

APPELLATE CIVIL.

Before Mr. Justice Zafar Ali and Mr. Justice Addison.

1926
 May 4.

RAM NATH-LADHU RAM (PLAINTIFF) Appellant
versus
 NORTH-WESTERN RAILWAY AND OTHERS
 (DEFENDANTS) Respondents.

Civil Appeal No. 782 of 1924.

Railways—Carriage of bags of Jagree over several Railway systems—Freight charged at owner's risk right through—over-looking the fact that one of the Railway systems carried such goods at class I rate only—Deficiency collected at destination—whether chargeable under the Railway rules.

Certain consignments of bags of *Jagree* were booked by the plaintiff firm at Rohtak for carriage partly to Hyderabad and partly to Warangal; up to Delhi these consignments had to go by the North-Western Railway, while from Delhi to Wadi they had to go over the Great Indian Peninsula Railway, and from Wadi to their destination over the Nizam's Guaranteed State Railway. The plaintiff had paid freight at Rohtak, but on arrival at their destination the Nizam's Guaranteed State Railway claimed Rs. 2,300-2-0 more as an undercharge, on the ground that *Jagree* is carried over the Great Indian Peninsula Railway (between Delhi and Wadi) only at class I rate. The amount was paid under protest and the present suit was instituted against the North-Western Railway for its recovery.

Held, that as the goods were booked throughout at owner's risk rule 6 printed on the back of the Railway receipt allowing recalculation of rates at the place of destination did not authorise the Nizam's Guaranteed State Railway to collect the difference between class I rate and Schedule rate for the journey between Delhi and Wadi, as this meant that the goods should have been carried between these two places at Railway risk. To hold otherwise would not only be most inequitable but would amount to allowing a basic alteration of the contract between the parties.

Chuni Lal v. Nizam's Guaranteed State Railway Co., Ltd. (1), followed.

1926

RAM NATH-
LADHU RAM
v.
NORTH-WEST-
ERN RAILWAY.

Second appeal from the decree of F. W. Skemp, Esquire, District Judge, Karnal, dated the 22nd December 1923, reversing that of Pandit Devi Dayal, Joshi, Senior Subordinate Judge, Rohtak, dated the 19th December 1922, and dismissing the plaintiff's suit.

SHAMAIR CHAND, for Appellant.

CARDEN-NOAD, Government Advocate, for Respondents.

The judgment of the Court was delivered by—

ADDISON J.—The plaintiff firm sued the North-Western Railway for recovery of Rs. 2,300-2-0 in the following circumstances:—

The plaintiff firm sent by five consignments 643 bags of *Jagree* to Hyderabad and 641 to Warangal. The consignments were booked at Rohtak and up to Delhi to go by the North-Western Railway, while from Delhi to Wadi they had to go over the Great Indian Peninsula Railway and from Wadi to their destination over the Nizam's Guaranteed State Railway. Altogether the plaintiff paid at Rohtak Rs. 4,260-4-0. On arrival at the destinations the Nizam's Guaranteed State Railway claimed Rs. 2,300-2-0 more as an undercharge. This sum was paid under protest and the present suit was then instituted for its recovery. The claim was decreed by the trial Court but dismissed by the learned District Judge in appeal. The plaintiff firm has filed this second appeal

It is admitted that the Booking Clerk at Rohtak made a mistake. He charged at schedule rate from

1926

Chami Lal v. Nizam's Guaranteed State Railway Co., Ltd. (1), followed.

RAM NATH-
LADHU RAM
v.
NORTH-WEST-
ERN RAILWAY.

Second appeal from the decree of F. W. Skemp, Esquire, District Judge, Karnal, dated the 22nd December 1923, reversing that of Pandit Devi Dayal, Joshi, Senior Subordinate Judge, Rohtak, dated the 19th December 1922, and dismissing the plaintiff's suit.

SHAMAIR CHAND, for Appellant.

CARDEN-NOAD, Government Advocate, for Respondents.

The judgment of the Court was delivered by—

ADDISON J.—The plaintiff firm sued the North-Western Railway for recovery of Rs. 2,300-2-0 in the following circumstances:—

The plaintiff firm sent by five consignments 643 bags of *Jagree* to Hyderabad and 641 to Warangal. The consignments were booked at Rohtak and up to Delhi to go by the North-Western Railway, while from Delhi to Wadi they had to go over the Great Indian Peninsula Railway and from Wadi to their destination over the Nizam's Guaranteed State Railway. Altogether the plaintiff paid at Rohtak Rs. 4,260-4-0. On arrival at the destinations the Nizam's Guaranteed State Railway claimed Rs. 2,300-2-0 more as an undercharge. This sum was paid under protest and the present suit was then instituted for its recovery. The claim was decreed by the trial Court but dismissed by the learned District Judge in appeal. The plaintiff firm has filed this second appeal

It is admitted that the Booking Clerk at Rohtak made a mistake. He charged at schedule rate from

. 1926

RAM NATH-
LADHU RAM
v.
NORTH-WEST-
ERN RAILWAY.

Delhi to Wadi over the Great Indian Peninsula Railway, whereas *Jagree* is only carried over that portion of the route at class I rate. This also means that the goods should have been carried over that portion of the route at railway risk whereas they were booked at owner's risk for all three parts of the journey. Rule 6 at the back of the railway receipts runs as follows:—

“ The Railway Administration have the right of remeasurement, reweighment, reclassification and recalculation 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 undercharged.”

This is an abridged reading of Rule 22 of Chapter I of the North-Western Railway General Rules. It was held, however, by the Allahabad High Court in *Chuni Lal v. The Nizam's Guaranteed State Railway Company, Limited* (1), that this rule did not authorise the Railway to alter the contract between the parties and charge at the place of destination maund rates instead of wagon rates. This decision of the Allahabad High Court has been followed later by the same Court and also by the Madras High Court. On the other hand, there are rulings which show that if there is merely an undercharge on account of the rates being miscalculated or mis-stated, etc., the undercharge can be collected at destination. In the present case there is this special circumstance that the goods were booked throughout at owner's risk, whereas the undercharge collected was because class I rate had not been charged between Delhi and Wadi, payment

(1) (1906) I. L. R. 29 All. 228 (F.B.).

of this rate implying that the goods were carried at Railway risk and not at owner's risk. It seems to us that as the goods were booked throughout at owner's risk it was not possible under this rule to collect at the destinations the difference between class I rate and schedule rate for the journey between Delhi and Wadi as this meant that the goods should have been carried between these two places at Railway risk. To hold otherwise would not only be most inequitable, but would amount to allowing a basic alteration of the contract between the parties.

For these reasons we accept the appeal and setting aside the order of the District Judge restore the decree of the first Court with costs.

N. F. E.

Appeal accepted.

1926

RAM NATH-
LADHU RAM
v.
NORTH-WEST-
ERN RAILWAY.