
(2005) 11 BOM CK 0042
In the Bombay High Court
Case No : F.A. No. 13 of 1992

Pawan Oil Industries

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 28-11-2005

Acts Referred:

Citation : (2006) 3 ACC 124 : AIR 2006 Bom 109 : (2006) 4 ALLMR 663 :
(2006) 5 BomCR 831

Hon'ble Judges : P.S. Brahme, J

Bench : Single Bench

Advocate : Vivek Palshikar, for the Appellant; P.S. Lambat, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Brahme, J.—This appeal is filed by the appellant/original plaintiff, a registered ownership firm against the order dated 24.9.1991 passed by Railway Claims Tribunal, Nagpur rejecting the claim of the The claim of plaintiff in brief was that it had purchased from V. GURUDASARADHAN 300 bags of ground-nut seeds which the seller booked at Railway Station ex. NAYUDUPETA R.S. to Amalner Railway Station as per invoice No. 3 Railway Receipt No. 733051 dated 7.5.1986. The consignment arrived at Amalner on or about 30.5.1986, when it was noticed that six bags, were in torn condition. On reweighment, shortage of 164 kgs was detected. In that respect claim was preferred to Chief Commercial Superintendent, Bombay on 14.7.1986; but the same was repudiated by the Railway Administration as per reply dated 21.8.1986. The shortage detected at Amalner was due to misconduct and negligence of the Railway Administration which was liable to pay to plaintiff price of groundnut seeds delivered short with 1C per cent loss of profits, proportionate freight notice charges and pre-item interest.

2. The defendant/respondent denied the status of plaintiff as partnership firm, so also plaintiffs claim for damages for shortage of 164 kgs of groundnut seeds. It was con-tended that the consignor had not complied with prescribed packing

conditions; that the booking was subjected to "L condition and loading was done by the sender and the same was not supervised by the Railway staff. That there was no interference en-route; allegations of misconduct/negligence were denied. It is also denied that there was shortage of 164 kgs of groundnut seeds.

3. Before the Tribunal the parties went on trial on the issues framed. The Tribunal found that the claimant has failed to prove satisfactorily that there was shortage during transit of 164 kgs. due to six bags having, been found in torn condition at the destination station, Amalner. The Tribunal found that the question of misconduct or negligence on the part of Railway Administration and its employees does not arise. That the consignor had not complied with prescribed packing conditions P 7 A to P 8 A and had done loading of the bags in wagon. That there was no interference en route, and therefore, the defendant is not liable for alleged claim for shortage. The Tribunal found that plaintiff is not entitled to any damages towards loss of profits, proportionate freight, notice charges and pre-item interest. Consequent upon these findings recorded by the Tribunal the claim petition/suit came to be dismissed with costs. Hence, this appeal.

4. I have heard Mr. Vivek Palshikar, the learned Counsel for the appellant, so also Mr. P.S. Lambat, the learned Counsel for the respondent-Railway Administration. The learned Counsel submitted that admittedly the consignment had arrived at Amalner on or before 30.5.1986 and when delivery, was taken, it was noticed that six bags containing groundnut seeds. Were in torn condition, and on reweighment it was found that there was shortage of 164 kgs. The price of the groundnut seeds of 164 kgs was claimed at Rs. 1177.05 paise with 10 per cent loss of profits i.e. Rs. 177.90 paise and refund of proportionate railway freight at Rs. 46.40 paise with pre-item interest on 18 per cent amounting to Rs. 664.65 paise and as such plaintiff has claimed total amount of Rs. 2,058/-. He submitted that the Tribunal has merely believed the statement of railway authorities made in their reply as regards non-compliance of prescribed packing conditions P 7 A to P 8 A. He submitted that though responsibility of loading was, upon the sender, the railway administration cannot escape their liability to supervise the loading. That the Tribunal ought to have drawn adverse inference against railway administration for not producing forwarding-note or any evidence oral or documentary proof for substantiating their contention. He further contended that merely because Exh. D-1 mentions that wagon was sealed in presence of sender cannot be accepted to be true in the absence of documentary proof. It is further contended that had there been tearing of bags before loading or during loading that condition could appear on forwarding-note or railway receipt. However, it is nobody's case that the bags were torn at the time of loading and therefore, to presume the shortage because the bags might have torn on the platform or ground is such a surmise which cannot be even conceived. That there is on evidence that the bags were torn before loading. The learned Counsel placed reliance on the provisions contained in the manual Indian Railway Commercial Manual to substantiate his contention that the shortage of loss of goods was on

