
(2006) 02 AHC CK 0115

In the Allahabad High Court

Case No : First Appeal From Order Nos. 115,117,118,119,123,125,129,130,131 and 135 of 1997

Raymond Cement Works

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-02-2006

Acts Referred:

Railways Act, 1890 — Section 2, 74

Citation : (2006) 02 AHC CK 0115

Hon'ble Judges : O.P.Srivastava, J

Final Decision : Dismissed

Judgement

O.P. Srivastava, J.—The above F.A.F.Os. arise out of common judgment and order dated 27.2.1997 passed in 11 claim cases by Railway Claims Tribunal, Lucknow Bench, Lucknow, dismissing the claims.

2. Since the facts of the above ten cases are almost similar and relevant law to be considered is also same and the common arguments have been advanced from either side, they are being disposed of by this common judgment.

3. The facts, in brief, are that M/s Raymond Cement Works, the appellant booked various quantities of cement bags through railway receipts, details whereof are given in the claim petitions as also in the judgment of Tribunal at Akaltara Railway Station for delivery at Alam Nagar Railway Station, Lucknow. The consignment in covered wagons reached the destination (Alam Nagar Railway Station) in good condition. Out of the ten consignments of the above appeals, M/s. East India Steels, Lucknow were named as consignee in eight consignments while they were endorsee in the remaining two M/s. East India Steels, Lucknow made endorsement in favour of two different persons who received the goods and got them unloaded from the wagons. Some of the bags were removed from the railway station. However, before the remaining cement bags could be removed, there were rains and goods got damaged. The matter was reported to the railway authorities. The assessment was carried out. The appellant preferred

claim for damage as per assessment. The claim was repudiated by the Railway Authorities. The appellant approached the Railway Claims Tribunal for damages.

4. The claims of the appellant before Tribunal were contested by the railways. In the written statement filed, title of appellant and its right to prefer the claim petitions was challenged on the ground that due to endorsement on the railway receipts, the ownership passed on to the authorized endorsee. It was also denied that there was any negligence or carelessness on the part of railway administration in dealing with the consignment. Rather it was alleged that all possible facilities such as providing of tarpaulin were available to the person getting delivery of the goods. Carelessness, negligence and misconduct on the part of endorsee or its agent after obtaining the delivery was alleged by the respondent. Railways took the defence that the damage was caused due to sudden and unexpected rains which according to them was an act of God and, therefore, protection of sections 83 (a) (f) (i) and 102 (c) (i) of the Indian Railways Act, 1890 was sought.

5. The following issues were framed by the Tribunal:

1. Whether the petitioners are the owners of the subject consignment and have right to sue?

2. Whether the claim is barred under section 78B of the Indian Railways Act?

3. Whether the respondents are protected under section 83 (a) (f) (i) and 102 (c) (i) of the Indian Railways Act?

4. Whether the reasonable foresight was taken by the railways for the carriage of the goods, if not, its effect?

5. Whether respondents have committed any negligence or misconduct in dealing with the subject consignment, if so, its effect?

6. To what relief, if any, the applicant is entitled to?

6. Finding of the Tribunal was against the appellant on all the five issues and, therefore, Tribunal held that appellant was not entitled to any relief resulting in dismissal of claim petitions.

7. Feeling aggrieved of the judgment and order of the Tribunal, the appellant has come up before this Court through the above appeals.

8. I have heard learned Counsel for the parties who addressed the Court at considerable length. They submitted written submissions also.

9. The following questions arise for determination in these appeals:

1. Whether the appellant/claimants had right to sue?

2. Whether the Railway Administration is responsible for the damage?

Point No. I

10. The appellant claimed to be unpaid vendor and on the basis of this contention, learned Counsel urged that the appellant continued to be the owner of the consignment having right to sue for damages. He cited the judgment of Hon"ble Supreme Court in *New India Insurance, Co. Ltd. v. Union of India and others*, (1995) 2 SCC 417. and *Union of India v. The West Punjab Factories Ltd.*, AIR 1966 SC395. On the other hand, contention of the learned Counsel for the respondent is that in view of section 74 of the Railways Act, 1989, the appellant ceased to be the owner of the consignment after endorsement in favour of other persons, who had taken delivery of goods also. As regards the above judgments of Hon"ble Supreme Court, learned Counsel for the respondent submitted that they are not applicable because of being a case pertaining to the old Railways Act, 1890.

