1962

May 1.

UNION OF INDIA

v.

M/s. UDHO RAM & SONS

(J. L. KAPUR, K. C. DAS GUPTA and RAGHUBAR DAYAL, JJ.)

Railway—Loss of goods in transit—Negligence of railway servants—Liability—Indian Railways Act, 1890 (IX of 1890), s. 72—Indian Contract Act, 1872 (IX of 1872), s. 151.

Certain goods consigned by a merchant to the respondent. Some of the goods were lost in transit. The respondent sued the railway authorities for demages for the loss on ground that the loss was incurred due to the negligence of the railway authorities. The defence raised was that loss occurred due to factors beyond the control of the railway authorities. The suit was dismissed by the trial court. On appeal the High Court reversed the judgment of the trial court and found that the loss was caused by the negligence and misconduct of the railway authorities in as much as the railway police failed to take precaution to see that no body interfered with the goods.

The Union of India appealed to the Supreme Court by way of certificate granted by the High Court.

Held, that the responsibility of the railway under s. 72 of the Indian Railways Act is subject to the provisions of s. 151 of the Indian Contract Act and the Railway as a bailee was bound to take as much care of the goods bailed to it as a man of ordinary prudence would under similar circumstances. The loss having taken place due to the negligence of the railway servants the railway is liable for the loss incurred by the respondent.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 581 of 60.

Appeal from the judgment and decree dated April 23, 1958, of the Punjab High Court (Circuit Bench) Delhi in Civil Regular First Appeal No. 32-D of 1953.

Naunit Lal and *D. Gupta*, for the appellant.

Gurbachan Singh and *Harbans Singh*, for the respondent.

1962. May 1. The Judgment of the Court was delivered by

RAGHUBAR DAYAL, J.—This, appeal, on certificate granted by the Punjab High Court, arises in the following circumstances.

M/s. Radha Ram Sohan Lal of Calcutta consigned certain goods to self at Delhi. Of the consignment, certain articles were not delivered to M/s. Udho Ram & Sons, the plaintiffs, in whose favour the railway receipt had been endorsed by the consigner. Having failed to receive the compensation for the loss suffered on account of the articles not delivered, the suit giving rise to this appeal was instituted. There is now no dispute about the amount of loss determined by the Court, as suffered by the plaintiffs.

The only dispute between the parties is whether the loss of goods in transit between Calcutta and Delhi was due to the mis-conduct and negligence of the railways or not. The Union of India, the defendent, contended that the loss occurred due to circumstances beyond the control of the railway administration.

The trial Court found that the railway wagon in which the consignment was loaded had been thereafter properly rivetted and sealed at Howrah, that the seals and rivet of one door of the wagon were found open when the train which left Howrah at 1. 30 a. m. on October 1, 1949, reached Chandanpur Station at 3.15 a. m., the same night, the train having stopped for 14 minutes at the Howrah—Burdwan Link for the home signal at 2. 05 a. m., and that the railway protection police escorted the train. The High Court accepted these findings and they are not questioned.

1963

Union of India
v.
M/s. Udho Ram & Sons

Raghubar Dayal J.

The trial Court, however, found that the precaution taken of posting railway protection police in a goods train, in view of the frequent thefts in running trains between Howrah and Chandanpur, amounted to the railways taking proper care of the goods delivered to them as carriers and that therefore the railways were not guilty of any negligence and mis-conduct. It was of the view that the railway protection police which usually travelled in the guard's van, could not possibly know what was happening in the wagons at the other and or in the middle of the train during the journey. It therefore dismissed the suit.

On appeal, the High Court held the railways responsible for the loss which, in its view, was due to its negligence and mis-conduct inasmuch as there was no evidence on record that the railway protection police took any precautions to see that nobody interfered with the train when it halted for 15 minutes at the Howrah—Burdwan Link at night. There was no other arrangement for watch and ward at the Link. There was no evidence as to what was the strength of the railway protection police or to show that it did stir out of the train see that the wagons were not interfered with. It therefore concluded that the servants of the railway were negligent and did nothing to see that opportunities for theft were eliminated as far as possible, that the railway administration was responsible for the negligence of its employees as it could act through its employees and that therefore the loss of goods was due to the mis-conduct and negligence of the railways. It therefore reversed the decree of the trial court and decreed the plaintiffs' suit for the amount of loss held suffered by the plaintiffs. It is this decree against which the Union of India has obtained the certificate of fitness for appeal from the Punjab High Court and has preferred this appeal.

