
(2005) 01 MP CK 0029
In the Madhya Pradesh High Court
Case No : M. A. No. 1194 of 1999

Dipak Textiles

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-01-2005

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23
Railways (Extent of Monetary Liability and Prescription of Percentage Charge) Rules,
1990 — Rule 3(1)(iii)

Citation : (2005) 3 MPLJ 42

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : Imtiyaz Hussain with Mohd. Qasim, for the Appellant; S.K. Mukherjee, for the Respondent

Judgement

N.K. Mody, J.

Being aggrieved by the order dated 15th March, 1999 passed by the Railway Claims Tribunal, Bench at Bhopal, in O. A. No. 188/98, whereby the learned Tribunal has awarded a sum of Rs. 4,400/-, this appeal has been filed u/s 23 of the Railway Claims Tribunal Act, which shall be referred hereinafter as Act.

In short, the case of the respondent was that the respondent purchased handloom clothes from Ranipur, Jhansi, on 7-5-1995 for a sum of Rs. 36,854.48 paise. The respondent spent Rs. 280/- towards packing charges. Goods were booked from Jhansi for being transported to Harda for which a sum of Rs. 103/- was paid by the appellant of which receipt No. 46295 was given by the booking clerk of the respondent. Case of the appellant was that the appellant travelled by Jhelum Express from Jhansi to Harda on 7-5-1995 and the goods were loaded in brake-van of the same train. The goods were not unloaded at Harda and was over-carried. Further case of the appellant is that inspite of repeated requests and reminders, the goods could not be traced, ultimately, after lapse of five months, one bale was received at Harda, which was given to the appellant

wherein, clothes valuing Rs. 13,852/- were delivered. After issuing the notice, appellant filed the claim of Rs. 34,268/-, which includes the price of remaining clothes valuing Rs. 24,969/-, packing charges, freight, interest etc.

The respondent submitted the reply before the learned Tribunal wherein it was submitted that the goods were booked under LT No. 46295 dated 7-5-1995 in two bales of handloom clothes which were loaded by 1078 UP Jhelum Express on 7-5-1995 but at the destination one bale was received short. Appellant admitted that shortage certificate was issued but was without prejudice to the railway rights under the law. It was denied that on account of carelessness of the railway staff the appellant suffered the loss for which the appellant is liable for payment of Rs. 34,268/-. It was prayed that the claim petition be dismissed.

Learned Tribunal vide judgment dated 15-3-1999 awarded a sum of Rs. 4,400/- with interest @ 12% p.a. w.e.f. 5-5-1998. Appellant has challenged the adequacy of the amount. Shri Imtiyaz Husain, learned counsel for the appellant submits that learned Tribunal committed error in applying Rule 3(1)(iii) of Railways (Extent of Monetary Liability and Prescription of Percentage Charge) Rules, 1990, which shall be referred hereinafter as Railway Rules. It was submitted that the liability of the appellant is covered under Rule 3(1)(iii) of the Railway Rules, whereby, railway administration is responsible for non-delivery of any consignment where the consigner at the time of entrustment of carriage declare the value of such consignment and paid percentage on excess value at the rate specified in schedule. The learned counsel submits that in case of nondelivery, the appellant is entitled for the value as declared at the time of booking of the consignment. The learned counsel further placed reliance on section 66(1) of the Railways Act, 1989, according to which at the time of booking of the consignment, if on the request of the railway servant authorized in this behalf, the consigner gives a statement in writing containing description of the goods as would enable the railway servant to determine the rate of such carriage. The learned counsel submits that the statement of value was given by the respondent at the time of booking; therefore, the appellant is entitled for the amount as claimed.

The learned counsel for the respondent Shri S. K. Mukherjee, submits that the word "luggage" is defined under sub-section (23) of section 2 of the Railways Act, which means the goods of a passenger either carried by him in his charge or entrusted to Railway administration for carriage. The learned counsel further submits that the word "consignment" has been defined in sub-section (9) of section 2 of the Railways Act, which means goods entrusted to administration for carriage. Learned counsel for the respondent further submits that since the respondent was a passenger in the same train and the goods were entrusted to the appellant for carriage, therefore, the same will be treated as "luggage" and not "consignment".

Further, reliance was placed on Union of India (UOI) Vs. Aluminium Industries Limited, , wherein it is held that a shortage certificate amounts neither to an

acknowledgment of liability nor holds out any hope to the consignee as to the time of delivery and is merely evidence of actual event that certain goods or articles have fallen short with reference to what the plaintiff states to have been dispatched. A shortage certificate is no proof of the fact that the quantum of goods claimed to have been dispatched has actually been dispatched unless the fact of dispatch of the quantum of goods is actually established. It was submitted that the shortage certificate of the goods is no proof of the fact that the quantum of goods claimed to have been dispatched has actually been dispatched, unless the fact of dispatch of the quantum of goods is actually established. Learned counsel for the respondent submits that in the present case, there is no evidence on record to show that the bale, which was missing, contained the handloom clothes valuing Rs. 24,969/-. In the present case, an affidavit has been filed by the appellant, in which it is stated that the bill of purchasing the handloom clothes was produced before the booking clerk of the respondent, who issued the Railway receipt. It was submitted that on the basis of this evidence, it cannot be said that the bale, which was missing, was containing handloom clothes of Rs. 24969/-. Learned counsel for the respondent placed reliance on a decision of the Apex Court reported in AIR 1970 SC 843, Had Sao and another vs. State of Bihar, wherein para 8 of its judgment, the Hon"ble Court has observed that:-

The question therefore arises as to whether the railway ran any additional risk or liability in acting upon the representation of the appellants and mentioning in the railway receipt the goods consigned were said to be 251 bags of chillies when in fact they were only 197 bags of straw. There can be little doubt that the railway did not run any additional risk. In case the goods were consumed by fire or even stolen from the wagon due to any negligence on the part of railway administration the owner would have to prove that he had put on rail 251 bags of chillies. He would also have to prove the weight of the chillies and the approximate value thereof. For this he would have to call evidence to show how and when he acquired the goods and the price he paid for them and exactly what quantity he loaded in the wagons. There would be no presumption that the goods put in the wagon were chillies because the railway did not accept the consignment as such and described it as 251 bags allegedly containing chillies. Nor was there any acceptance of the weight of the goods by the railway. The endorsement "S.W.A." would negative the plea, if any, that the weight was accepted by the railway. The endorsement "L/U" emphasized that the loading and unloading being in charge of the consignor the railway could not be held liable for any negligence in loading or unloading.

Learned counsel for the respondent has placed" reliance on a decision of the Division Bench of this Court reported in Radheshyam Agarwal Vs. Union of India (UOI) and Others, , wherein this Court has observed that:-

The fact of actual delivery of goods by the consignor to the railway administration for carriage by rail marks the starting point of the railway's liability as common carrier under the existing section 73 of the Railways Act and

the issue or non-issue of the railway receipt for the same, is at best merely of an evidentiary value and not decisive of the question whether actual delivery of the goods had been made by the consignor and accepted by the railway administration. Whenever there is any dispute about the fact of actual delivery of goods by the consignor or to the railway administration, the same has to be determined on the basis of evidence adduced in the case since it is this fact of actual delivery and not the circumstances of issue or non-issue of a railway receipt which provides the starting point for commencement of the responsibility of the railway administration as carrier of the goods.

In view of the aforesaid position of law, in the facts and circumstances of the case, since the appellant has failed to produce the evidence that the missing bale was containing handloom clothes of Rs. 24969/- and the fact was in the knowledge of the respondent, the appeal fails and is dismissed. No order as to costs.