

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No. 398/2006**

% ***14<sup>th</sup> January, 2019***

**CONTAINER CORPORATION OF INDIA**

**..... Appellant**

Through: Mr. S.C. Rajpal and Mr. Varun  
Rajpal, Advocates (Mobile No.  
9891175510).

**versus**

**UNITED INDIA INSURANCE CO. LTD. AND ANR.**

**..... Respondents**

Through: Mr. Sameer Nandwani and Mr.  
Junaidullah, Advocates for R-1  
(Mobile No. 9810528802).  
Mr. Akhil Sachar and Ms. Sunanda  
Tulsyan, Advocates for R-2 (Mobile  
No. 9891105069).

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

To be referred to the Reporter or not? **YES**

**VALMIKI J. MEHTA, J (ORAL)**

**RFA No. 398/2006 and C.M. Appl. No. 9186/2006 (for stay)**

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant no. 1 in the suit impugning the Judgment of the trial court dated 03.03.2006 by which the trial court has decreed the suit filed by the respondent no. 1/ plaintiff/subrogee insurance company for an amount of Rs.10,56,347/- along with interest at 6% per annum on account of loss of goods being tin ingots, which were taken in transit for shipment by the appellant/defendant no. 1 from Bombay Port to Internal Container Depot (*hereinafter* 'ICD') Tuglakabad, New Delhi. The claim filed by the respondent no. 1/plaintiff is with respect to a delivery shortage of 4350 kgs of tin ingots.

2. The facts of the case are that respondent no. 1/plaintiff filed the subject suit pleading that the respondent no. 2/defendant no. 2/MMTC had shipped its consignment of tin ingots and this consignment was insured with the respondent no. 1/plaintiff vide Insurance Policy dated 12.10.1995 for a sum of Rs. 2,40,00,000/-. The consignment was kept in container No. UACU 2963769/20, which was originally dispatched from Penang Port and had reached the Bombay Port on 27.10.1995. After the arrival of the shipment in

Bombay, it was loaded on to a train on 13.11.1995 with original Railway Seal no. 164901. The said consignment reached Delhi Station on 18.11.1995, and at the ICD Tuglakabad on 19.11.1995. When the container was inspected on 22.11.1995 at ICD Tuglakabad by surveyors M/s B. Ghose & Co. and M/s Ericson and Richards (Delhi), who were appointed by the respondent no. 1/plaintiff, it was found that the original seal of Railways was not existing and instead the container had the seal of the appellant/defendant no. 1 being Container Corporation of India (*hereinafter* 'CONCOR') Seal no. 023457. On inspection, 15 bundles of tin ingots were found in sound condition, whereas 22 pieces were found in loose condition thereafter the Container was re-sealed. The respondent no. 2/defendant no. 2 was informed by respondent no. 1/plaintiff for the loss of articles and thereafter another surveyor M/s P.L. Singhal & Company was appointed on 27.12.1995, who had also visited the site on 28.12.1995 and had found the shortage of tin ingots totaling to 4350 kgs. This shortage of the consignment by 4350 kgs is said as per the various surveys which took place between 19.11.1995 to 22.11.1995 at the ICD Tuglakabad Depot. The insured being respondent no.

2/defendant no. 2 lodged its claim with the insurance company being respondent no. 1/plaintiff and resultantly the amount of Rs. 10,06,260/- was paid to respondent no. 2/defendant no. 2. The said amount along with the surveyor's fee was thereafter claimed in the subject suit by seeking a decree for recovery of Rs. 10,56,347 along with interest.

3. The suit was contested by the appellant/defendant no. 1. It was pleaded that the respondent no.1/plaintiff had no privity of contract with the appellant/defendant no. 1 and therefore the appellant/defendant no. 1 was not liable to make payment to the respondent no.1/plaintiff. The appellant/defendant no. 1 also denied its liability by giving a reference to the provision of Section 99 of the Railways Act, 1989. An alternative plea was also taken, that at best the liability of the appellant/defendant no. 1 under Section 103 of the Railways Act, was not more than Rs. 50 per kg. The suit was hence prayed to be dismissed.

