(2003) 12 BOM CK 0075

In the Bombay High Court

Case No : First Appeal No. 450 of 2003

Mahipal Battulal Jain — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

Date of Decision : 11-12-2003

Acts Referred:

Evidence Act, 1872 — Section 114
Railway Claims Tribunal Act, 1987 — Section 16
Railways Act, 1989 — Section 100, 103, 106, 2

Citation : (2004) 2 ALLMR 45 : (2004) 106 BOMLR 943

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.T. Kharche, J.—Heard finally with the consent of the parties.

2. This appeal is directed against the order dated 18.10.2002 passed by the Railway Claims Tribunal, Nagpur, in Claim Application No. 127/OA-1/RCT/NGP/1998 filed u/s 16 of the Railway Claims Tribunal Act, 1987, directing the respondent-Railway Administration to pay to the applicant the sum of Rs. 11,500/- with interest at the rate of 6% per annum thereon with effect from 30.7.1998 till final payment with costs of Rs. 2,713.04.

3. Brief facts are required to be stated as under:

The appellant purchased readymade clothes from Howrah and had booked the same in three gunny bags through Railway under luggage ticket No. 088233 dated 7.8.1995 Ex-Howrah to Nagpur and accordingly they entrusted the said goods to the railway administration. Upon presenting the said luggage ticket in the Parcel Office at Nagpur Railway Station on 8.8.1995 and onwards for delivery of the goods in question, the respondent could not give delivery thereof stating that the goods were lost in transit. Thereafter the appellant instituted claim application contending therein that the non delivery was due to sheer negligence/

misconduct on the part of the railway administration and they are solely responsible for the loss of the luggage in transit and claimed compensation of Rs. 90,061.00/- on account of undelivered goods, Rs. 22,608/- on account of interest at the rate of 9% per annum from the date of lodging claim till the date of application before Railway Claims Tribunal, Rs. 570/- on account of luggage charges paid to the railway and Rs. 300/- on account of notice charges. Thus total compensation of Rs. 1,13,559.00/- was claimed.

4. The respondent/railway administration resisted the claim by filing written statement. It is contended that the notice u/s 106 of the Railways Act, 1989 (Act No. 24 of 1989) (for short the Act) was not served and the appellant did not pay the percentage charges in accordance with the provisions of Section 103 of the Act and, therefore, the claim is liable to be dismissed.

5. The Railway Claims Tribunal relied on the oral as well as documentary evidence adduced by the parties and on considering the evidence and on hearing the learned Counsel for the parties had come to the conclusion that the appellant would be entitled to receive the amount of Rs. 11,500/ - only with interest at the rate of 6% per annum from 30.7.1998 till the final payment in addition to the cost of Rs. 2,713.04 and decreed the claim accordingly. This order is under challenge in this appeal.

6. The learned Counsel for the appellant contended that the Railway Claims Tribunal wrongly applied the provisions of Section 103 of the Act. According to him, there is a difference between "luggage" and "consignment" as per the definition in Section 2(9) and 2(23) of the Act. He contended that the respondent is liable for the loss, destruction, damage, deterioration or non-delivery of any luggage in view of the provisions of Section 100 of the Act, whereas for consignment the liability would arise as per the provisions of Section 103 of the Act. He contended that the finding of the Tribunal that Section 103 of the Act read with Rule 3(i)(ii) & (iii) of the Railways (Extent of Monetary Liability and Prescription of Percentage) Rules, 1990 (for short the Rules) are only applicable to the consignment as defined in Section 2(9) of the Act and not to the luggage, cannot be sustained in law. He contended that the railway administration had issued the luggage ticket and there is a printed condition on the luggage ticket showing therein that the liability of the railway administration for the luggage booked is governed u/s 100 of the Act. He, therefore, contended that the railway administration is liable to pay the entire amount of compensation Including the value of the luggage which has been lost in transit along with interest.

7. Mr. Lambat, learned Counsel, for the respondent contended that the appellant though had produced various purchase bills, they did not examine anybody to show the value of the goods. He further contended that the value of the consignment was not declared and the percentage charges thereon were also not paid. He contended that in the circumstances the monetary liability of the respondent would be at the rate of Rs. 50/- per kg. for the consignment in question in terms of Section 103 of the Act read with Rule 3 of the Rules. He

contended that in such circumstances the Tribunal was perfectly justified in awarding the compensation to the appellant in accordance with the provisions of the Act and no Interference into the same is warranted.

