

## APPELLATE CIVIL.

*Before Sir Grimwood Mears, Knight, Chief Justice, and Mr. Justice Dalal.*

1927  
April, 20.

MULCHAND RAM PRASAD (PLAINTIFF) v. THE GREAT INDIAN PENINSULA RAILWAY (DEFENDANT).\*

*Act No. IX of 1890 (Indian Railways Act), section 72—Railway—Goods in transit destroyed by fire—Extent of liability of railway administration—Act No. IX of 1872 (Indian Contract Act), sections 151 and 152.*

The liability of a railway company in respect of goods carried by it "at railway risk" is governed by sections 151 and 152 of the Indian Contract Act, 1872. Where such a consignment was destroyed by fire, it was held that the railway company had discharged its liability when it had shown that it had done everything that a reasonable and prudent man would have done to protect and endeavour to save his own property. It was not bound to explain and prove the actual origin of the fire and to show that the company was free from any negligence in the matter.

THE facts of the case are fully stated in the judgement of the Court.

Pandit *Gopinath Kunzru*, for the appellant.

Pandit *Ladli Prasad Zutshi*, for the respondent.

MEARS, C. J., and DALAL, J.:—This is the appeal of a firm, Mulchand Ram Prasad, from a decision of the District Judge of Cawnpore who, affirming the decision of the Subordinate Judge, rejected the appeal of the plaintiff. The plaintiff firm had consigned 41 bags of betel-nuts from a place Bhola to Banda. That was on the 7th of May, 1923. One bag went astray, and for that the lower court gave compensation. That matter is final as between the parties. The remaining 40 were destroyed by fire. On the 7th of June, 1923, the wagon with the 40 bags was at

\* Second Appeal No. 224 of 1925, from a decree of H. E. Holme, District Judge of Cawnpore, dated the 23rd of October, 1924, modifying a decree of Gauri Shankar Tewari, Subordinate Judge of Banda, dated the 17th of March, 1924.

Manikpur station. The wagon was examined and was despatched to Karwi, arriving there on the next day, the 8th June. At Karwi certain packages were taken out of the wagon and ten bags of rice and five bundles of gunny bags were put into the wagon which left at 12.30 at night on the 9th *en route* to Banda. The train ran through one station and stopped at Bharat Kup, and there a pointsman noticed the fire in wagon No. 25045 and gave the alarm. This was the wagon in which the plaintiff's goods were contained. The engine-driver, the guard, the Assistant Station Master and other persons came up. The wagon was taken to a siding, efforts were made by means of a hook to drag out packages, but this could not be done. Efforts were made to put out the fire with water. This proved unavailing. The fire was, according to the evidence, very fierce, and consumed the betel-nuts, gunny bags, rice and the covered van itself. Under these circumstances the plaintiff commenced a suit for the recovery of Rs. 2,065 damages. Mr. Gauri Shankar Tewari who tried the case drafted, in our opinion, the proper issues and in every way appreciated what the point was that had to be decided. It may be stated that the railway company alleged that they were protected by a risk-note form H, but on investigation it was found that no such note had been signed by the consignor, and that, therefore, as between the consignor and the railway company they were governed by the ordinary law applicable to goods carried at railway risk. The railway company traced the whole history of the consignment, from the moment when undoubtedly it was safe and secure at Manikpur to the time when it had been totally destroyed at Bharat Kup; and they showed to the satisfaction of the Subordinate Judge that they had taken the same care of the consignor's goods as

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a prudent and reasonable man would have done of his own; that is to say, they had placed the goods in a wagon reasonably fit for the purpose with a fire proof iron roofing, that they had been careful not to put any inflammatory goods with the consignment, that the wagon had been examined internally and externally at proper times, and that when at Bharat Kup the fire was found all acts were done which a reasonable and prudent man would have done to protect and endeavour to save his own property. The learned Subordinate Judge, having heard all the evidence, found that the defendants had acted up to that standard, and that being so, held that they were absolved from any liability to make good to the plaintiff the loss or damage sustained by him. We are in complete agreement with the Subordinate Judge and the District Judge in this case, and we consider that the decision arrived at is a right one. It has been suggested to us that in all these cases the railway company cannot escape liability unless it can explain and prove the actual origin of the fire and show that the railway company itself was free from any negligence in the matter. We do not think that the liability of a railway company is as high as that. It is governed by sections 151 and 152 of the Contract Act, and both courts had this legal position carefully in mind and decided this case in accordance with law.

We, therefore, dismiss the appeal with costs.

*Appeal dismissed.*