4. The trial court framed the following issues:-

“1) Whether the plaint has been signed, verified and instituted by an authorized person? OPP

- 2) Whether the suit is bad in the absence of any privity of contract between the plaintiff, defendant no. 2 and defendant no. 1? OPD
- 3) Whether there was shortage of 4350 Kgs of tin on arrival at ICD Tughlakabad and if so to what effect?
- 4) Whether defendant no. 2 had received goods without any protest at the time of delivery, if so to what effect? OPD
- 5) Whether the contract between defendant no. 1 and defendant no. 2 was governed by the Railway Act as per the Inland way Bill issued by defendant no. 1 and if so to what effect? OPD
- 6) What amount is the plaintiff entitled to? OPP
- 7) Whether the plaintiff is entitled to any interest, if so, at what rate and period thereof?
- 8) Relief.”

5. The only issue which has to be considered by this Court is as to whether the appellant/defendant no.1 is entitled to the benefit of provisions of Sections 99 and 103 of the Railways Act, and this is the only issue which is argued before this Court.

6. To determine this issue, along with the provisions of Sections 99 and 103 of the Railways Act, the provision of Sections 93 and 97 of the Railways Act would also be relevant. These Sections 93, 97, 99 and 103 of the Railways Act read as under:-

**“Section 93. General responsibility of a railway administration as carrier of goods.-** Save as otherwise provided in this Act, a railway administration shall be responsible. for the loss, destruction, damage

or deterioration in transit, or non-delivery of any consignment, arising from any cause except the following, namely.-

- (a) act of God;
- (b) act of war;
- (c) act of public enemies;
- (d) arrest, restraint or seizure under legal process;
- (e) orders or restrictions imposed by the Central Government or a State Government or by an officer or authority subordinate to the Central Government or a State Government authorized by it in this behalf;
- (f) act or omission or negligence of the consignor or the consignee or the endorsee or the agent or servant of the consignor or the consignee or the endorsee;
- (g) natural deterioration or wastage in bulk or weight due to inherent defect, quality or vice of the goods;
- (h) latent defects;
- (i) fire, explosion or any unforeseen risk:

Provided that even where such loss, destruction, damage, deterioration or non-delivery is proved to have arisen from any one or more of the aforesaid causes, the railway administration, shall not be relieved of its responsibility for the loss, destruction, damage, deterioration or not delivery unless the railway administration further proves that it has used reasonable foresight and care in the carriage of the goods.

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#### **Section 97. Goods carried at owner's risk rate.**

Notwithstanding anything contained in section 93, a railway administration shall not be responsible for any loss, destruction, damage, deterioration or non-delivery in transit, of any consignment carried at owner's risk rate, from whatever cause arising, except upon proof, that such loss, destruction, damage, deterioration or non-delivery was due to negligence or misconduct on its part or on the part of any of its servants:

Provided that-

- (a) where the whole of such consignment or the whole of any package forming part of such consignment is not delivered to the consignee or the endorsee and such non-delivery is not proved by the railway administration to have been due to fire or to any accident to the train; or

(b) where in respect of any such consignment or of any package forming part of such consignment which had been so covered or protected that the covering or protection was not readily removable by hand, it is pointed out to the railway administration on or before delivery that any part of that consignment or package had been pilfered in transit, the railway administration shall be bound to disclose to the consignor, the consignee or the endorsee how the consignment or the package was dealt with throughout the time it was in its possession or control, but if negligence or misconduct on the part of the railway administration or of any of its servants cannot be fairly inferred from such disclosure, the burden of proving such negligence or misconduct shall lie on the consignor, the consignee or the endorsee.

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**Section 99. Responsibility of a railway administration after termination of transit.**

(1) A railway administration shall be responsible as a bailee under sections 151, 152 and 161 of the Indian Contract- Act, 1872 (9 of 1872), for the loss, destruction, damage, deterioration or non-delivery of any consignment up to a period of seven day after the termination of transit :

Provided that where the consignment is at owner's risk rate the railway administration shall not be responsible as a bailee for such loss, destruction, damage, deterioration or non-delivery except on proof of negligence or misconduct on the part of the railway administration or of any of its servants.

(2) The railway administration shall not be, responsible in any case for the loss, destruction, damage, deterioration or non-delivery of any consignment arising after the expiry of a period of seven days after the termination of transit.

(3) Notwithstanding anything contained in the foregoing provisions of this section, a railway administration shall not be responsible for the loss, destruction, damage, deterioration or non-delivery of perishable goods, animals, explosives and such dangerous or other goods as may be prescribed, after the termination of transit.

