

Before Mr. Justice Mukerji and Mr. Justice Niamat-ullah.

1931
November,
13.

EAST INDIAN RAILWAY AND ANOTHER (DEFENDANTS) v.
NARAINDAS GANGA SARAN (PLAINTIFF).*

Railways Act (IX of 1890), section 72—Liability of railway for loss of consignment—Risk-note Form H—“Misconduct”—Mismanagement or culpable negligence, though not wilful, may amount to “misconduct”.

A bale of cloth weighing nine and a half maunds was consigned over a railway under risk-note Form H. The wagon in which the bale was loaded was locked securely on one side, but on the platform side with an ordinary lock attached to a ring. While the train was standing at some intermediate station, some man on the platform side managed to wrench off the ring, open the lock and remove the bale, so that it was lost. It was held that the legitimate inference was that the bale was removed owing either to deliberate misconduct of the railway servants, in the shape of standing by or helping in the theft, or at any rate in so neglecting the wagon that it was possible for several men to arrive at the place, to wrench off the ring and to remove a heavy load like the bale in question.

“Misconduct” need not be wilful or involve some degree of moral obliquity. Mismanagement or culpable neglect of duty towards the consignor may constitute misconduct.

Mr. U. S. Bajpai, for the appellants.

Mr. Panna Lal, for the respondent.

MUKERJI, J. :—The question to be determined in this appeal is whether in the circumstances found by the court below it may be properly said that misconduct on the part of the railway administration or its servants can be fairly inferred.

The plaintiffs respondents, who are a firm, consigned, for being sent to Hathras, a bale of *dhotis* weighing nine and a half maunds. The bale was handed over to the East Indian Railway administration at Howrah. The bale never reached its destination and it was found missing when the train arrived. As required by the risk-note H, under which the bale was

*Second Appeal No. 1585 of 1928, from a decree of Ali Ausat, Additional District Judge of Aligarh, dated the 18th of July, 1928, modifying a decree of Zamirul Islam Khan, Munsif of Hathras, dated the 18th of April, 1928.

consigned, the railway administration gave evidence as to how the bale had been dealt with in the course of its transit. The learned Judge found that the wagon in which the goods were placed was secured on one side by a lock described as "Ellis patent lock" and was secured on the other side by an ordinary lock. The Ellis patent lock is very secure, and it was found that it was used on that side of the wagon which did not appear on the station side. It was found that one of the rings to which the other lock was attached was broken, and the bale was missing. On the evidence the learned Judge came to the conclusion as follows: "The truth seems to be that while the train was standing at some intervening station, on the platform side some man managed to wrench off the ring and opened the lock and removed the bale. It is difficult to imagine that one man could remove from the wagon a bale weighing nine and a half maunds as the railway receipt shows." As I have stated, the question is whether from this fact we are prepared to draw the inference that there was misconduct on the part of some servant of the railway administration.

Murray in his Dictionary gives two meanings of the word "misconduct". The primary meaning is "bad management", "mismanagement" and "malfeasance or culpable neglect of an official in regard to his office". The second meaning is "adultery", with which we are not concerned. Giving this usual meaning to the word "misconduct" there seems to be no escape from the conclusion that the bale was removed owing either to deliberate misconduct of the railway servants, in the shape of standing by or helping in the theft, or at any rate in so neglecting the wagon that it was possible for several men to arrive at the place to "wrench off the ring" and to remove a heavy load like the bale in question. The neglect, in the latter case, is surely culpable and the whole affair is mismanaged. I am, therefore, prepared to hold that the lower

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appellate court was right in decreeing the claim against the appellants.

In *Secretary of State v. Allah Ditta* (1) an opinion has been expressed that misconduct involves some degree of moral obliquity. In the result, however, the learned Judges found that where a goods wagon had been unnecessarily detained for thirty hours, there was misconduct on the part of the servants of the railway, and this is in keeping with the meaning to be found in Murray's English Dictionary.

A few other cases have also been cited. Some of these interpret the words "wilful neglect". These cases are, in my opinion, irrelevant, because we are not concerned with that expression. In *Bengal Nagpur Railway Company v. Hukum Chand Hardat Rai* (2) the word "misconduct" was interpreted as being equal to wilful neglect, or failure of duty towards the consignor. I am prepared to accept the second meaning. Misconduct need not be wilful, if Murray be right in interpreting it as bad management, or mismanagement, or culpable neglect of an official in regard to his office. The word "wilful" is not there and I would not use it in explaining the word "misconduct".

In *Secretary of State for India in Council v. Bhagwan Das* (3) the word "misconduct" was considered, and it was held that "a railway servant, who is placed as a kind of guardian over the goods of the public in transit, is guilty of misconduct if he allows a trespasser to obtain access to such goods". This is in general agreement with the meaning of the word "misconduct" to be found in Murray's English Dictionary.

In the result I would dismiss the appeal with costs.

NIAMAT-ULLAH, J. :—I CONCUR.

(1) A.L.R., 1930 Lah., 120.

(2) A.L.R., 1930 Pat., 559.

(3) (1927) I.L.R., 49 All., 839.