
(2004) 09 MP CK 0055

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 331 of 1998

Mahendra Kumar and Company

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 06-09-2004

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23
Railways Act, 1989 — Section 83

Citation : (2004) 4 MPHT 77 : (2004) 4 MPLJ 100

Hon'ble Judges : S.S. Kemkar, J

Bench : Single Bench

Advocate : P.L. Shrivastava, for the Appellant; S.P. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Shantanu Kemkar, J.

This Misc. Appeal has been filed u/s 23 of the Railway Claims Tribunal Act, 1987 against the order dated 12-12-1997 passed in O.A. No. 86/97 by the Railway Claims Tribunal, Bhopal Bench.

Briefly stated, the appellant dispatched 45 bags of raw mangoes booked on 24-7-1996 Ex Nizamuddin to Bhopal. As per the appellant the consignment reached the destination after considerable delay, as a result of which the raw mangoes were totally damaged and foul smell was emitting out. The appellant took the delivery of goods but the contents being badly damaged, rotten and unfit for human consumption he left the consignment in the premises of the Railway administration.

The appellant vide notice dated 20-8-1996 claimed compensation of Rs. 24,900/- towards damages and loss sustained by him. Since the compensation was not paid he filed an application for compensation before the Railway Claims Tribunal Bench Bhopal. The Claims Tribunal issued notice to the respondent. The respondent appeared and filed their reply. After recording the evidence by way of

affidavits the Tribunal heard arguments of the parties and vide impugned order partly allowed the claim of the appellant and directed the respondent to pay compensation of Rs. 960/- with interest at the rate of 10%. Feeling aggrieved the appellant has preferred this appeal.

Ms. P.L. Shrivastava, learned Counsel for the appellant has contended that Tribunal has failed to consider that the consignment was to be dispatched through Super Fast Train and it ought to have reached at Bhopal within 8 to 10 hours. The delay in delivery of the consignment from Nizamuddin to Bhopal caused damage to the raw mangoes. The delay was due to gross negligence on the part of the Railway authorities and, therefore, the appellant ought to have been awarded compensation at the rate of Rs. 25/- per kg. for 996 kgs. of raw mangoes; totalling to Rs. 24,900/-. It has also been contended by the learned Counsel for the appellant that the consignment booked on 24-7-1996 did not reach at Bhopal till 26-7-1996 as is evident from the endorsement made by the respondent on 28-7-1996 in the sale notice dated 27- 7-1996. It has been further contended that the respondent had no right to sell the consignment applying the provisions of Section 83 of the Railways Act, 1989.

On the other hand Shri S.P. Sinha, learned Counsel for the respondent has supported the impugned order and has contended that out of total bags, 31 bags reached Bhopal on 25-7-1996. The appellant did not collect the same. The appellant collected the consignment on 26-7-1996. This fact is admitted by the appellant in his notice dated 20-8-1996. The rest of the bags reached at Bhopal on 27-7-1996. The appellant look the delivery of the consignment, left the consignment in the parcel office and went away. In such circumstances the respondent had no option but to sell the same through auction. He further submitted that in the normal course the raw mangoes can not be expected to become so rotten within 2-3 days as alleged by the appellant. He, therefore, contended that the raw mangoes must have been already in the bad condition, when booked. He further submitted that the appellant has failed to prove the price of the goods booked by him by any cogent evidence.

It is borne out from the evidence led by the parties that the consignment was booked on 24-7-1996. Out of 45 bags, 31 bags reached the destination on 25-7-1996, remaining 14 bags reached on 27-7-1996. The question is whether the delay in reaching the consignment is inordinate and is due to negligence of the respondent. The appellant in his affidavit has not stated at what time on 24-7-1996 the consignment was booked. The part of the consignment reached the destination, very next date of its booking. The appellant did not approach for delivery of consignment on 25-7-1996. Though there is no evidence that the appellant approached the respondent seeking delivery of the consignment on 26-7-1996 except the alleged endorsement made by him in sale notice dated 27-7-1996 in which it has been written by him that he went to the office of the respondent for taking delivery on 26-7-1996. However, assuming it to be correct he could have taken the delivery of 31 bags, but he did not do so. According to

him on 27-7-1996 he took delivery of all the bags but the same were badly damaged and emitting foul smell. Awadhesh Singh, Assistant Parcel Clerk in his affidavit has stated that the bags reached Bhopal in part firstly on 25-7-1996 and then on 27-7-1996 as per Ex. D-1. He also stated that the sale notice was served on the consignee but he did not accept. Hence, the consignment was sold by public auction.

Considering the evidence on record, I am of the opinion that the learned Claims Tribunal has correctly appreciated the evidence and all the facts and circumstances of the case. The raw mangoes were booked on 24-7-1996, the same in the normal circumstances can not be expected to become rotten within two to three days. The possibility of loading of already damaged raw mangoes can not be ruled out. There is no cogent evidence about the price of the mangoes. Looking to the distance between the two stations there appears to be no inordinate delay in delivery of goods. In such circumstances, I am of the considered view that the appellant having failed to prove any inordinate delay or negligence on the part of the respondent, the learned Claims Tribunal has rightly rejected the claim of the appellant.

Thus, I find no merit in this appeal. The appeal is accordingly dismissed with no orders as to costs.