8. I have given thoughtful consideration to the contentions canvassed by the learned Counsel for the parties. It is not in dispute that the appellant had booked the luggage as per the luggage ticket Issued to him from Howrah. It is also not disputed the luggage was lost in transit and, therefore, could not be delivered by the railway administration to the appellant. At this juncture, it is necessary to reproduce the definitions of luggage and consignment.

Section 2(23) - "luggage" means the goods of a passenger either carried by him in his charge or entrusted to a railway administration for carriage."

Section 2(9) - "consignment" means goods entrusted to a railway administration for carriages.

9. Section 103 of the Act (Extent of monetary liability in respect of any consignment) contemplates as under:

(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 the railway unless the value of such goods is declared and percentage charge is paid as required under Sub-section (2).

10. It is also necessary to reproduce Section 100 of the Act which reads as under:

100. Responsibility as carrier of luggage.- A railway administration shall not be responsible for the loss, destruction, damage, deterioration or non-delivery of any luggage unless a railway servant has booked the luggage and given a receipt there for and in the case of luggage which is carried by the passenger in his

charge, unless it is also proved that the loss, destruction, damage or deterioration was due to the negligence or misconduct on its part or on the part of any of its servants.

11. Analysis of Section 100 of the Act would show that the claimant is required to establish that he has booked the luggage and obtained receipt there for from the railway administration and in the case of luggage which is carried by the passenger in his charge, he has to establish that the loss, destruction, damage or deterioration was due to the negligence or misconduct on the part of railway administration or of any of its servants.

12. In the present case, the luggage ticket has already been obtained by the appellant and there is a condition printed on the reverse of the luggage ticket which reads, "liability of the respondent that the luggage booked is governed u/s 100 of the Railways Act, 1989." The respondent/railway administration by printing such condition on the reverse of the luggage ticket itself has impliedly admitted that the liability of the railway administration would arise in case of luggage booked and lost in transit and it would be governed by Section 100 of the Act and not by Section 103 of the Act.

13. It is not in dispute that there was non-delivery of the luggage to the appellant and, therefore, it is obvious that the luggage was lost in transit. Therefore, the burden was on the railway administration to prove that how it is lost and it was not on account of negligence or misconduct on the part of the railway administration. In such circumstances, the contention of the learned Counsel for the railway administration that Section 103 of the Act read with Rule (3) of the Rules would be applicable appears to be misconceived and this Court is of the considered view that the liability of the railway administration would be governed by the provisions of Section 100 of the Act so far as the loss of luggage is concerned and r. (3) of the Rules would be inapplicable to the goods which are booked as luggage and not as consignment.

14. The learned Counsel for the appellant rightly relied on the decision of this Court in Babubhai Cloth Stores v. Union of India and Anr. 1988 Mh. L.J. 434 wherein it is held that "The requirement of giving a declaration as provided in Section 77-B of the Railways Act has no applicability to a case where compensation is claimed on the ground of non-delivery of the goods. If the plaintiffs grievance is about non-delivery of the goods, he has every right to file a suit for compensation even though he has not made declaration as regards the value of goods as required by Section 77-B of the Railways Act. Union of India and Another Vs. K. Mansukhram and Sons, rel."

15. In the present case though other conditions are printed on the reverse of the ticket that the monetary liability of railway administration will be determined by the Rules, 1990 and the liability of railway administration for loss, damage, destruction, deterioration or non-delivery shall not exceed Rs. 100/- per Kg. for booked luggage unless the value of the consignment has been declared and

percentage charge on excess value has been paid, it cannot be said that the appellant would not be entitled to value of the goods which were lost in transit on account of negligence on the part of the servants of the railway administration.

16. The appellant had produced the bills and those bills showed that the total value of the luggage was Rs. 90,061/- only. The railway administration did not examine any witness to disprove those bills and, therefore, there is no reason for this Court to hold that the value of the goods has not been proved. Moreover, non-examination of witness by the railway administration would lead to adverse inference against it u/s 114(g) of the Indian Evidence Act. Since the railway administration did not examine any witness nor has cross-examined the appellant, It is obvious that the luggage has been lost in transit due to the negligence on the part of servants of the railway administration. This Court, therefore, holds that the appellant is entitled for the value of the goods, i.e. Rs. 90,061/- and the railway administration is liable to pay the same to the appellant.

17. That takes me to consider the question of awarding interest. It is a fact that the goods which were booked as luggage have been lost in transit and could not be delivered to the appellant and, therefore, he had filed claim petition and he would be entitled to receive interest at the rate of 6% per annum from the date of claim petition till realisation.

18. In the result, the impugned judgment of the Tribunal is modified in the aforesaid terms and conditions. The appeal is allowed with costs.