

APPELLATE CIVIL.

Before Mr. Justice Addison and Mr. Justice Bhide.

**SHAHDARA-SAHARANPUR LIGHT RAILWAY
COMPANY (DEFENDANT) Appellant**

1928

May 9.

versus

SULTAN AHMAD (PLAINTIFF) Respondent.

Civil Appeal No. 2122 of 1924.

Indian Railways Act, IX of 1890, section 72 (2)—Risk Note 'B'—Loss of goods consigned under—Burden of proof—'Wilful neglect'—meaning of.

Held, that in a suit for compensation for loss of goods consigned under Risk Note 'B' the *onus* is upon the plaintiff to prove that the loss was due to 'wilful neglect' on the part of the defendant Railway.

And, that the expression 'wilful neglect' is to be interpreted as meaning something done deliberately and intentionally, and not by accident or inadvertence, so that the mind of the person who does the act goes with it.

Tamboli v. G. I. P. Railway Co. (1), followed.

Second appeal from the decree of Bhagat Jagan Nath, District Judge, Delhi, dated the 1st July, 1924, reversing that of Lala Jeshta Ram, Subordinate Judge, 3rd Class, Delhi, dated the 31st March 1924, and decreeing the plaintiff's suit.

NAWAL KISHORE, for Appellant.

DIN DAYAL, KAPUR, for Respondent.

JUDGMENT.

BHIDE J.—Civil Appeals Nos. 2122 and 2123 of 1924 arise out of two suits based on similar facts and will be disposed of together. Plaintiffs in both the suits sued for recovery of compensation for loss of goods consigned to the defendant railway company, which the latter failed to deliver at the destination.

BHIDE J.

1928

SHAHDARA-
SAHARANPUR
LIGHT RAIL-
WAY COMPANY
v.
SULTAN AHMAD.
—
BHIDE J.

It has been found by the Courts below that the goods were consigned under Risk Note 'B'. It was therefore for the plaintiff to prove that the loss of goods was due to 'wilful neglect' on the part of the defendant railway. The trial Court held that no such neglect was proved and dismissed the suits. The learned District Judge on appeal reversed the decision and decreed plaintiff's claim in both the suits. From this decision the railway company has filed second appeals.

The learned District Judge has recorded his finding in the following terms:—

"My finding therefore under the circumstances is that in the first place the loss has not been satisfactorily proved and even if this be taken to have been done, the circumstances show that the theft was either committed by the *chowkidars* or other railway employees, or if it was at all committed by some outsiders it was certainly made possible by the wilful neglect of the said *chowkidars* who did not keep a proper watch as they should have done."

This finding seems to be based on a misconception of facts and law. The loss of the goods was not in dispute and there was no issue on the point. The Risk-notes having been proved, the burden of proving 'wilful neglect' on the part of the appellant was on the plaintiffs, but the learned District Judge appears to have thought that the burden was on the railway company and has proceeded on conjectures. The mere fact that the *chowkidars* were dismissed by the railway company cannot be taken as any evidence of 'wilful neglect' on their part. It is not known when the *chowkidars* were dismissed and for what

reason. Even if there was negligence on their part there is nothing whatever to indicate that it was 'wilful.' The expression 'wilful neglect' has been interpreted in a recent Privy Council ruling *Tamboli v. G. I. P. Railway Co.* (1) as meaning that the 'act is done deliberately and intentionally and not by accident or inadvertence, so that the mind of the person who does the act goes with it.' No such conduct on the part of the *chowkidars* or any other railway servants has been proved in these suits.

I would accordingly accept both appeals with costs throughout and restore the decrees of the trial Court.

ADDISON J.—I agree.

N. F. E.

ADDISON J.

Appeal Accepted.

APPELLATE CIVIL.

Before Mr. Justice Addison and Mr. Justice Bhide.

MUSSAMMAT DURGI (PLAINTIFF) Appellant

versus

SECRETARY OF STATE (DEFENDANT)

Respondent.

Civil Appeal No. 2673 of 1927.

Criminal Procedure Code, Act V of 1898, sections 87 and 88—Absconder—attachment and sale of property—validity of, as against wife's right of maintenance.

Held, that both under Customary and Hindu Law the maintenance of a wife by her husband is a matter of *personal* obligation which is liable to be defeated by the attachment and sale of his property under sections 87 and 88 of the *Criminal Procedure Code*.

1928

SHAHNARA-
SAHARANPUR
LIGHT RAIL-
WAY COMPANY
v.
SULTAN AHMAD.

BHIDE J.

1928

May 10.

(1) (1928) I. L. R. 52 Bom. 169 (P. C.).