CIVIL RULE

Before Stephen and Holmwood JJ.

1913
March 27.

INDIA GENERAL STEAM NAVIGATION COMPANY

v.

BHAGWAN CHANDRA PAL.*

Carriers—Carriers Act (III of 1865), ss. 6, 7, 8, 9—Liability of steamer company for goods damaged in transit—Onus of proof—Negligence or criminal act of company, its servant, or agent presumed.

Where a steamer company forwarded a consignment of four tins of oil on terms contained in what is known as an owner's risk note, after receiving the tins in good condition, and the consignee refused to take delivery as one tin was cut open and partly empty and another was quite empty, and brought a suit for the value of the oil :—

Held, that the steamer company, being a common carrier, was in a different position from railway companies, who are only bailees, coming under ss. 151, 152 and 161 of the Contract Act. Its liability is, therefore, that of an insurer subject to certain exceptions under s. 6 of the Carriers Act.

Held, also, that the onus was, as a matter of course, on the steamer company as common carriers, even in a case covered by special contract, to disprove negligence, as the loss of the goods is *primâ facie* evidence of negligence or criminal act of the carrier, his servants or agents.

Choutmull Doogur v. *The Rivers Steam Navigation Co.* (1) followed.

Irrawaddy Flotilla Co. v. *Bugwandas* (2), *Lalchand Seo Karan* v. *E. I. Ry. Co.* (3) referred to.

Sheobarut Ram v. *B. and N.-W. Ry. Co.* (4) not followed.

THE facts are briefly as follows. A Dacca firm sent to the plaintiff, opposite party, four tins of *til* oil

* Civil Rule, No. 46 of 1913, against the order of Ahmadulla, Small Cause Court Judge of Silchar, Cachar, dated Oct. 9, 1912.

(1) (1897) I. L. R. 24 Calc. 786.
(2) (1891) I. L. R. 18 Calc. 620.
(3) (1913) 17 C. W. N. 635 n.
(4) (1912) 16 C. W. N. 766.

through the defendant company at owner's risk. The tins weighed 1 maund 36 seers 8 chittaks, and were apparently in good condition when delivered to the defendant's servants at Dacca. On 21st March the plaintiff called at Silchar Ghât for taking delivery of the tins, and found one tin cut open at the top and its contents gone in part, another was entirely empty, and the other two in good condition. He refused to take delivery unless the consignment was weighed and a note made to that effect on the bill, which the defendant company's servants refused to do. Hence delivery was not taken, and this suit was instituted after serving the defendant company with notice.

The defendant company denied liability, alleging that the goods were carried at owner's risk, which was a special contract, and that there was no negligence on the part of the company's servants.

The learned Small Cause Court Judge held that, although the consignment was carried under a special contract, as the tins had been received by the defendants' servants in good condition, they were responsible for the cutting and emptying of the tins, which was a criminal act, and the liability had to be fixed on the defendants. In this view of the case, he gave plaintiff a decree for Rs. 41-12, being the price of the oil, but without any damages, as the goods were carried at owner's risk.

The defendant company, thereupon, moved the High Court and obtained this Rule.

Mr. B. C. Mitter, *Babu Provash Chandra Mitter* and *Babu Ambica Pada Chowdhury*, for the petitioners.

Babu Tara Kishore Chowdhury and *Babu Braia Lal Chuckerbutty*, for the opposite party.

Cur. adv. vult.

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STEPHEN J. The facts of this case are as follows.

The plaintiff in a Small Cause Court suit, who shows cause as the opposite party to a Rule before us, was the consignee of four tins of oil forwarded to him from Dacca by the defendants, the present petitioners, on terms contained in what is known as an owner's risk note. The defendants received the tins in good condition and carried them to Silchar, where they called on the plaintiff to take delivery. This he refused to do, because one tin was cut open and partly empty and another was quite empty, but brought a suit for the value of the oil. The Court below decreed the suit on the ground that the company's servants were responsible for what had happened. No evidence was given on either side to show how the two tins that were not full had been tampered with.

This Court has granted a Rule calling on the opposite party to show cause why the decision of the Small Cause Court should not be set aside or modified on the ground that the plaintiff was wrong in not taking delivery, and was therefore not entitled to the value of all the four tins; and that the Court should have held that the onus was on the plaintiff to prove negligence on the part of the defendants, or that the loss of the missing oil was due to theft by the servants or agents of the defendants.

The first ground has not been pressed before us.

The second seems to us to be amply covered by authority.

There is no doubt that the defendant company is a common carrier, and, therefore, subject to the provisions of the Carriers Act, 1865, and in a different position from a railway company, which is only a bailee, under sections 151, 152 and 161 of the Contract Act, as far as the carriage of goods is concerned: see

Irrawaddy Flottila Co. v. *Bugwandas* (1). Its liability is, therefore, that of an insurer; but by section 6 of the Carriers Act it can, subject to exceptions that do not apply here, limit that liability, though, by section 8, it will be liable for loss of, or damage to, any property arising "from the negligence or criminal act of the carrier or any of his agents or servants."

Section 9 then enacts: "In any suit brought against a common carrier for the loss, damage or non-delivery of goods entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents." The special contract in this case exempts the defendant company from liability for any "loss or damage of whatever nature or kind soever, unless it has arisen from the negligence or criminal act of their servants or agents."

In dealing with a case arising under the same Act, covered by a special contract in what are practically similar terms, where the goods in the possession of the bailee were destroyed by fire, Maclean C. J. treated it as a matter of course that the common carrier defendant must disprove negligence. Macpherson J. said: "the effect of the 9th section of the Carriers Act is to make the loss of goods evidence of negligence which the carrier must displace." Trevelyan J. held that "the loss of the goods is *primâ facie* evidence of the negligence or criminal act of the carrier, his servants or agents, and, therefore, if the carrier seeks to exempt himself from liability, he must negative such *primâ facie* evidence, that is to say, he must prove that the loss was or must have been occasioned otherwise than by the negligence or

(1) (1891) I. L. R. 18 Calc. 620.

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criminal act of himself, his servants or agents": *Choutmull Doogur* v. *The Rivers Steam Navigation Co.*(1).

The provisions of the Carriers Act seem to us to be quite clear, and we find it impossible to distinguish the present case from that which we have just quoted. We have been referred to decisions relating to railways which seem to be decided in a contrary view, but in view of the fact that a railway company is not a common carrier, we cannot consider that they have any application to the present case.

The result is that we hold that the case was rightly decided in the Court below as far as the question of onus is concerned. The Rule is therefore dismissed with costs.

HOLMWOOD J. I agree with my learned brother. I think that under the Carriers Act a *primâ facie* case of ordinary care and caution must be made out by the defendant company.

The judgment in *Lalchand Sew Karan* v. *The E. I. Ry. Co.* (2) clearly brings this out even in the case of the Railway Act, and there is nothing in *Sheobarut Ram* v. *B. and N.-W. Ry. Co.* (3) to affect the long course of decisions under the Carriers Act. I would, therefore, discharge this Rule, as no evidence whatever was offered by the company.

G. S. *Rule discharged.*

(1) (1897) I. L. R. 24 Calc. 786. (2) (1913) 17 C. W. N. 635n.
(3) (1912) 16 C. W. N. 766.