

1928

AMARJIT
UPADHYA
v.
ALGU
CHAUBE.

succeed to this property the plaintiff has no *locus standi* to sue. His sisters may sue hereafter.

We accordingly allow this appeal and, setting aside the decree of the court below, dismiss the plaintiff's suit.

REVISIONAL CIVIL.

Before Mr. Justice Sulaiman.

1928
November,
16.

BANSI RAM AND OTHERS (PLAINTIFFS) v. B. N.-W. RAILWAY AND ANOTHER (DEPENDANTS).*

Railway—Risk-note form A (as amended)—“Loss arising from the same”—Interpretation—Goods insecurely packed—Shortage in weight at destination—Burden of proof.

A consignment consisting of three bundles of corrugated iron sheets was despatched over a railway. As the consignment was defectively packed, a risk-note in form A (as amended) was executed by which the consignor agreed to hold the railway “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.” At destination the consignment was found to be short in weight by over two maunds. In a suit for damages against the railway: *Held*, that the expression “loss arising from the same” meant “loss arising from the condition in which the goods are delivered,” that a shortage in weight is a condition in which the goods are delivered and is covered by the saving clause, and that the burden lay on the plaintiff to prove the exception, i.e., misconduct of the railway’s servants.

THE facts of the case are fully set forth in the judgment of the Court.

Pandit Ambika Prasad Pandey, for the applicants.

Mr. B. Malik, for the opposite parties.

1928

 BANSI
 RAM
 v.
 B. N.-W.
 RAILWAY.

SULAIMAN, J. :—This is a revision from a decree of the Court of Small Causes dismissing the plaintiffs' suit for damages against the defendant railway company. A consignment consisting of three bundles of corrugated iron sheets was despatched from Calcutta to Deoria. Its weight as noted at Calcutta was 8 maunds, 4 seers. The consignment when weighed at its place of destination was found to be 2 maunds, 7 seers short in weight. The plaintiffs took delivery under protest.

The court below has dismissed the claim, holding that the plaintiffs have failed to prove wilful negligence of the defendant or misconduct of the servants of the defendant.

The risk-note which has to be considered is in form A, as recently amended. It 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 consignor admitted that the goods were in such condition and 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 except upon proof that such loss arose from misconduct on the part of the railway administration's servants." It is not now open to the plaintiffs to urge that the consignment was neither in bad condition nor defectively packed. There is no doubt that the railway company is not liable for the condition in which it was delivered or from any loss arising from the same except on proof of the misconduct of the company's servants.

The learned advocate for the applicants has argued that the burden was on the railway company to prove that the loss arose on account of leakage, damage or wastage in transit. His contention is that the company has

1928

failed to prove that the shortage in weight was due to any such cause.

BANSI
RAMv.
B. N.-W.
RAILWAY.

In my opinion the expression "loss arising from the same" means "loss arising from the condition in which the goods are delivered." The Urdu translation of this contract, though not conclusive, also supports the view that the word "same" refers to the noun "condition." It seems to me that a shortage in weight is a condition in which the goods are delivered and is covered by the saving clause. When a bundle is insecurely 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. The question of wilful negligence did not really arise on the terms of the agreement; but that of misconduct on the part of the company's servants did arise. The burden lay on the plaintiffs to prove the exception, and the finding of the court below is that they have failed to discharge that burden. There is no proof that the loss of some of the sheets was due to any misconduct on the part of the railway servants.

I accordingly dismiss the revision with costs.