(4) Nothing in the foregoing provisions of this section shall affect the liability of any person to pay any demurrage or wharfage, as the case

may be, for so long as the consignment is not unloaded from the railway wagons or removed from the railway premises.

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### **103. Extent of monetary liability in respect of any consignment.**

(1) Where any consignment is entrusted to a railway administration for carriage by railway and the value of such consignment has not been declared as required under sub-section (2) by the consignor, the amount of liability of the railway administration for the, loss, destruction, damage, deterioration or non-delivery of the consignment shall in no case exceed such amount calculated with reference to the weight of the consignment as may be-prescribed, and where such consignment consists of an animal, the liability shall not exceed such amount as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1) where the consignor declares the value of any consignment at the time of its entrustment to a railway administration for carriage by railway, and pays such percentage charge as may be prescribed on so much of the value of such consignment as is in excess of the liability of the railway administration as calculated or specified, as the case may be, under sub-section (1), the liability of the railway administration for the loss, destruction, damage, deterioration or non-delivery of such consignment shall not exceed the value so declared.

(3) The Central Government may, from time to time, by notification, direct that such, goods as may be specified in the notification shall not be accepted for carriage by railway unless the value of such goods is declared and percentage charge is paid as, required under sub-section (2).”

7. Before commencing discussion on the interpretation of the aforesaid provisions of law, the general law concerning the liability of a carrier is required to be noted. A carrier has absolute liability with respect to the consignment in its possession, and till the consignment remains in possession of the carrier. This is the liability

of a carrier, whether under the Carriage of Goods Act or the Carriers Act, 1865 or the Carriage of Goods by Sea Act, 1925 etc. The main judgment of the Hon'ble Supreme Court in this regard, that the liability of a carrier is absolute as that of an insurer is the judgment in the case of *Nath Bros. Exim International Ltd. v. BEST Roadways Ltd.*, (2000) 4 SCC 553. Under the provision of Rule 22 of the Schedule 1 to the Carriage by Air Act, 1972, liability of a carrier is limited if it is so provided, but as per Rule 25 the provision of Rule 22 which limits the liability will not help the carrier, if there is found to be a willful misconduct on the part of the carrier. All these aspects have been dealt with by this Court in its judgment in the case of *M/s Jet Airways India Ltd. v. M/s Dhanuka Laboratories Ltd.*, RSA 295/2016 decided on 30.9.2016 reported as 2016 SCC Online Del 5455. The relevant paras of this judgment are paras 10 and 11, and these paras read as under:-

10(i) The singular issue to be decided in this second appeal is as to whether the liability of the appellant/defendant is limited as per Rule 22 of the Rules under the Carriage by Air Act, 1972 or whether the appellant/defendant cannot get benefit of this Rule 22 of limited liability because the appellant/defendant is guilty of wilful misconduct as provided in Rule 25 of the said Rules and which provision overrides the provision of Rule 22. I further would like to note that reference in the issues framed

will be to Rules 22(2) and 25, inasmuch as, the reference is wrongly made to Rule 22(2)(a).

(ii) For the sake of convenience, Rules 22 and 25 of Schedule of the Carriage by Air Act are reproduced as under:-

**“Rule 22.**

(1) In the carriage of passengers the liability of the carrier for each passenger is limited to the sum of 1,25,000 francs. Where damages may be awarded in form of periodical payments, the equivalent capital value of the said payments shall not exceed 1,25,000 francs. Nevertheless, by special contract the carrier and the passenger may agree to a higher limit of liability.

(2) In the carriage of registered luggage and goods, the liability of the carrier is limited to a sum of 250 francs and kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that sum is greater than the value to the consignor at delivery.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5,000 francs per passenger.

(4) The sums mentioned in this rule shall be deemed to refer to the French franc consisting of sixty-five and a half miligrammes gold of millesimal fineness nine hundred.

**Rule 25.**

(1) The carrier shall not be entitled to avail himself of the provisions of this Schedule which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as is in the opinion of the court equivalent to wilful misconduct.

(2) Similarly, the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused as aforesaid by any agent of the carrier acting within the scope of his employment.”