11. The goods covered by consignment of the above appeals were booked in December, 1990 after enforcement of new Railways Act, 1989 (in short "Act, 1989") in July, 1990 and, therefore, claim of the appellant is to be examined in light of the provision of the said Act. The relevant provision regarding the rights and liabilities of the consignor are to be examined in light of section 74 of the said Act. In order to facilitate the proper appreciation, section 74 of the Railways Act, 1989 is extracted here below:

"74. Passing of property in the goods covered by Railway Receipt. The property in the consignment covered by a Railway Receipt shall pass to the consignee or the endorsee, as the case may be, on the delivery of such Railway Receipt to him and he shall have all the rights and liabilities of the consignor."

12. From the above provision, it is apparently clear that the property of the consignment covered by any Railway Receipt of the date after enforcement of the Act, 1989, passed on to the consignee or the endorsee on delivery of such Railway Receipts to him and it is he who shall have all the rights and liabilities of the consignor. The plain reading of the provision makes it amply clear that the moment railway receipt is delivered to such consignee or endorsee he shall have all the rights and liabilities of the consignor. Therefore, rights and liabilities of the consignor in respect of goods covered by Railway Receipt pass on to the consignee or endorsee, as the case may be, the moment receipt is delivered to him.

13. Coming to the facts of the instant case, out of above ten cases, the goods covered by two Railway Receipts were booked in favour of self and the consignee in the remaining eight was M/s. East India Steels, Lucknow. However, in the two cases booked in favour of self, the appellant had made endorsement in favour of M/s. East India Steels, Lucknow. M/s. East India Steels, Lucknow in its turn made endorsement in favour of Sunil Kumar in certain cases and Dilip Kumar in the remaining cases. The receipts were also passed on to the said endorsee Sunil Kumar and Dilip Kumar, meaning thereby, in none of the cases, M/s, East India Steels, Lucknow remained the last endorsee. It is also not disputed that delivery of goods on the basis of said receipts was taken by the said persons.

14. The word "endorsee" has been defined in section 2 of the Act, 1989, according to which endorsee means the person in whose favour an endorsement is made, and in case of successive endorsements, the person in whose favour the last endorsement is made. Thus, on the factual aspect, it is apparently clear that out of ten cases mentioned above in the matter of two, the endorsements were made by the appellant in favour of M/s. East India Steels, Lucknow while M/s. East India Steels, Lucknow was consignee in the remaining cases. On behalf of M/s. East India Steels, Lucknow, the receipts were further endorsed in the name of Sunil Kumar and Dilip Kumar and, therefore, they were the last endorsee and in my opinion, in view of section 74 of the Act, 1989 the right and title over the goods covered by the consignment passed on to the above last endorsee. The two authorities relied upon by the learned Counsel for the appellant are not applicable to the present case. There was no identical provision to section 74 in Railways Act, 1890 and, therefore, the judgments cited on behalf of the appellant are not attracted to the facts of the case and the appellant cannot derive any benefit there from. The Railway Claims Tribunal rightly held that the appellant did not have title over the property and thus, it did not have right to sue for claim. Point No. 2.

15. Sri J.R. Yadav, Goods Superintendent, Northern Railway, Alam Nagar, Lucknow, has stated in his affidavit that consignments were booked under L/U (loading and unloading) condition, meaning thereby, loading as also unloading was to be supervised by the party and not the railway administration. Appellant had examined only a witness who was present at the time of loading. Appellant had not examined any witness of unloading. It is not disputed that goods reached the destination in good and safe condition and also that goods got damaged due to rains after the same was unloaded under the management of endorsee. It is also in the statement of Sri J.R. Yadav that no staff of the railway administration is posted at Alam Nagar Station either for the purpose of loading or unloading or removal of the consignment. Thus, it is proved that unloading as also removal of the goods from the railway station was the responsibility of the appellant.

16. Sri J.R. Yadav has further stated that delivery of the goods was taken by the endorsee/agent after signing wagon transport register. He proved the relevant entries from the register. Learned Counsel for the appellant submitted that merely signing the wagon transport register in token of having received the goods, cannot be treated as actual delivery and, therefore, responsibility of the railway did not cease as the goods continued in their custody. In my opinion, this contention of the learned Counsel for the appellant has no substance. As mentioned above, since the goods were booked under L/U condition, it was the duty of the owners to get the goods unloaded through their own management. It is not disputed that goods were got unloaded from the wagons and a major part of it was removed also from the railway station leaving behind the remaining to be removed later. Removal of major part of the goods from railway station after unloading of the goods from the railway wagons clearly lead to the conclusion,

