v. Jot Ram Chandra Bhan* (1). With all respect to the learned Judge, we must say we are unable to agree with him in the view that he has taken with regard to a discrepancy of this character. The case of *Mahabarsha Bankapore v. Secretary of State for India in Council* (2), upon which he has relied is, in our opinion, widely different. We are of opinion that so long as it is established that the Risk Notes, the Forwarding Note and the railway receipt refer to the consignment in question, the company is amply protected.

As all the contentions urged in support of the Rule fail, the Rule must be discharged with costs 2 gold mohurs.

Rule discharged.

G. S.

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