
(2010) 11 DEL CK 0181
In the Delhi High Court
Case No : F.A.O. No. 254 of 1997

Rajesh Kumar Sunil Kumar and Co.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Railways Act, 1890 — Section 73, 77, 78

Citation : (2010) 11 DEL CK 0181

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : M.L. Bhargava, for the Appellant; J.P. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Mool Chand Garg, J.—A very short point arises in this appeal directed against the order passed by the Railway Claims Tribunal dated 19.03.1999 whereby the claim preferred by the Appellant in the sum of Rs. 28,488/- together with costs and interest for damages allegedly caused to the consignment of 185 bags of gingelly seeds booked under RR No. 771433 dated 26.06.1989 (Invoice No. 74) from Dimapur to Delhi Lahori Gate has been dismissed.

2. It is the case of the Appellant that owing to gross negligence and misconduct on the part of the railway administration, the consignment arrived at the destination damaged by wet condition and that the delivery was taken on assessment. The damages were assessed @ 40% on 17 bags and 50% on 38 bags. This damage was worked out by the Appellant as Rs. 28,488.20 @ Rs. 1400/- per qtl.

3. On the other hand, it was the case set up by the Respondent in the written statement that the suit consignment was consigned with the Respondents in sound condition. They have averred that loading was not supervised by railway staff, original water-tight wagon reached the destination with seals and rivets intact and that wagon at the destination was also found to be water-tight. At the

time of unloading, it was found that no dunnage was used and 18" space was not left near the doors and that the alleged damage was due to the negligence of the sender for not loading the consignment properly. The Respondents also sought protection u/s 73(i) of Indian Railways Act, 1890.

4. The following issues were framed by the Tribunal:

1. Whether the applicants have got the locus standi to file the present application?
2. Whether the dunnage provided by the applicants was non-standard? If so, to what effect?
3. What amount of damages, if any, applicants are entitled to recover from the Respondents.
4. Whether the applicants are entitled to recover pendente lite and future interest? If so, at what rate?

5. Relief.

5. An additional issue was also framed by the Tribunal as under:

Whether the Rly Admn. Is not responsible for the damage caused by wet to the consignment in question?

Initially issue No. 1 was decided by the Tribunal in favour of the Appellant but after the respondent filed an appeal and the matter was remanded back and both the sides were permitted to lead evidence on the addl. Issue. The Appellant filed affidavits of Sh Mahesh Aggarwal, AW2 and Sh Jagdish Lal Bhatia, AW3. These witnesses were cross-examined by the Respondents. The Respondents did not produce any oral evidence and wanted to rely on the documents only. Learned Counsel for the applicant filed written submissions and also argued orally. The Respondents did not file written submissions, but argued the matter orally.

6. The Tribunal on the basis of the evidence led by the parties and having gone through the terms and conditions of the contract and the relevant provisions of the Railways Act decided issue No. 2 against the Appellant and held that the dunnage provided by the consignor was of non-standard size. The effect of non-standard size dunnage is that the packing condition S-27 has not been complied with and that this would attract provisions of Section 77(c)(i)(b) of IRA.

7. Similarly, on the same reasoning, additional issue No. 1 was also decided against the Appellant by making the following observations:

The subject consignment was booked on 26.6.89 from Dimapur to Delhi, Lahori Gate, a distance of 2781 kms. It reached the destination on 17.7.89 i.e. in 22 day. There is no remark either in the Forwarding Note or in the RR that the consignment when booked was in defective condition. We, therefore, take it that the consignment when booked was in sound condition. The consignment when arrived at the destination was in damaged by wet condition and the damages

were assessed @40% on 17 bags and 50% on 38 bags. The issue to be examined by us is whether the railway admn. is not responsible for this damage.

Sh. Batia AW-3 has deposed that there was an abnormal delay in transit. We find that in terms of para 1746 of Indian Railway Commercial Manual, reasonable tie means lapse of three days after the expiry of transit period, to be calculated as under:

Full Wagon Load-

All Board Gauge routes: One day for every 250 kms or part thereof on the overall distance plus one day each for loading and unloading.

All Meter Gauge routes:- One day for every 160 kms or part thereof on the overall distance plus one day each for loading and unloading.

Since Dimapur lies on the Metre Gauge and the consignment reached the destination in the same wagon in which it was loaded, namely WR 27206, we have to take one day for every 160 kms or part thereof for the overall distance. This works out to 18 days of transit. To that, we have to add one day each for loading and unloading and lapse of 3 days as mentioned in the aforesaid para 1746 of the Indian Railway Commercial Manual. This makes a total of 23 days and hence, we do not accept the version of the applicant that there was delay in the carriage of the consignment. We hold that there was no delay in the carriage of the consignment.

The consignment was booked in wagon No. 27206. The DDPC (marked XX) shows that the wagon arrived with seals intact. This is a joint DDPC for a number of wagons booked

from MPQ/DMV. The DDPC starts with the work 'NIKOLO' meaning thereby that the wagons had arrived with seals intact i.e. without interference. Sh Jagdish Lal Bhatia, AW-3 has deposed in his affidavit that the consignment had arrived in an interfered condition. We have discussed above that there is a documentary evidence that the subject wagon arrived at the destination with seals and rivets intact and with no interference enroute. We are not inclined to place any reliance on this interest testimony of AW-3 and would rather go by the available documentary evidence and hold that the wagon had arrived with seals intact.

