
(2008) 04 DEL CK 0016
In the Delhi High Court
Case No : FAO No. 223 of 1996

Jai Shree Electrical Store

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 28-04-2008

Acts Referred:

Citation : (2008) 04 DEL CK 0016

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : M.L. Bhargava, for the Appellant; R.C. Nangia, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—This appeal is directed against the order dated 12.3.1996 passed by the learned Railway Claims Tribunal, Delhi.

2. The appellant M/s. Jai Shree Electric Stores filed a claim petition against the respondent claiming a compensation of Rs. 16,548/-.

3. The case set up by the appellant was that on 16.12.1989 a consignment comprising of 2 packages containing PVC wire were entrusted to the respondent for transport from Delhi to Varanasi. That the consignment was booked under Parcel Way Bill (PWB) No. 662337. That it was the endorsed consignee of the consignment in question. That due to gross negligence and misconduct of the employees of the respondent the respondent failed to deliver the consignment at the destination station.

4. defense set up by the respondent was that the appellant has no locus standi to maintain the present action for the reason appellant is neither consignor nor consignee of the consignment in question.

5. After considering evidence led by the parties in light of their versions vide impugned order dated 12.3.1996 the learned Tribunal has held that the appellant has been able to establish that it was the endorsed consignee of the consignment

in question but has failed to establish that it had paid valuable consideration in respect of the consignment. It has been held that an endorsed consignee can maintain an action for damages in his own right only when he has paid valuable consideration for the consignment. That since the appellant has not established that it had paid valuable consideration for the consignment it has no right to maintain the present action. The claim application filed by the appellant was thus dismissed by the Tribunal.

6. Learned Counsel for the appellant submitted that he does not dispute the proposition of law applied by the Tribunal that an endorsed consignee can maintain an action for damages only when it had paid valuable consideration for the consignment. Learned Counsel argued that the appellant had successfully established by leading positive evidence that it had paid valuable consideration in respect of the consignment in question.

7. Thus the controversy in the present appeal turns on the issue whether the appellant had established that it had paid valuable consideration for the consignment in question.

8. To establish that the appellant was an endorsed consignee for a valuable consideration, the appellant examined one Mr.Raj Kumar,AW-1 who claimed to be a partner of the appellant firm. He deposed that on 16.12.89 he purchased the consignment in question from M/s Suraj Traders for a sum of Rs. 16,548/-. He proved a bill Ex.RW-1/1 to evidence the purchase. He stated that after purchasing the goods he went to Shahdra City Booking Agency where he entrusted the goods to the respondent and made endorsement at the rear of the PWB in favor of the appellant. (Meaning thereby, that Raj Kumar was the consignor and the appellant was the endorsed consignee). He stated that he had also made the entries pertaining to the payment of the consignment in the cash book and ledger book of the appellant (Relevant portions of the cash book and ledger book were produced on record).

9. Learned Tribunal disbelieved the testimony of the witness of the appellant that he had made payment for purchasing the consignment on the behalf of the appellant. It has been held that the bill dated 16.12.89, Ex.RW1/1, purportedly issued by the M/s Surjit Traders is not a genuine document evidencing the sale of the goods consigned. Reasons noted by the Tribunal for so disbelieving are as under:

I The bill Ex.RW1/1 contains the PWB number and the weight of the consignment. This is contrary to the testimony of the witness of the appellant as he had deposed that he had first purchased the consignment and then entrusted the same to the respondent. How can a document contain the details of another document which was not in existence at the time of the preparation of a document remains a mystery?

II J.B.Mal, Claims Inspector, Railways, RW-1 had deposed that he was assigned the task of investigating the genuineness of the bill Ex.RW1/1 and he deposed

that the shop "M/s Surjit Traders" did not exist at the address written on the bill Ex.RW1/1.

III No documents were produced by the appellant to establish that Mr.Raj Kumar was a partner in the appellant firm.

IV Neither any employee of M/s Surjit Traders was examined nor any documents of M/s Surjit Traders such as accounts books etc. were summoned/produced by the appellant to establish that AW-1 had purchased the consignment from M/s Surjit Traders on behalf of the appellant.

V Testimony of AW-1 who is an interested witness as also self-serving account books produced by the appellant does not inspire any evidence.

10. Learned Counsel for the appellant had contended that the Tribunal had committed a grave error by holding that the account books produced by the appellant are self-serving documents and thus ignoring the same.

11. It is settled law that an appellate court cannot re-appreciate the evidence unless the court of first instance had ignored a material evidence/circumstance or the conclusions drawn by the court of first instance from the evidence are perverse in nature.

12. Learned Counsel for the appellant has not pointed any evidence/circumstance which was ignored by the Tribunal while appreciating the evidence.

13. Conclusions drawn by the Tribunal from evidence I to IV noted in para 9 above are perfectly sound. Indeed the fact that in the bill Ex.RW-1/1 the PWB No. (Parcel Way Bill) was mentioned evidences that the bill was created much after the goods were entrusted to railway authorities for only then the maker of the bill referred to PWB No. on the bill.

14. I find no infirmity in the impugned order.

15. The appeal is dismissed.

16. No costs.