

1927
 SHAH NAIM
 ATA
 v.
 LALA
 GIRDHARI
 LAL.

learned trial Judge or his successor to be re-admitted under its original number and decided according to law. Costs will abide the result.

Case remanded.

APPELLATE CIVIL.

1927
 February, 1.

Before Mr. Justice Wazir Hasan and Mr. Justice King.
 THE SECRETARY OF STATE FOR INDIA IN COUNCIL;
 (DEPENDANT-APPELLANT) v. MURLIDHAR (PLAINTIFF-RESPONDENT).*

Railway—Risk Form B, goods despatched under—Under-charge, claim for, when permissible.

The plaintiff offered some bags of castor-cakes at a station on the O. and R. Railway for being carried to a station on the B. & N.-W. Railway. The goods were accepted as manure and booked at owner's risk under Risk Form B and charged as such. At the place of destination the railway refused to deliver the goods unless an additional payment on account of freight at a higher rate was made. The plaintiff refused to pay the additional charge and filed the present suit for damages. The defence was that the booking clerk made a mistake in calculation and should have charged them at the higher rate for oil-cakes on the O. & R. Railway or at the higher rate for manure on the B. & N.-W. Railway and that the railway could ask for the payment of a proper freight on the basis of condition sixth printed on the reverse of the receipt—Risk Form B.

Held, that condition sixth in Risk Form B cannot be so interpreted as to permit any basic alteration in the terms of the contract. Under that clause alterations are permissible only in the case of mistakes in re-measurement, re-weighment, re-calculation and re-classification of rates, and the present case is not of such a nature.

The precise matter which has the effect of altering the contract is that the claim for under-charge necessarily carries with it the alteration of that part of the agreement between the parties which related to the carrying of the goods at the

* Second Civil Appeal No. 222 of 1926, against the judgment and decree of Sheo Narain Tiwari, Second Additional Subordinate Judge of Lucknow, dated the 16th of April, 1926, decreeing the plaintiff's claim and reversing the decree, dated the 11th of January, 1926, of Chaudhry Mohammad Abdul Azim Siddiqi, Munsif South, Lucknow, dismissing the plaintiff's claim.

owner's risk. [*Chunni Lal v. The Nizam's Guaranteed State Railway* (1), and *Ram Nath Ladhu Ram v. North-Western Railway* (2), followed. *B., B. & C. I. Railway v. Budh Sen* (3), and *Gulab Dei v. G. I. P. Railway* (4), referred to.]

The Government Advocate (Mr. *G. H. Thomas*) and Mr. *H. K. Ghosh*, for the appellants.

Mr. *G. N. Mukerji* and Mr. *Sri Ram*, for the respondent.

HASAN and KING, JJ. :—This is the defendants' appeal from the decree of the Second Additional Subordinate Judge of Lucknow, dated the 16th of April, 1926, reversing the decree of the Munsif South, Lucknow, dated the 11th of January, 1926. The appellant is the Secretary of State for India in Council, representing the administration of the East Indian Railway, Oudh and Rohilkhand branch.

Hasan and King, JJ.

The facts are as follows:—

On the 28th of August, 1924 the respondent offered 180 bags of castor-cakes (manure) weighing 270 maunds at the Oudh and Rohilkhand Railway station Bholaganj for being carried to Chapra, a station on the B. & N.-W. Railway. The offer was accepted by the appellant's agent at the Bholaganj station and a railway receipt No. 3705 was granted to the respondent. This receipt carried with it the condition that the goods were to be despatched at the owner's risk. It was in the well-known Risk Note Form B. The rates for carrying the consignment were naturally lower than they would have been had the goods been undertaken to be carried at the railway risk. The consignment was accepted as one of manure and at the rate mentioned above the entire freight was charged in respect of the consignment as such. The goods reached Chapra in due course.

(1) (1907) I.L.R., 29 All., 228 (2) (1926) I.L.R., 7 Lah., 412.
(F.B.)

(3) (1924) I.L.R., 46 All., 55. (4) (1926) I.L.R., 48 All., 217.