(iii) It is settled law that benefit of the provision of the limited liability of a carrier such as the appellant/defendant under Rule 22 is subject to Rule 25 and which states that the benefit of limited liability cannot be given to a carrier in case the carrier is found guilty of wilful misconduct or conduct equivalent to wilful misconduct. A statement by respondent/plaintiff that goods have been misappropriated is not only a case of wilful misconduct but such act is even more than the case of wilful misconduct, and it is this case of the respondent/plaintiff which was proved that on account of the goods not having been traced and thus in fact the goods have been misappropriated. Obviously, misappropriation cannot be by a legal entity such as the appellant/defendant or its agent airline company, but by its employees or agents who have been dealing with the goods. There are judgments of various courts which hold that once goods are not traced and there is an averment of the same being misappropriated, the case then falls under Rule 25 that there is wilful misconduct or conduct equivalent to wilful misconduct. One such judgment of this Court is in the case of *Vij Sales Corporation Vs. Lufthansa, German Airlines AIR 2000 Del 220*. Of course, whether or not there is wilful misconduct would depend on facts of each case with, of course the onus being really on the carrier such as the appellant/defendant who is in control and possession of the goods to show that there is no wilful misconduct because a consignor such as the respondent/plaintiff can only step into the witness box and state so in the examination-in-chief. It is also required to be noted that similar principle with respect to strict liability of a carrier exists under the Carriers Act, 1865 and therefore onus is really upon the appellant/defendant/carrier to show that there is no wilful misconduct. The judgment under the Carriers Act holding strict liability of the carrier is the judgment of the Supreme Court in the case of *Nath Bros. Exim International Ltd. Vs. BEST Roadways Ltd. (2000) 4 SCC 553* and which specifies the strict liability of a carrier and how a carrier cannot take benefit of a clause of limited liability. The relevant paras of this judgment are paras 25 to 27. In these paras, the strict liability of a carrier has been equated to the liability of an insurer. These paras 25 to 27 read as under:-

“25. We have already reproduced the provisions of Sections 6, 8 and 9 above. Section 6 enables the common carrier to limit his liability by a special contract. But the special contract will not absolve the carrier if the damage or loss to the goods, entrusted to him, has been caused by his own negligence or criminal act or that of his agents or servants. In that situation, the

carrier would be liable for the damage to or loss or non-delivery of goods. In this situation, if a suit is filed for recovery of damages, the burden of proof will not be on the owner or the plaintiff to show that the loss or damage was caused owing to the negligence or criminal act of the carrier as provided by Section 9. The carrier can escape his liability only if it is established that the loss or damage was due to an act of God or enemies of the State (or the enemies of the King, a phrase used by the Privy Council). The Calcutta decision in *British & Foreign Marine Insurance Co. v. The Indian General Navigation & Rly. Co. Ltd.*, the Assam decision in *River Steam Navigation Co. Ltd. v. Syam Sunder Tea Co. Ltd.*, the Rajasthan decision in *Vidya Ratan v. Kota Transport Co. Ltd.*, and the Kerala decision in *Kerala Transport Co. v. Kunnath Textiles*, which have already been referred to above, have considered the effect of special contract within the meaning of Sections 6 and 8 of the Carriers Act, 1865 and, in our opinion, they lay down the correct law.

26. In the Madras decision in *P.K. Kalasami Nadar v. K. Ponnuswami Mudaliar*, it was held that an act of God will be an extra-ordinary occurrence due to natural causes, which is not the result of any human intervention, but it was held that an accidental fire, though it might not have resulted from any act or omission of the common carrier, cannot be said to be an act of God. Similarly, in *Kerala Transport Co. v. Kunnath Textiles*, it was held that the absolute liability of the carrier was subject to two exceptions. One of them is a special contract that the carrier may choose to enter into with the customer and the other is the act of God. It was further held that an act of God does not take in any and every inevitable accident and that only those acts which can be traced to natural causes as opposed to human agency would be said to be an act of God. In *Associated Traders & Engineers (P) Ltd. v. Delhi Cloth & General Mills Ltd.*, a fire which broke out in a pounded warehouse where the goods were kept was held not to be an act of God and, therefore, the carrier was held liable. This Delhi decision has been relied upon by the learned Counsel for the appellant on another question also to which we shall presently come, to show that the agreement by which the liability of the carrier is sought to be limited must be signed by the owner of the goods, entrusted to the carrier for carriage.

