

APPELLATE CIVIL

Before H. R. Khanna, J.

UNION OF INDIA,—Appellant

versus

RAUNAQ SINGH,—Respondent

Regular Second Appeal No. 24-D of 1959.

1963
 August, 28th.

Railways Act (IX of 1890)—S. 74-A—Damage—Meaning of—Goods consigned not properly packed according to the directions contained in Goods Tariff—Railway administration—Whether liable for loss in transit of such goods.

Held, that the word 'damage' as used in section 74-A of the Indian Railways Act, 1890, denotes partial destruction or partial impairment and implies that the goods still exist although in damaged condition and that it does not cover the case of loss of the goods. There are a number of sections both preceding as well as following section 74-A in which the word 'loss' has been used and if the legislature intended that the protection given by section 74-A of the Act, would also cover the case of loss, there was nothing to prevent the legislature from mentioning the word 'loss' in addition to the words "deterioration, leakage, wastage or damage" in section 74-A of the Act. The fact that the legislature did not use the word "loss" in section 74-A of the Act, though that word was used in some of the preceding sections as well as following that section would go to show that the protection given by section 74-A of the Act was not intended to cover the case of loss. The word 'damage' as used in section 74-A of the Act is not comprehensive enough to cover the case of loss of part of the goods consigned and the Railway administration cannot escape its liability for loss in transit of a part of the goods consigned, though not packed in accordance with the directions contained in the Goods Tariff.

Second Appeal from the decree of the Court of Shri S. L. Chopra, Additional District Judge, Delhi, dated the 20th day of November, 1958 reversing that of Shri G. C. Jain, Sub-Judge 1st Class, Delhi, dated the 30th May, 1958 and granting a decree for Rs. 1,826-8-0 in favour of the plaintiff against the defendant and leaving the parties to bear their own costs.

NANAK CHAND, ADVOCATE, for the Appellant.

RAJ KISHAN, ADVOCATE, for the Respondent.

JUDGMENT

KHANNA, J.—The question as to what is the meaning of the word 'damage' as used in section 74A of the Indian Railways Act (hereinafter referred to as the Act) arises for determination in this second appeal filed by the Union of India against the judgment and decree of the learned Additional District Judge, Delhi, whereby he accepted the appeal of Raunaq Singh, respondent and awarded a decree for recovery of Rs. 1,826-8-0 in favour of the plaintiff-respondent against the defendant-appellant.

Khanna, J.

The brief facts of this case are that two consignments consisting of pipes with sockets were booked from Jetty (near Calcutta) to Delhi as per railway receipts Nos. 150576, dated 18th February, 1956 and 150589, dated 23rd February, 1956. At the time of the delivery of the two consignments, there was found a shortage of 148 sockets in one consignment and 122 sockets in the other consignment. The plaintiff, who was endorsee of the railway receipts, filed the present suit for recovery of Rs. 2,430 on the allegation that he suffered damages to the extent of the above amount on account of the non-delivery of the above sockets. The non-delivery of the sockets was ascribed to the misconduct and negligence of the railway administration.

The suit was resisted on behalf of the railway administration *inter alia* on the ground that the consignor did not pack the goods according to the conditions prescribed in Goods Tariff and the railway administration as such was not liable for the damages under section 74A of the Act except on proof of negligence or misconduct. The trial Court found that the goods had not been packed in accordance with condition 19(f) of the Goods Tariff and entry to that effect was made by the consignor. It was further held that

Union of India,
v.
 Raunaq Singh,

 Khanna, J.

section 74A of the Act applied and under that section the railway was not responsible except upon proof of negligence or misconduct on the part of the railway administration. The plaintiff was further found to have failed to prove any misconduct or negligence on the part of the railway administration or its employees. The price of each socket was found to be Rs. 10-8-0. As a result of its findings, the trial Court dismissed the suit.

On appeal the learned Additional District Judge reversed the finding of the trial Court on the point that section 74A of the Act exonerated the railway administration from its liability in the present suit. It was held that section 74A of the Act did not apply to this case. The appeal of the plaintiff-respondent was, accordingly, accepted and a decree for recovery of Rs. 1,826-8-0 was awarded in his favour, parties being left to bear their own costs throughout.

At the hearing of the appeal it is not disputed that the goods in question at the time they were consigned to the railway administration had not been packed in accordance with the directions contained in the Goods Tariff. The question which, however, arises for consideration is whether the railway can escape liability because of the defective packing on account of the provisions of section 74A of the Act. This section reads as under:—

[His Lordship read section 74A and continued:]
 The above section deals with the liability of a railway administration for goods in defective conditions or which are defectively packed, and the point canvassed in arguments is whether the word 'damage' as used in the section would cover the case of non-delivery of part of the goods. According to Mr. Nanak Chand, learned counsel for the appellant, the word 'damage' as used in the section would also cover the case of loss

of part of the goods. This stand has been controverted by Mr. Raj Kishan, learned counsel for the respondent.

Union of India,
v.
Ramaq Singh,

Khanna, J.

I have given the matter my earnest consideration and am of the view that the word 'damage' as used in the section denotes partial destruction or partial impairment and implies that the goods still exist although in damaged form and that it does not cover the case of loss of the goods. There are a number of sections both preceding as well as following section 74A in which the word 'loss' has been used and if the legislature intended that the protection given by section 74A of the Act would also cover the case of loss, there was nothing to prevent the legislature from mentioning the word 'loss' in addition to the words "deterioration, leakage, wastage or damage" in section 74A of the Act. The fact that the legislature did not use the word "loss" in section 74A of the Act though that word was used in some of the preceding sections as well as following that section would, in my opinion, go to show that the protection given by section 74A of the Act was not intended to cover the case of loss. I further find that in sub-section (3) of section 74C as well as in section 76 of the Act the legislature has used both the words 'loss' as well as 'damage' in addition to 'destruction and deterioration'. If in fact the word 'damage' was used in a comprehensive sense as to include the cases of loss, there was hardly any necessity for using the word 'loss' in the above-mentioned two sections, because in such an event the use of the word 'loss' would have been superfluous and otiose. The fact that the legislature also mentioned the word 'loss' in addition to the word 'damage' in sections 74C and 76 clearly goes to show that the word 'loss' was used as something distinct and separate from the word 'damage'. It also cannot be said that though the word 'damage' as used in section 76C and

Union of India,
v.
Raunaq Singh,
—
Khanna, J.

76 of the Act is not comprehensive enough to cover the case of loss, it is comprehensive to cover the case of loss so far as section 74A of the Act is concerned. The courts would ordinarily presume that a word used in different parts of a statute carries the same meaning. It is observed on page 322 of Maxwell on the Interpretation of Statutes, Tenth Edition—

“It is, at all events, reasonable to presume that the same meaning is implied by the use of the same expression in every part of an Act.”

In the circumstances, I am of the view that the word ‘damage’ as used in section 74A of the Act is not comprehensive enough to cover the case of loss of part of the goods consigned. The railway administration consequently cannot escape its liability by relying on the provisions of section 74A of the Act.

The appeal, accordingly, fails and is dismissed, but, in the circumstances of the case, I leave the parties to bear their own costs.

B.R.T.

Before D. Falshaw, C. J. and A. N. Grover, J.

THE STATE OF PUNJAB AND ANOTHER.—Appellants

versus

BHAGAT RAM.—Respondent

Letters Patent Appeal No. 16 of 1960.

1963
—
Sept., 4th.

Limitation Act (IX of 1908)—Art. 181—Whether applicable to an application under section 88 of the Lunacy Act (IV of 1912).

Held, that article 181 of the Indian Limitation Act 1908, applies only to applications which are made under