There is no evidence on record that the railway protection police which escorted the train was adequate in strength for the purpose of seeing that the goods were not interfered with in transit. In fact, the defendants did not allege in their written statement that any railway protection police escorted the train. The presence of the railway protection police with the train was just deposed to by Chatterjee, D. W, 10, the then Assistant Station Master at Chandanpur Railway Station. He did not mention that fact in any of his messages or memorandum in which he simply mentioned the presence of the railway protection police at the time of re-sealing the wagon. He stated in cross examination that he did not remember from memory the events of the occurrence at Chandanpur Station on October 1, 1949, and was making his statement on the basis of the record before him. However, both the Courts below have recorded the finding that railway protection police did escort the train. There is no evidence as to why the police force could not see to the non-interference with the wagons when the train halted at the Link where, according to the Courts below, the thieves probably get at the wagon and tampered with its seal and rivets. In the absence of any evidence about the strength of the railway protection police, the contention of the appellant that the force was adequate cannot be accepted.

It may be true that any precautions taken may not be always successful against the loss in transit on account of theft, but in the present case there is no evidence with respect to the extent of the precautions taken and with respect to what the railway protection police itself did at the place where the train had to stop. We cannot accept the contention that the railway protection police could not have moved out of the guard's van due to the uncertainly of the stoppage of the train at the

1962

Union of India v. M/s. Udho Ram & Sons

Raghubar Dayal J.

signal. It was the job of its members to get down on every stoppage of the train and to keep an eye at the various wagons, as best as they could. There could be no risk of the train leaving them on the spot suddenly. They could climb up when the train was to move. The wagon in which the plaintiffs' goods were, was in the centre of the train. It was the 29th carriage from the other end. It must be taken to be the duty of railway protection police to get out of the guard's van whenever the train stops, be it at the railway platform or at any other place. In fact, the necessity to get down and watch the train when it stops at a place other than a station is greater than when the train stops at a Station, where at least on the station side there would be some persons in whose presence the miscreants would not dare to temper with any wagon and any tempering to be done at a station is likely to be on the off side.

The responsibility of the railways under s. 72 of the Indian Railways Act is subject to the provisions of s. 151 of the Indian Contract Act. Section 151 states that in all cases of bailment, the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstance, take of his own goods of the same bulk, quality and value as the goods bailed. Needless to say that an ordinary person travelling in a train would be particular is keeping an eye on his goods especially when the train stops. It is not therefore imposing a higher standard of care on the railway administration when it is said that its staff, and especially the railway protection police specially deputed for the purpose of seeing that no loss takes place to the goods, should get down from the wagon and keep an eye on the wagons in the train in order to see that no unauthorised person gets at the goods.

We are therefore of opinion that the finding of the High Court that the loss took place due to the negligence of the railway servants and, consequently, of the railway administration, is justified.

We therefore dismiss the appeal with costs.

Appeal dismissed.

MOHANLAL CHUNILAL KOTHARI

v.

TRIBHOVAN HARIBHAI TAMBOLI

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, N. RAJAGOPALA AYYANGAR and T. L. VENKATARAMA AIYAR, JJ.)

Suit—Decree—Law changed during pendency of appeal—Appellate Court, if bound to apply changed law—Retrospective operation—Bombay Tenancy and Agricultural Lands Act (Bom. LXVI of 1948, s. 88 (1)(d)—Bombay Tenancy Act, 1939, s. 3A(1).

Certain lands were situated in the erstwhile State of Baroda before it became a part of the State of Bombay by merger. The Bombay Tenancy and Agricultural Lands Act, 1948, was extended to Baroda on August 1, 1949. Suits were filed in the Civil Court by appellants—landlords against the respondents who were their tenants on the ground that the latter became trespassers with effect from the beginning of the new agricultural season in May, 1951. Decrees for possession were passed by the Civil Court in favour of landlords and the same were confirmed by the first appellate court. However, the High Court accepted the appeals and dismissed the suits. It was held that under the provisions of s. 3A(1) of the Bombay Tenancy Act, 1939, as amended, a tenant would be deemed to be a protected tenant from August 1, 1950 and that vested right could not be affected by the notification dated April 24, 1951 issued under s. 89 (1) (d) of the Act of 1948 by which the land in suit was excluded from the operation of the Act. The notification dated April 24, 1951 had no retrospective effect and did not take away the protection