

(2008) 04 DEL CK 0166
In the Delhi High Court
Case No : FAO No. 327 of 1996

Harish Chand Deepak Kumar

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 30-04-2008

Acts Referred:

Citation : (2008) 04 DEL CK 0166

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : M.L. Bhargava, for the Appellant; S.R. Narayan, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Whether on the evidence on record the order dated 18.4.1996 passed by the Railway Claim Tribunal is justified or not is the issue which needs adjudication in the instant appeal.

2. On 30.9.1988, as consignor, appellant entrusted to the railways 478 bags of kabuli gram vide RR No. 204751 for transportation from Carnac Bridge to Delhi. When offered for delivery, contents of 60 bags were found damaged to the extent of 35% and those of 80 bags to the extent of 40%. The railway authorities disclaimed liability to recompense the appellant. Claim petition filed before Railway Claim Tribunal has suffered a dismissal.

3. Two reasons have weighed with the Tribunal in dismissing the claim petition. Firstly, that the goods were directly loaded from the truck to the railway wagon under supervision of the appellant and secondly at the point of destination the TXR certificate records that the wagon was found in a water tight condition at the place of destination.

4. It was urged at the hearing by learned Counsel for the appellant that the Railway Claim Tribunal has wrongly cast the onus of the appellant and that as per decision of the Hon'ble Supreme Court reported as SC 1414 UOI v. Sugauli

Sugar Works Pvt. Ltd. onus to prove no negligence was on the railway authorities. Secondly, counsel urged that as per Rule 2145 of the commercial manual, railway authorities cannot issue a railway receipt till goods arrive at the railway premises and that as per Rule 1451(b), while issuing the railway receipt the railway officers are obliged to examine and weigh the goods before issuing a railway receipt. Counsel further urged that as per Rule 1418 (a & b) it is the duty of the railway officers to properly examine and ensure that the goods offered for carriage are securely packed in accordance with the packing conditions. Sh. M.L.Bhargava learned Counsel for the appellant urged that in the teeth of the relevant rules the finding returned by the learned Tribunal is perverse. Counsel further urged that the railway receipt evidences that the goods were booked at railway risk.

5. To appreciate the contentions a few additional facts need to be noted.

6. The goods in question were entrusted to the railway authorities for carriage as aforementioned vide railway receipt No. 204751 (document not formally exhibited but at page 139 of the Record of the Tribunal). The same records that the goods were loaded in the wagon directly from the truck on 30.9.1988 and that the carriage was on Railway Risk. However, the wagon commenced journey on the intervening night of 5th and 6th October 1988 and reached the destination within the requisite time on 9.10.1988.

7. At the point of destination the consignee who was also the consignor raised an issue pertaining to the goods being damaged. An inspection was carried out contents whereof were noted in the DDPC book. Relevant extract proved as Ex. R-7 records that 158 bags were having marks of dry water.

8. The assessment report dated 14.10.1988 Ex. R-8 records that on joint examination of the goods in presence of representative of the appellant and the railway officers, 158 bags were old used bags and had dry water marks on the bags that part content of the gram had suffered dis-colouration; had turned into lumps; fungus had appeared.

9. The relevant rules cited by learned Counsel for the appellant and as noted above, read as under:

2145. Prohibition against grant of railway receipts before the actual receipt of consignments on railway premises -

Except where otherwise provided as in the case of the loading done at a private or assisted siding, a railway receipt should not be granted until the relevant consignment has actually arrived in full on the railway premises and has been accepted by the staff deputed for this purpose.

1451. Grant of receipt foil of invoice to consignors.

(a) ...

(b) Railway Receipts (i.e. receipt foils of invoices) should not be granted till

goods tendered for dispatch have been correctly examined and weighed. When senders are required to load their consignments, the railway receipts should not be given until the loading has been completed to the satisfaction of the Railway.

