

(2011) 03 DEL CK 0329

In the Delhi High Court

Case No : FAO 42 of 1992

Jay Shree Tea and Industries Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 24-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Railways Act, 1989 — Section 73, 76, 78, 78B

Citation : (2011) 03 DEL CK 0329

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : Puneet Verma, for the Appellant; Manoj V. George, for the Respondent

Final Decision : Allowed

Judgement

Mool Chand Garg, J.—This appeal has been directed against the order dated 31.10.1991 passed by Delhi Bench of Railway Claims Tribunal, whereby the claim of the Appellant for recovery of Rs. 65809.17 as compensation for the damage caused to the consignment of ply wood and block boards which was booked by the Appellant from Ultadanga (Eastern Railway) was damaged and was found wet while the goods were in possession of the Railway Administration.

2. It is the case of the Appellant that the Appellant are the manufacturers of ply wood and its by products and their factory at Andaman & Nicobar Island had booked a consignment of 160 crates containing 2364 pieces plywood and block boards with the Railway Administration at Ultadanga for delivery at New Delhi, under Railway Receipt No. 724775 dated 3.5.1983. The normal period of transit from Ultadanga to New Delhi is 10 days and the consignment ought to have been delivered within the said period at New Delhi, however, due to negligence and misconduct on the part of the Respondent, the said consignment was unloaded at the destination station only on 2.12.1983 and booked delivery was effected on the same date. At the time of delivery it was found that the consignment was

damaged inasmuch as even according to the Railway Administration damage to 1162 pieces were assessed at 11.5%, 691 pieces at 24%, 336 pieces at 33% and 175 pieces at 59%. It has been claimed that even though loss suffered was about Rs. 1,50,000/- , however, as per the assessment made by the Railway Administration the loss was of the value of Rs. 47,483.17 paise. The said amount with interest was claimed on account of delay in consignment of six months after serving a notice u/s 80 CPC r/w Section 78B of the Indian Railways Act delivered on the Respondents on 23.06.1983. However, as the Respondents failed to make the payment the Appellant filed a suit for recovery before the Additional District Judge which was then transferred to the Railway Claims Tribunal but finally the said claim was dismissed by the Tribunal vide order dated 31.12.1991. The Respondents denied the claim of the Appellant.

3. On the pleadings of the parties, following issues were framed:

(i) Whether the Plaintiff is a company, duly incorporated under the companies Act and the plaint has been signed, verified and filed by a duly authorised person? OPP.

(ii) Whether the Plaintiff company is the sole proprietor of Jayshree Timber Products? If not to what effect? OPP

(iii) Whether the consignments, when tendered to the Defendant, were not in sound condition, and the packing conditions were not complied with as alleged in para 3 of the WS, if so to what effect? OPD.

(iv) Whether the damage caused to the consignment was not due to the negligence and misconduct of the Defendant and its employees? OPD

(v) Whether the notice u/s 80 CPC was not legal and valid as alleged in para 10 of the W/S, if so, to what effect? OPD.

(vi) To what amount, if any, is the Plaintiff entitled? OPD

(vii) Whether the Plaintiff is entitled to any interest, if so, at what rate and for which period? OPP

(viii) Relief.

4. The decision of the Tribunal has been assailed by the Appellant primarily with respect to findings returned by the Tribunal qua Issue No. 4, which has been decided along with Issue Nos. 3,6,7 and 8.

5. The Tribunal has made the following observations:

The Respondent has produced a certificate from the Train Examiner, New Delhi i.e. the destination station that wagon No. CRC 53391 was found to be water-tight on arrival.

This consignment was booked on 3.5.1983 and was placed for unloading at New Delhi on 2.12.83. The wagon was unloaded on the same date. The wagon was

found with seals & rivets intact. Intact seals are only indicative of the fact that the wagon was not tampered with enroute. There is, however, no denying the fact that this wagon suffered a delay of more than six months. It took about 7 months to reach New Delhi against the normal transit time of about 10 days.

It is now well settled that though transit delay in itself constitutes negligence on the part of the Railways, negligence must directly lead to damage, deterioration etc as alleged, to fasten liability on the railways. However, transit delay by itself cannot lead to damage by wet, though this may in some cases result in deterioration.

6. Thus, it will be seen that despite their being delay in arrival of the consignment, on the basis of certificate issued by the Train examiner that the wagons at the time of arrival were found to be water tight, and were not tampered with en route, the Tribunal held that there was no direct evidence that damage caused to the consignment was on account of delay so as to fasten responsibility upon the Railways and consequently dismissed the claim petition.