account of defective wagon being supplied. The learned Counsel also pointed out the Goods Tariff relating to the packing condition which shows that for the goods in-question the gunny bags are to be used. He, therefore, submitted that the Tribunal committed an error in rejecting the claim of petitioner. He submitted with emphasis that the fact that when delivery of the goods was taken at the destination it was found that seals of the wagon were intact which indicated that from the station where the goods were loaded in the wagon still the wagon reached to the place of destination i.e. Amalner there was no interference with the seal of the wagon and as such when loss of 164 kgs. of groundnut seeds was noticed it was railway administration which was responsible for the shortage. He therefore. urged that the appeal be allowed and the appellant's claim be decreed.

5. As against that Mr. Lambat, learned Counsel appearing for respondent/ Railway. Administration submitted that for the short-age of goods, railway is not responsible as loading was done by the sender and the wagon, was sealed in his presence and when the wagon reached to the place of destination the seal was intact. Therefore, it shows that there was on interference during the transit.

6. Considered the submissions of learned Counsel for both parties, It is not disputed that loading of the goods was done by the sender of the goods which was not supervised by the employees of railway administration. The learned Counsel for respondent brought to my notice from the contentions of the respondent in written statement that the alleged shortage is due to negligence and misconduct of the consignee and their servants. It is admitted that the type of wagon was selected and goods were loaded by the sender at his risk. The packing of the goods in gunny bags was done by the sender. It is further admitted that the goods were loaded and unloaded by the owner of the goods and the goods were not counted or supervised by the railway staff. It is admitted that the goods were loaded directly from truck to the wagon by the sender. He also pointed out that "it was consigned with remarks/said to contain, P.7 and P.8 not complied with, bagging weak, single, old loosely stitched etc. as mentioned on railway receipt". What is surprising is that neither the sender nor the plaintiff has objected to this remark as to the condition of the packing. It is needless to say that the wagon was intact when it reached to the place of destination. There is nothing on record to show that the wagon was defective. That apart the goods were loaded by the sender at his risk in the wagon on site, it was not supervised by the railway administration. Therefore, there was no verification of the actual weight of the consignment as shown by the sender. The fact that the seals of the wagon were intact when it reached to the place of destination, it is crystal clear that there was no interference during transit; If that is so, then the Tribunal has rightly found that the railway administration cannot be held Responsible for the loss or shortage of the goods. That apart the petitioner has failed to prove that there was in fact shortage of 164 kgs. of groundnut seeds. If the shortage is there, assuming that it is true then the same could be attributed to negligence on the part of the sender in packing the goods. The learned Counsel for the respondent rightly submitted that it was incumbent on the part of the petitioner/

claimant to examine the sender at whose risk the goods have been loaded in the wagon. Through his evidence the plaintiff could have proved that the entire consignment consisting of goods i.e. groundnut seeds was weighed as claimed by the petitioner.

7. The Tribunal has found that the requirements for groundnut seeds without shells as per paras 229 and 230 of Goods Tariff No. 40 Part I, Volume-II and page 90, Chapter VIII of Goods Tariff No. 39 Part I Volume-I are that such seeds had to be packed in double jute bags and that each bag had to conform to specifications of the corresponding packing conditions P 7 to P 12. It is obvious that on account of weight of the commodity the bags should not get torn and the consignment should not lose any weight, while loading or during transit and later on while unloading. So the sender of the goods in this case had not complied with prescribed packing conditions P 7A. Therefore, if at all any loss had occasioned the respondent-Railway Administration can not be held responsible for the same. There-fore, I have no hesitation for agreeing with the learned Tribunal that the petitioner/claimant has failed to prove that there was negligence or misconduct on the part of the railway administration in carrying the goods in a wagon provided by railway administration. If this is so, then no liability can be fastened for the loss, If any occasioned to plaintiff. The Tribunal has rightly dismissed the petition.

8. There is no merit in this appeal. No interference is called for. The appeal will have to be dismissed. Hence, the order.

9. The appeal is dismissed with no order as to costs.