**27. From the above discussion, it would be seen that the liability of a carrier to whom the goods are entrusted for**

carriage is that of an insurer and is absolute in terms, in the sense that the carrier has to deliver the goods safely, undamaged and without loss at the destination, indicated by the consignor. So long as the goods are in the custody of the carrier, it is the duty of the carrier to take due care as he would have taken of his own goods and he would be liable if any loss or damage was caused to the goods on account of his own negligence or criminal act or that of his agent and servants.”

(Emphasis is mine)

11. In my opinion, once the appellant/defendant has admittedly led no evidence whatsoever, and the respondent/plaintiff has led evidence proving the value of the goods and the case as set up in the plaint, the appellant/defendant cannot be said to have discharged the onus upon it that there was no wilful misconduct or misappropriation as was the case of the respondent/plaintiff. Without leading evidence and merely by cross-examination of the witnesses of the respondent/plaintiff/shipper/consignor, a carrier cannot say that it has discharged its onus of proof because onus of proof is discharged by leading positive evidence, with the aspect that positive evidence also ordinarily does not absolve a carrier because liability of a carrier is a strict liability equal to that of an insurer.”

8(i). Of course, it must be immediately stated that in the Carriage by Air Act, there is a specific provision as per Rule 25 which holds that the carrier will be guilty if there is an existence of a wilful misconduct, even if contractually the liability is limited under Rule 22 of the schedule of the Carriage by Air Act, even though such a provision similar to Rule 25 of the Carriage by Air Act is not found in

the Railways Act. The liability of a carrier as per the judgment of the Hon'ble Supreme Court in the case of *Nath Bros. Exim International Ltd. (supra)* is limited to the loss/damage of/to the goods during the period of possession of the goods with the carrier. This aspect is so stated because in the present case we are concerned with the specific provision of Section 99 of the Railways Act, which absolutely provides that there will be no liability whatsoever of the Railways seven days after termination of the transit with respect to shipment of the goods. Section 99(2) of the Railways Act is very widely worded and states that after a period of 7 days there will be no liability whatsoever of the Railways for any loss of the goods.

8(ii). I may at this stage note that there is no dispute that the appellant/defendant no.1/CONCOR is under a notification of the Government made equivalent to the Indian Railways under the Railways Act with respect to shipment which the appellant/defendant no.1 undertakes as a carrier for and on behalf of its customers. The appellant/defendant no.1 is a public sector undertaking which is owned by the Union of India with the administrative control being under the Ministry of Railways.

9(i). When we refer to and read Section 99 of the Railways Act, Sub-Section (1) makes it clear that the liability of the appellant/defendant no.1 or the Railways is only for a period of 7 days after termination of transit. Even within this period of 7 days, appellant/defendant no. 1 or Railways would not be liable as the goods are carried at owner's risk rate unless and until the owner/consignee proves negligence or misconduct on appellant's/defendant no. 1's or the Railway's part. After the seven days period, as per Section 99(2) of the Railways Act, the liability of the Railways ceases in absolute terms. However, Section 99(4) of the Railways Act provides that even after 7 days the appellant/defendant no. 1/CONCOR or Railways is still entitled to demurrage or wharfage as long as the goods are in custody and possession i.e. beyond the period of seven days after the termination of transit. Therefore, the issue which arises is that if the appellant/defendant no. 1 is entitled to claim demurrage or wharfage beyond the period of seven days and till the consignment is in its possession, whether there is an absolute cessation of liability of the appellant/defendant no. 1 or the Railways even if the appellant/defendant no. 1 or the Railways or their employees are found guilty of

willful misconduct or theft or pilferage or criminal act/negligence. Of course, I must hasten to add that in case there is no willful misconduct of the appellant/defendant no. 1 or the Railways (through its employees) and that there is no criminal act/negligence or theft or pilferage by its employees, there would be no liability of the appellant/defendant no. 1 or Railways.

