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Therefore the decision that they were entitled to a one-fifth share only has become final.

The cross-objection of the plaintiffs that they were entitled to possession must be sustained. There is nothing to prohibit the granting of a decree for joint possession. We dismiss the appeal with costs. We allow the objection so far that we restore the decree of the court of first instance. The plaintiffs will obtain their costs of the objection.

Appeal dismissed.

REVISIONAL CIVIL.

1912
March 10.

Before Mr. Justice Binerji.

GREAT INDIAN PENINSULA RAILWAY (DEFENDANT) V. SHAM
MANOHAR AND ANOTHER (PLAINTIFFS).*

Act No. IX of 1890 (Indian Railways Act), sections 80, 75—Suit for compensation for loss of through-booked goods—Short delivery—Uninsured goods.

Held that where goods are booked for conveyance over more than one railway system the owner can only claim compensation for loss against a railway company other than the company with which they were booked, if it is shown that the loss occurred on the system of the company sued.

Held also that if goods, the insurance of which is obligatory, are packed uninsured with other goods, the insurance of which is not obligatory, no compensation is obtainable for the loss of either class of goods. *Pandlik Udaji Jadhav v. S. M. Railway Company* (1) followed.

The facts of the case are as follows :—

The plaintiff booked six packages containing various kinds of goods from the Etawah station on the East Indian Railway, to be delivered at Jhansi, a station on the Great Indian Peninsula Railway. Out of the six packages three were not delivered at Jhansi. The plaintiffs sued the East Indian, the Oudh and Rohilkhand and the Great Indian Peninsula Railways. The claim against the Oudh and Rohilkhand Railway was withdrawn by the plaintiffs.

The lower court dismissed the plaintiffs' claim against the East Indian Railway on the ground that no notice under section 77 of the Indian Railways Act was given to that Company, but it decreed part of the claim against the Great Indian Peninsula Railway deducting from the claim the value of those articles which

* Civil Revision No. 6 of 1912.

(1) (1909) 11 Bom. L. R., 827.

under the second schedule of the Act, ought to have been declared and insured and which one of the plaintiffs had admitted formed part of the contents of each of the three packages lost.

The defendant company applied for revision.

Pandit *Ladli Prasad Zutshi*, for the applicants :—

Section 80 of the Railways Act provides that a suit for compensation for loss of goods can be brought either against the railway administration to which the goods were booked or against the railway administration on whose railway the loss of the goods occurred. In the present case the goods were admittedly delivered to the East Indian Railway, and there is nothing to show that the loss occurred on the Great Indian Peninsula Railway. Therefore no decree could be passed against the applicants.

Secondly, the lower court was clearly wrong in not dismissing the whole claim against the applicants as the plaintiff had admitted that the contents of each of the three packages were composed partly of goods, which under schedule 2 of the Railways Act ought to have been declared and insured. Because section 75 of that Act clearly exempts a railway company from the responsibility of loss of packages containing such articles. It was not necessary that the package or parcel should have contained nothing but such excepted articles as were mentioned in the second schedule; *Pandlik Udaji Jadhav v. S. M. Railway Company* (1), *Nanku Ram v. The Indian Midland Railway Company* (2), *Chunni Lal v. The Nizam's Guaranteed State Railway Company, Limited* (3).

Babu *Sital Prasad Ghose*, for the opposite party :—

The lower court had before it section 80 of the Railways Act, as it refers to it in the judgement. In spite of this, it has held the applicants liable for the loss of the packages. That being so, it must be taken that the court was satisfied that the loss occurred on that railway, although it referred to nothing on the record in support of this. A Small Cause Court Judge was not bound to record all the evidence. As regards the other point, it was certainly not the intention of the Legislature in enacting section 75 of the Railways Act to free the railway company from any risk whatever, if the packages consigned to its care by the merest chance contained any articles which ought to have been declared

(1) (1909) 11 Bom. L. R., 827.

(2) (1900) I. L. R., 22 All., 361.

(3) (1907) I. L. R., 29 All., 288.

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and insured. By neglecting to insure and declare such articles all that the plaintiffs were liable for was, that they could not claim the price of those articles. It would be preposterous to hold that the plaintiffs forfeited all claims to the entire packages or parcels by reason of the mere fact that each of the three parcels contained in a very small quantity articles mentioned in schedule 2 of the Act and which, as such, ought to have been declared and insured.

Pandit *Ladli Prasad Zutshi* was not called upon to reply.

BANERJI, J.—This was a suit for damages for non-delivery of three packages consigned by the plaintiff at the Etawah Railway Station for despatch to Jhansi. On the 23rd of May, 1910, the plaintiff booked six packages for despatch from Etawah station to Jhansi. Three of these were delivered and the other three were not delivered. In respect of the articles contained in the packages not delivered, the present suit was brought. The defendants to the suit were the East Indian Railway, The Oudh and Rohilkhand Railway and the Great Indian Peninsula Railway. The suit was withdrawn against the Oudh and Rohilkhand Railway; it was dismissed against the East Indian Railway, but a part of the claim has been decreed against the Great Indian Peninsula Railway. This application for revision has been filed on behalf of that railway. The first contention of the applicants is, that having regard to the provisions of section 80 of the Indian Railways Act (Act IX of 1890), the claim could not be decreed against this railway unless it was proved that the goods were lost on that railway. This contention appears to be well founded. Section 80 provides that a suit for compensation—among other things—for loss of goods booked through or over the railways of two or more railway administrations may be brought either against the railway administration to which the goods were delivered by the consignor or against the railway administration on whose railway the loss occurred. In the present case, the goods were delivered by the plaintiff to the East Indian Railway. Therefore, in accordance with the provisions of that section, the Great Indian Peninsula Railway would not be liable unless the loss occurred on that railway. It was denied by that railway that the goods ever came to its possession. The plaintiffs, therefore, were bound to prove that the goods came into the possession of the Great Indian Peninsula Railway and that the loss occurred on that railway. No evidence was

given on the point and the court below does not find that the loss occurred on that railway. I fail to understand, how, in view of the provisions of section 80 to which the learned Small Cause Court Judge has referred; he could make a decree against the Great Indian Peninsula Railway without finding whether the loss had occurred on that railway. On this ground alone the applicants are entitled to have the suit dismissed. It is also urged, that in view of the provisions of section 75 of the same Act no compensation could be allowed, in respect of any of the articles contained in the lost packages, inasmuch as a part of the goods contained in those packages were articles, which, under the second schedule to the Act ought to have been insured. The court below has excluded from the claim the value of those articles only which contained gold and silver tissue and lace. But the section clearly shows that the protection afforded by the section extends not only to the articles containing tissue and lace (which ought to have been insured), but also to all the other articles contained in the parcels in which the articles first mentioned were placed. This was held by the Bombay High Court in *Pandlik Udaji Jadhav v. S. M. Railway Company* (1) and is justified by the language of the section. The plaintiff in his deposition admitted that the three parcels not delivered to him contained the articles of which he gave details in the court below. Therefore, on both these grounds mentioned above, the suit ought to have been dismissed against the Great Indian Peninsula Railway. I allow this application, set aside the decree of the court below and dismiss the claim as against the applicants with costs in both courts.

Application allowed.

(1) (1909) 11 Bom. L. R., p. 827.

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