1927

THE
SECRETARY
OF STATE
FOR INDIA
IN COUNCIL
v.
MURLIDHAR.

*Hasan and
King, JJ.*

They were, however, not delivered to the respondent and a claim for a higher rate of freight was made. The position taken up was that unless the respondent paid an additional sum of Rs. 40-1 the goods would not be delivered to him. He refused to pay the additional charge for which the claim was made and after some correspondence between him and the railway administration the suit, out of which this appeal has arisen, was instituted with the relief of damages to the extent of Rs. 1,425-2.

The only defence with which we are concerned may be described as one of justification of the claim for the additional freight. The court of first instance upheld the defence and dismissed the suit. The lower appellate court, on appeal by the respondent, has decreed the suit for a sum of Rs. 1,375-2.

It is not disputed before us that if the appeal fails the decree of the court below as to the measure of damages is correct. The case on the side of the appellant is that the goods carried on that portion of the railway line, which was O. & R. R. section, should have been charged at a higher rate as oil-cakes and the booking clerk made a mistake in charging them as manure at a lower rate. The alternative case is that even if the goods were to be charged as manure, the rate of freight on the B. & N.-W. R. section of the journey is always a higher rate, and the difference between the freight paid and the freight chargeable on that basis is more than what was claimed at the destination. The reply to this argument is simple. It is argued that the claim in its original form as well as in the alternative clearly seeks to override the terms of contract under which the goods were accepted by the railway administration to be carried to the place of destination and this cannot be permitted. The argument of the learned

Advocate for the appellant in reply is that his client is entitled to ask for the payment of a proper freight on the basis of condition sixth, printed on the reverse of the receipt. That condition, the learned Advocate argues, must be treated as a part of the contract and is binding, having regard to the provisions of section 54 of the Indian Railways Act.

The argument put forward by the learned Advocate for the appellant must certainly prevail if it were applicable, but we are of opinion that it is not. The condition sixth is as follows:—

“ That the railway administration have the right of re-measurement, re-weighment, re-classification and re-calculation of rates terminals and other charges at the place of destination, and of collecting before the goods are delivered any amount that may have been omitted or under-charged.”

The precise matter which has the effect of altering the contract is that the claim for under-charge necessarily carries with it the alteration of that part of the agreement between the parties which related to the carrying of the goods at the owner's risk. The higher rate of freight on the O. & R. section of the railway will impose the legal liability of all risks to the goods on the railway administration. This will happen if the first aspect of the defence is accepted. From the alternative case of the appellant similar consequences follow. On the B. & N.-W. Railway manure, as such, is carried at a higher rate of freight and consequently at the railway risk and not at the owner's risk. There is a consensus of opinion that condition sixth cannot be so interpreted as to permit any basic alteration in the terms of the contract. The clause itself defines the scope within which alteration may be permissible. Those

1927

THE
SECRETARY
OF STATE
FOR INDIA
IN COUNCIL
v.
MURLIDHAR.

*Haran and
King, JJ.*

1927

THE
SECRETARY
OF STATE
FOR INDIA
IN COUNCIL
v.
MURLIDHAR.

Hasan and
King, JJ.

are the cases of mistakes in re-measurement, re-weighment, re-calculation and re-classification of rates. The present case, as we have said above, is not of such a nature. The leading case on the subject is considered to be that of *Chunni Lal v. The Nizam's Guaranteed State Railway Company, Ltd.* (1). It has been repeatedly followed in the same court—See the cases of *Bombay, Baroda & Central India Railway v. Budh Sen, Pusp Chand* (2) and *Gulab Dei v. The Great Indian Peninsula Railway* (3); but the most precise case on the point on which our decision proceeds will be found in *Ram Nath Ladhu Ram v. North-Western Railway* (4).

The appeal, therefore, fails and is dismissed with costs.

Appeal dismissed.

(1) (1907) I.L.R., 29 All., 228 (2) (1924) I.L.R., 46 All., 55.
(F.B.).

(3) (1926) I.L.R., 48 All., 217. (4) (1926) I.L.R., 7 Lah., 412.