

(2009) 04 MP CK 0082

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 2408 of 2005

Krishna Kumar Sethi

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 13-04-2009

Acts Referred:

Railways Act, 1989 — Section 103, 103(1), 103(2), 106, 110

Citation : (2009) ILR (MP) 2376 : (2009) 3 JLJ 412 : (2009) 3 MPLJ 50

Hon'ble Judges : A.M. Naik, J

Bench : Single Bench

Advocate : P.L. Shrivastava, for the Appellant; Indira Nair and Khushi Saha, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Naik, J.

This appeal has been preferred by the claimant against dismissal of his claim by Railway Claims Tribunal, Bhopal vide decision dated 9.11.2004 in O.A. No. 454/2002.

Briefly slated facts as averred in the claim petition are that the claimant-Appellant is a fruits and vegetables vendor. A consignment was sent on 17.2.2000 by parcel vide Railway Receipt No. 034867 containing 21 bags of lemon weighing 567/570 kgs. from Bhusawal Station to Bhopal. Additional surcharge was also paid for speedy delivery because it contained item of perishable nature. The consignment ought to have been received at Bhopal on 18.2.2000, however, due to mistake, the parcel was not unloaded at Bhopal and was allowed to be carried further. It was brought back and was delivered to the Appellant on 20th of February, 2000. Appellant had made complaint on 18.2.2000 to the Chief Parcel Observer who informed that mistakenly the parcel could not be unloaded at Bhopal and was allowed to travel further. It was stated, thus, there was negligence and misconduct on the part of Railway employees.

The consignment of parcel was received by the Appellant at Bhopal Railway Station on 20th of February, 2000 in a damaged condition. However, it was certified by the delivery clerk that the consignment was delivered in proper condition. It is stated that on account of damage caused to the lemon, the claimant suffered a monetary loss of Rs. 19,950/-. This amount was claimed with interest.

Stand of the Respondent was that there was no negligence or misconduct on the part of its employees. Moreover, the claimant-Appellant did not suffer any monetary loss.

Learned Railway Claims Tribunal vide its impugned order dated 9.11.2004 found that the claimant has failed to prove that they had suffered monetary loss to the tune of Rs. 19,950/-. Aggrieved by the same, the present appeal has been preferred by the claimant.

Mrs. P.L. Shrivastava, learned Counsel for the Appellant and Smt. Indira Nair, learned Senior Advocate with Ms. Khushi Saha, Advocate made their submissions at length.

Considered the submissions and perused the record.

Ms. P.L. Shrivastava, Counsel for the Appellant contended that the parcel containing 21 bags of lemon was booked by the Appellant at Bhusawal Railway Station on 17.2.2000 vide receipt No. 034867. It ought to have reached Bhopal Railway Station on 18.2.2000 because the requisite charges as well as additional surcharge at the rate of 20% were paid for quick delivery. Consignment was received by the Appellant not on 18.2.2000, but on 20th of February, 2000 and Panchnama was prepared while accepting delivery of goods in damaged condition. Since the damage certificate was not issued, a Panchnama was prepared as contained at page 10 of the record of Railway Claims Tribunal, Bhopal. Lemon received by the claimant-Appellant on 20th of February, 2000 were in damaged condition, so they could fetch Rs. 6,300/- only. It caused loss of Rs. 19,950/- which the claimant is entitled to recover from the Respondent. Mrs. P.L. Shrivastava, learned Counsel for the Appellant submitted that in view of Sections 78, 81, 95, 103 of the Railway Act, the claim ought to have been allowed.

On the contrary, it is contended on behalf of the Respondent that the claimant-Appellant was obliged to prove by virtue of Section 110 of the Act that the monetary loss has actually occurred. The damage was not proved at all by positive and cogent evidence and thus, the claim petition was rightly dismissed.

To appreciate the scope of dispute, aforesaid provisions are reproduced below:

78. Power to measure, weigh, etc. - Notwithstanding anything contained in the railway receipt, the railway administration may, before the delivery of the consignment, have the right to-

- (i) re-measure, re-weigh or re-classify any consignment;
- (ii) re-calculate the freight and other charges; and
- (iii) correct any other error or collect any amount that may have been omitted to be charged.

Open delivery of consignments. - Where the consignment arrives in a damaged condition or shows signs of having been tampered with and the consignee or the endorsee demands open delivery, the railway administration shall give open delivery in such manner as may be prescribed.

Delay or detention in transit. - A railway administration shall not be responsible for the loss, destruction, damage or deterioration of any consignment proved by the owner to have been caused by the delay or detention in their carriage if the railway administration proves that the delay or detention arose for reasons beyond its control or without negligence or misconduct on its part or on the part of any of its servants.

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).

A conjoint reading of all the aforesaid provisions makes it clear that if the consignment arrives in a damaged condition, the railway administration shall give open delivery in the prescribed manner. If the delay in transit or delivery is for the reasons beyond its control or without negligence or misconduct on the part of the railway, the railway administration shall not be responsible for the loss.