7. The learned Counsel for the Appellant mainly contended that firstly, as per the report of the train examiner, the wagons were leaking. However, it has been contended on behalf of the Respondents that this is a misreading of the certificate inasmuch as, the certificate dated 2.12.1983 relied upon by the Appellant as per Ex.R-2 the certificate of the Train examiner as available on record shows that the wagons were water tight and, therefore, in the absence of any evidence led on behalf of the Appellant to show or establish that there was leakage of the wagons, the Appellant was not entitled to any damages as claimed by him.

8. Regarding second point of delay in delivery of good, reference has been made by counsel for the Respondent to a judgment delivered by the Apex Court in the case of Union of India (UOI) Vs. The Steel Stock Holders Syndicate Poona, wherein it has been held:

Section 73 of the new Act lays down that the railway administration shall be responsible for the loss, destruction, damage deterioration or non-delivery except in certain cases which amount to vis major. But there also the proviso confers responsibility on the Railways for loss etc., if the railway administration does not prove that it has used reasonable foresight and care in the carriage of the goods.

As against this a Division Bench of the Lahore High Court in AIR 1925 255 (Lahore) observed as follows:

The "deterioration" of a thing, whether it be in quality or in value, implies in ordinary parlance a change for the worse in the thing itself. If a thing is worthless than it was before only because the market rate has gone down it would be correct to say that it has depreciated in value, but not that it has deteriorated.

Having regard to the background and the setting in which the word "deterioration" occurs in Section 76 of the new Act it seems to us that the Parliament intended that the word should be used in its ordinary parlance and in a restricted sense so as to include within its ambit the actual physical act of deterioration, i.e., the physical part of it namely, the change for the worse in the thing itself as very aptly put by Martineau, J., in the Lahore High Court judgment referred to above. We must seek to draw a clear distinction between a physical deterioration of a thing and depreciation in its value according to market price. These are two separate concepts having separate ingredients. The (words used in Section 76 of the new Act, namely, "loss, destruction damages or deterioration" must be read as ejusdem generis so as to indicate the actual and physical loss or change in the goods contemplated by Section 76. In these circumstances, therefore, with due respect, we are unable to agree with the somewhat broad view taken by the Allahabad High Court and followed by the Orissa High Court in the cases referred to above. We, on the other hand, prefer to adopt the view taken by the Lahore High Court in the case referred to above. In this view of the matter, it is clear that the word "deterioration" used in Section 76 referred to the physical and actual deterioration of the goods, which has admittedly not taken place in the present case. The Plaintiff cannot take advantage of Section 76 relying on the word "deterioration" because of the finding of negligence entered by the Courts below. The case of the Plaintiff is clearly taken out of the ambit of Sections 76 and 78 and his suit for damages also cannot be defeated on the ground that it is barred by Section 76 or Section 78 of the new Act. We are, therefore, of the opinion that in view of the finding of fact arrived by the Courts below the Plaintiff is undoubtedly entitled to damages.

9. I have heard the parties and have also perused the records, the impugned order as well as the written submissions and the judgments cited by the parties. At first I would like to discuss the Apex Court judgment on which the Respondent has relied upon, in the case of Union of India v. The Steel Stock Holders Syndicate (Supra) through this case, the Respondent has tried to prove that though the delay was caused by the railways but since no damage was caused to the goods in as much as the Wagon examiner himself has testified that he had checked the seals and the rivets of the compartment in which the goods were kept was evident of the fact that the said compartment was watertight. This is also fortified by Ex.R-2.

10. However in my observation though the examination of the compartment was thoroughly done but the fact that there was delay of over seven months in the delivery of the goods and also when it reached the destination a part of the goods were deteriorated goes to show that the prime reason behind the deterioration of the goods was delay in the delivery of consignments. To that extent the judgment of the Tribunal also cannot be sustained.

11. I may also observe that to the witness produced by the Appellants it was not suggested by the Respondents that goods were not loaded in a safe condition or

the consigner/ Appellant was responsible for booking the goods in a manner which caused damages as was found by the inspection committee.

12. Hence in the light of the above it was the duty of the Respondent to transit the goods within stipulated time and since they delayed the delivery of the consignment, the goods got damaged and thus, it is now the responsibility of the Respondent to make the loss good.

13. In view of the aforesaid, the appeal is allowed. The order of Railway Claims Tribunal rejecting the claim of the Appellant is set aside. Appellant is awarded the sum of Rs. 65809.17 as compensation for the damages caused to the consignment of ply wood and block boards with further interest thereupon @ 9% from the date of the decision of the Railway Claims Tribunal till the claim amount is released. However, there shall be no orders as to costs.