9(ii). It is pertinent to note that the Sub-Sections (1) and (2) of Section 99 of the Railways Act, cannot be interpreted and read so as to totally cease the liability of the appellant/defendant no. 1 or Railways after seven days of termination of the transit, even if willful misconduct or criminal act/negligence of its employees is found out, and the same can be found from an analytical reading of Sections 93 and 97 of the Railways Act. Both these provisions make it clear that if the appellant/defendant no. 1 or Railways is found guilty with respect to loss or destruction or damage or pilferage resulting in the non-delivery of goods, then the appellant/defendant no. 1 or Railways will continue to be liable. Sections 93 and 97 of the Railways Act in fact are on the same principles of law of willful misconduct as contained in Rule 25 of the Schedule of the Carrier by Air Act.

9(iii). The issue is whether we can implicitly read the requirement of the appellant/defendant no. 1 or the Railways to not be liable, even if it is found that the appellant/defendant no. 1 or Railways is found guilty of willful misconduct or theft or pilferage or criminal act/negligence by its employees. In my opinion the provisions of Section 99(1) and (2) of the Railways Act, cannot be read in a way to justify that even after the period of seven days, the appellant/defendant no. 1 or Railways can continue to claim demurrage or wharfage charges when at the same time the appellant/defendant no. 1 cannot in any manner whatsoever be liable even if the employees of the appellant/defendant no. 1 or Railways are guilty of willful misconduct and/or criminal act/negligence. To give any other interpretation to the provisions of Section 99(1) and (2) will result in an absurdity, that whether it can be argued by the appellant/defendant no. 1 or Railways that after a period of seven days, the employees of the appellant/defendant no. 1 or Railways can voluntarily set fire to the goods and yet the appellant/defendant no. 1 or Railways will not be responsible for this act. Obviously not. Another example to establish this argument would be whether it can

be argued that after a period of seven days, the employees of the appellant/defendant no. 1 or Railways can steal the goods, yet the appellant/defendant no. 1 or Railways will not be liable? Obviously, the answer would be in the negative, and this cannot be the position. However, incase no willful misconduct is found of the appellant/defendant no. 1 or Railways or any pilferage or stealing or criminal act/negligence by its employees, but in the alternate event of destruction of a godown due to an act of God (fire or natural calamity etc.) or in the event that a thief comes and steals the goods from the godown of the appellant/defendant no. 1 or Railways and with respect to which an FIR is lodged by the appellant/defendant no. 1 or Railways, then in such aforesaid situations the appellant/defendant no. 1 or Railways can claim that it is not guilty of willful misconduct or criminal act/ negligence, hence its liability after a period of seven days will cease in terms of Section 99(1) and (2) of the Railways Act.

10(i). In the present case, it is not disputed that when the container was opened in the presence of both the parties on 22.12.1995, the container did not bear the original seal of Railways but it had the seal of the appellant/defendant no. 1 i.e. the CONCOR

Seal. As per the admissions of DW in his cross-examination, he has stated that the ICD is under the complete control of the authorities. Obviously, therefore the original Seal of the Railways was broken and opened and the employees of the appellant/defendant no. 1 have thereafter put their seal. The contention of the appellant/defendant no. 1, that the seal was opened by the Customs Authorities is not acceptable because Customs Authorities will not open the seal of a container unless first notice is given to the consignee or the owner of the goods i.e. the goods in container are opened in the presence of the consignee and the owner and only after a notice is sent to the consignee or the owner.

10(ii). Accordingly, in the facts of the present case, once the loss of goods is not on account of an act of god or on account of theft of the tin ingots weighing 4350 kgs. by a third-party thief inasmuch as no FIR in this regard has been lodged by the appellant/defendant no.1, therefore it is held that the liability was of the appellant/defendant no. 1 and the appellant/defendant no. 1 cannot claim a shield of protection under Section 99(1) and (2) of the Railways Act.

11. The aforesaid discussion will also apply with respect to the liability of the appellant/defendant no. 1 being allegedly limited as per Section 103 of the Railways Act.

12. In view of the aforesaid discussion, I do not find any merit in the appeal and the same is hereby dismissed.

13. The appellant/defendant no. 1 has deposited the decretal amount in this Court pursuant to an order passed by a Division Bench of this Court on 12.07.2006. The amount deposited in this Court alongwith accrued interest be released to the respondent no.1/plaintiff in full and final satisfaction of the claim of the respondent no.1/plaintiff under the impugned judgment and decree. The appeal is accordingly dismissed and disposed of. Pending Applications, if any, are disposed of.

**JANUARY 14, 2019**

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**VALMIKI J. MEHTA, J**