1418. Examination of packing etc. of goods:

(a) Each package in a consignment tendered for conveyance should be carefully examined to see that it is properly and securely packed in accordance with the packing condition laid down in the I.R.C.A. Goods Tariff. In this context, the explanatory instructions contained in the rules dealing with the "packing conditions for goods" appearing in the tariff should be carefully studied and complied with.

It should also be seen that the goods are not likely to deteriorate or otherwise lose weight or value in transit.

(b) When a consignment tendered for dispatch is not packed in accordance with the packing conditions laid down in the I.R.C.A. Goods Tariff or is insecurely fastened or packed or shows signs of pilferage or is in defective condition, as a consequence of which it is liable to deterioration, leakage, wastage or damage in transit, it should be ensured that remarks as to the exact defect in packing or nature of defective condition of the consignment is recorded on the forwarding note clearly and in detail by the consignor or his authorised agent in his own hand writing. For example, consignments of grain, pulses, seeds, sugar, piece-goods, cotton, tobacco, wool, jute, provisions, etc. often get wet while being brought to the station premises for loading. These should be carefully examined and precise remarks from the consignor or his authorised agent, regarding the number and condition of the affected bags, should be obtained on the forwarding note, if the consignments are not tendered in good and dry condition.

10. Pertaining to the rules it would be difficult to concur with learned Counsel for the appellant that the same obliged the railway authorities to check the contents of each and every bag. Indeed, if this is the mandate of the rules, loading and unloading would become a very cumbersome and a time consuming process. The process of loading a wagon would take days together. As in the instant case, the number of bags entrusted to the railway officers for carriage was 478. To open each and every bag to check its contents would have required the unsealing of the bags and thereafter resealing the same. Desealing and resealing equipment would have to be brought to site where wagon was loaded.

11. As I read the rules, and indeed as the same require to be so interpreted in a business like manner, the mandate is for the railway authorities to examine and check whether the weight of the consignment is correctly recorded and that the consignment is packed in a proper packaging material. No more is required.

12. As noted by the Tribunal, the date when consignment was entrusted for carriage was not monsoon period. Indeed, I note that the appellant has led no evidence that during the period the consignment remained entrusted with the

railway authorities it had rained. As noted by the Tribunal, at the point of destination, as per TXR certificate the wagon was found water tight. This means that no water seeped into the wagon in transit or otherwise.

13. The contents of the DDPC book and the assessment report date 14.10.1986 assume significance. As noted above the two documents record that 148 bags were having marks of dried water. Internal contents showed that due to presence of moisture, part of the contents had got damaged.

14. Even to a lay man the conclusion would be obvious; being that the bags which had become wet had retained the moisture within but externally were dry. That is why on the gunny bags water mark of dried water was observed.

15. The evidence on record Therefore probablizes that the consignment which had got wet much earlier, when not even entrusted to the railway authorities had become substantially dry, in that, the bags containing the gram had dried up. Anyone receiving the sealed bags would have no reasons to suspect that the contents within had moisture. The extent of deterioration of the gram is also indicative of the same being wet and thereafter in a humid condition for a considerable number of days and not 5 or 6 days. It is settled law that every day experience can be put into aid by judges while probablizing facts. Gram which is a hard cereal is in the dried up form and if soaked in water swells for 2 to 3 days before decomposition sets in. The de-colouration and fungus formation normally takes 10 to 12 days after the gram is soaked in water and allowed to remain in a wet condition.

16. The decision of the Hon"ble Supreme Court in Sugauli Sugar Works"s case is not applicable in the facts of the said case. In said decision the wagon got lost in a river when the barge over which the railway track was laid suddenly sunk when the goods carrying train was crossing the bridge. Their Lordships of the Hon"ble Supreme Court held that the responsibility to maintain the barge and the track was of the railway authorities and thus it was not for the claimant to prove the circumstances under which the barge and the track sunk. The Hon"ble Supreme Court noted that there was no satisfactory Explanation offered by the railway authorities for the sinking of the barge.

17. I find no merits in the appeal.

18. Dismissed.

19. No costs.