Extent of monetary liability in respect of consignment is provided in Section 103 of the said Act. Section 78 provides certain powers in order to protect freight and other charges. In the case in hand, the consignment as per delivery certificate was shown to have been handed over in good and proper condition. If the claimant had any objection at the time of taking delivery about condition of goods, he ought to have submitted an application under acknowledgment about specific condition of goods. No such step is proved to have been taken timely. Moreover, the alleged Panchnama which is at page 10 of the record of the Railway Claims Tribunal, Bhopal is undated and unexhibited. Moreover, the same has not been proved in lawful manner by any of the independent persons shown to have put signature on it. Admittedly, the railway administration has not placed on record any evidence to prove that the cause of delay was beyond its control. However, this by itself will not make the claimant entitled to the damages in view of Section 110 of the said Act which runs as follows:

110. Burden of proof. - In an application before the claims Tribunal for compensation for loss, destruction, damage, deterioration or non-delivery of any goods, the burden of proving

(a) the monetary loss actually sustained; or

(b) where the value has been declared under Sub-section (2) of Section 103 in respect of any consignment that the value so declared is its true value,

shall lie on the person claiming compensation, but subject to the other provisions contained in this Act, it shall not be necessary for him to prove how the loss, destruction, damage, deterioration or non-delivery was caused.

In view of Section 110 (supra), actual monetary loss is to be necessarily established. It may be seen that claimant-Appellant has not specified the purchase cost. No document/bill pertaining to the purchase of goods was placed on record to establish the purchase cost. Similarly, the prevailing sale/market price has also not been established by any positive and cogent evidence.

Learned Counsel for the Appellant submitted that prevailing market price was pleaded as Rs. 125/- per 100 pieces of lemon which may be accepted as the prevailing market price. However, on perusal it is found that in the written statement contents in paragraph 7(i) and 7(ii) were denied. In view of this denial, it was obligatory on the part of the claimant-Appellant to prove the purchase costs in order to prove the actual loss.

Learned Counsel for the Appellant relied upon the affidavit of the Appellant. Relevant paragraphs of the affidavit are reproduced below:

(1) That, the consignor had dispatched a consignment of 21 bags of lemons, weighing 570 kgs. under parcel way bill No. 034867, dated 17.2.2000, ex-Bhusawal to Bhopal for safe carriage and delivery.

(2) That the consignment reached destination station after a considerable delay

in transit and due to the negligence of the railway employees, the consignment was not unloaded by the railway, it was over carried. I requested the Beena railway staff to unload the consignment but due to some technical fault at the train, it was not unloaded. I complained regarding the same to the senior railway official vide my letter dated 18.2.2000 but no heed was paid in this regard.

(3) That, notice dated 18.5.2000 u/s 106 of the Railways Act was delivered by hand on 20.6.2000 to the Respondent. In spite of this notice, the claim was not settled and hence, this application.

(4) That, due to negligence and misconduct on the part of the railway employees, I sustained a loss of Rs. 19,950/- towards the rotten lemons @ 125/- per hundred, which comes to Rs. $125 \times 10 = 1,250 \times 21 = 26,250/-$, which was sold in the market @ Rs. 308/- per bag = $300 \times 21 = 6,300/-$ because of low quality, hence I sustained a loss amounting to Rs. $26,250/- (-) 6,300/- = 19,950/-$ which is entitled to get from the railway.

(5) That the applicant is the consignee and the owner of the goods and therefore, got legal and locus standi to claim compensation as per Railway Rules.

On perusal of the aforesaid, it is clear that Appellant did not state on oath about the prevailing market price though he has explained about loss on account of sale of alleged damaged items. He has however mentioned in specific about the prevailing market rate of lemon. Moreover, there is no specific mention about piecewise quantity of lemon in one bag. On the contrary, it was mentioned that there was consignment of 21 bags of lemon weighing 570 kgs. There is no averment that how many pieces of lemon were kept in each bag. On the other hand, no prevailing market price per kg. was mentioned either in the claim petition or in the affidavit. It is a matter of common sense that lemon are available in various different sizes and without averment and necessary proof, no presumption may be drawn about the relationship of pieces and kgs. with reference to lemon. This apart, the Appellant has not produced a single witness who was alleged signatory of the so called Panchnama certifying that 80% of goods were rotten/in damaged condition.

Mrs. P.L. Shrivastava, learned Counsel for the Appellant placing reliance on the decision of New Swadeshi Sugar Mills Ltd. Vs. Union of India (UOI), , contended that the consignment was weighing 570 kgs. Prevailing market rate was pleaded at Rs. 125/- per 100 pieces. The same was reiterated in the affidavit and the damages ought to have been granted on its basis. As discussed in the preceding paragraphs, it is observed that the claimant-Appellant has failed to specifically aver kilogramwise market price of lemon. There is no evidence on record that how many pieces of lemon were contained in each bag or how many pieces of lemon were contained in the consignment. Weight of consignment was 570 kgs., therefore, it was necessary for the claimant to prove the market price per kilogram. In the case of Union of India (UOI) and Others Vs. Sugauli Sugar Works (P) Ltd., , Hon"ble Supreme Court while confirming the decision of High

Court of Patna observed that High Court said that the evidence of Plaintiff's witness Gaya Prasad showed the selling rate of sugar and there was no challenge to that evidence. In the case in hand, no evidence was produced by the claimant-Appellant to prove per kilogram market price either at the place of purchase or at the place of destination. At an earlier occasion, the market rate of lemon, as per claimant's father's evidence, was found to be Rs. 2.50 per kg. Vide this Court order dated 6.12.1979. Even if it is to be taken to have increased four times, it would amount to Rs. 10/- per kg. Accordingly, market price could have been at the most Rs. 5,700/-. Claimant-Appellant having already sold the lemon for Rs. 6,300/-, cannot be said to have suffered any loss.

In the result, learned Railway Claims Tribunal is found to have rightly dismissed the claim petition for want of proof about actual monetary loss. Claimant-Appellant does not get any assistance from the provisions contained in Sections 78, 81, 95 and 103 of the Railways Act. In absence of proof that actual monetary loss was suffered by him, resultantly, the appeal being devoid of substance is hereby dismissed, however, without order as to cost.