We find that there is a remark on the subject RR that the wagon in which the subject consignment was loaded was jointly checked by the parties and found fit for loading. At the destination also, the subject wagon was found watertight by the Train Examiner (Ex.D/R). There is a provision in para 2125 of I.R.C.M., Vol.II that during monsoon season the crevices of the doors of the wagon should be plugged by gunny strips. This is the responsibility of the respondent. AW-3 has deposed that at the destination no gunny strips were found. We find that there is no mention either in the DDPC or in the Assessment Report that no gunny strips were found. Usually, when at the destination, gunny strips are not found, there is a remark to that effect in DDPC. But there is no such remark in the DDPC. We

are inclined to accept the documentary evidence rather than the interested testimony of AW-3 and hold that gunny strips were provided.

The Respondents, therefore, have on their part take due care and foresight in the carriage of the goods by providing watertight wagon, plugging the crevices of the doors by gunny strips and by bringing the consignment to destination without any delay.

8. In the light of the aforesaid observations, which are supported by the record, the Tribunal held that the damage has been caused due to the negligence of consignor for not loading the consignment properly. It was observed that it was a wagon load consignment and the loading condition prescribed for such consignment as 'L' meaning thereby that it is the responsibility of the consignor to load the consignment. The fact that 'L' condition attached to this consignment is also mentioned in the subject RR. In terms of Rule 133 of Goods Tariff 39, Part I - Vol. I, in all cases where the owners of the goods are required to do the loading/unloading, the risks attending these operations shall be borne by the consignors. With a view to ensure safe transit of the consignment to its destination, one of the conditions prescribed in para 2106 of Indian Railway Commercial Manual, Vol.II is that while loading the wagon, 6" vacant space on all sides of the wagons and 18" vacant space near the doors is to be left. This space of 18" near the doors is to provide space for the dunnage of standard size. With this arrangement, the bags of the subject consignment are loaded away from the doors of the wagon to prevent damage by wet and pilferage. In this case, as mentioned both in the forwarding note and RR, 6" space was not left all around the wagon. The forwarding note and RR also bear the remarks that the bags were touching the swing doors. This would imply that 18" space near the doors of the wagon was not kept. A further endorsement was made on the RR that the consignment was liable to damage in transit. AW-2 has deposed in his affidavit that he was present at the time of loading and that due space as advised by railway staff was left around the walls of the wagon. In his cross-examination, he also admitted that Ex.R-2 was the forwarding note for the suit consignment. The question is that if the 6" space was left at the time of loading and if the bags were not touching the swing doors, why such remarks appeared on the forwarding note and also in the RR. AW-2 has stated in his cross-examination that he does not remember whether any objection was given to railway authorities for the remarks on the RR in the Forwarding Note. We are not inclined to accept the self serving testimony of AW-2 as it runs counter to the remarks in the Forwarding Note and RR and would like to place reliance on the documentary evidence available, which clearly shows that 6" space around the wagon was not left and that the bags were touching the swing doors.

9. After making the aforesaid observations, the Tribunal held that the consignor failed to observe loading instructions and as such they were not entitled to any damages as claimed. In this regard reference was also made to Section 78 of the Railways Act which provides that the railway administration shall not be

responsible for the damages of goods proved by the railway administration to have been caused by or to have arisen from improper loading/unloading by the consignor or the consignee or by an agent of the consignor or the consignee.

10. There is no dispute that the subject consignment was booked in monsoon season. In monsoon season, the area near the doors of the wagon and near the walls of the wagon is very vulnerable to damage by rain water entering through the crevices of the wagon door during long journey of the wagon from the booking station to the destination station. It is to prevent this damage that monsoon precautions have to be observed. It was held that these booking conditions were not violated by the Appellant/consignor and, therefore, it was on account of their negligence and lack of due care and oversight in the carriage of the goods, the loss was suffered and, therefore, the Railways was protected u/s 78(c)(i) and was thus, not responsible for the damages.

11. It was in these circumstances, the Tribunal by a detailed order which is reasoned one and after discussing each and every aspect of the matter dismissed the claim of the Appellant.

12. I have gone through the written submissions filed on behalf of the parties. I have also gone through the relevant rules including Rule 133 of Goods Tariff 39, Part I - Vol. II where condition ?L? is mentioned. I have also gone through the provisions contained u/s 78(c)(i) of the Railways Act which prescribes the consequence of improper loading by the consignor and provides protection to the Railways against damages which may be caused on account of improper loading of the consignment.

13. Therefore, I am not impressed with the submissions made by the Appellants, consequently I find no reason to disturb the findings returned by the Railway Claims Tribunal.

14. Accordingly, the judgment delivered by the Tribunal is upheld and this appeal is dismissed.

15. No costs.