pecially in view of the fact that it was to be supervised by the owners themselves, that it was not a token but an actual delivery taken by the owners. There is neither any case of appellant of having taken partial delivery nor there is any partial delivery certificate. The "owners removed major part of the consignment but after taking delivery left behind some part of the consignment which due to unusual rains got wet and damaged. The liability of the respondent ceased soon after actual delivery of goods was taken it was the duty of owner after taking delivery of goods to have taken all possible steps to avoid damage to the goods. It is also in the statement that there was facility of unloading the goods from the wagons to the truck also but this facility available at the railway station was not utilized by the owners. Sri J.R. Yadav has stated that sufficient number of tarpaulins of the size which could cover the entire four wheelers are also available at the railway station and the same are provided to the owners on demand but the owner did not make any oral or written request for making the tarpaulins available to cover the goods left at the station. The appellant also could not produce any evidence to show that there was at all any request for supply of tarpaulin. The learned Counsel for the respondent rightly argued that after delivery of the goods in good and sound condition the liability of railways as bailee came to an end under section 160 of the Contract Act. Therefore, the owners being responsible for unloading after taking delivery and having not utilized the facility of unloading direct from the wagons to the truck or removing the entire consignment after unloading as also the lack on their part in demanding the tarpaulins to cover the consignment left over at the station, the owner and not railway administration is .responsible for loss.

17. Contention of the learned Counsel for the appellant that so long as the gatepass is not issued, it was responsibility of the railway administration to take care of the goods left over at the railway station till the expiry of "in transit" period, is also not tenable.

18. As regards the gatepass, in support of his contention, learned Counsel has referred to para 1853 etc. of the Indian Railways Commercial Manual. Learned Counsel for the respondent submitted that no such plea was raised by the appellant before the Railway Claims Tribunal. However, at any rate, gate passes are issued only to ensure removal of authorized goods from the station premises. It has nothing to do with the unloading or taking the delivery of goods. It is admitted by the appellant that regarding goods which the appellant intended to remove, the gate pass was issued. The appellant removed part of the goods against the gate pass and, therefore, in absence of any evidence regarding refusal of the gate pass, it would be presumed that in case the appellant desired gate pass for removal of the goods soon after the delivery was taken, there would not have been any difficulty in getting the gate pass.

19. Learned Counsel for the appellant contended that railway administration is responsible for any loss or damage occurred during "in transit" period. He urged that since the period during which goods got damaged, was "in transit" period,

the liability of railway administration did not cease. In my opinion, the argument of learned Counsel is totally misplaced. As it would appear from the plain reading of the different provisions of the Railways Act, 1989, after delivery has been taken and a major part of it has already been removed leaving behind a part of remaining consignment to be removed later, the liability of the railway administration will not be attracted. The railway administration is responsible for the loss till delivery is not taken during "in transit" period but once the delivery has been taken by owner, it is total responsibility of the consignee endorsee to take proper steps to remove the goods at the earliest or take care for its protection. However, owner can leave the goods on siding without any levy of charge by the railway administration during "in transit" period but if goods are not removed by the owner within "in transit" period as required under Rule 2 (41) of the Act, 1989, charge is to be levied on the goods for not removing them from the railway premises after the expiry of free time. The word "free time" has been used in the definition of "in transit" and according to same the transit terminates on the expiry of the free time allowed for unloading of consignment from any rolling stock and where such unloading has been completed within such free time, transit terminates on the expiry of the free time allowed, for the removal of the goods from the railway premises. Therefore, in cases where the delivery of the goods has been taken and the same has been unloaded from rolling stock if goods are not removed within the free time the owner is liable to pay charge for occupying the said place beyond free time.

Therefore, in cases where delivery of the goods has been taken and the same has been unloaded from the rolling stock, the owner can use the railway premises without paying any charge till expiry of free time at his own risk. Learned Counsel for the respondent rightly pointed out that the liability of the railway administration as bailee came to an end, the moment delivery of the goods is taken and, therefore, liability of the railway administration also came to an end. Under section 99 of the Act, 1989, even after the termination of the responsibility of the railway as bailee, the railway administration will have right to charge demurrage/wharf age for not unloading from railway wagons or removing the goods from railway premises "in transit" period. Learned Counsel for respondent rightly submitted that "in transit" period will expire in respect of entire goods and not in respect of only part of which it was left behind at the railway premises to be removed later.

20. Learned Counsel for the appellant next argued that on the complaint of the appellant, the railway administration itself went for assessment which conclusively proved that railway authorities admitted the negligence of the railway administration otherwise there would not have been any question of assessment. This argument is not acceptable for the reason that assessment has nothing to do so far as liability of the railway administration for payment of damages is concerned. The assessment is different from the acceptance of liability to pay damage. The assessment has to be done immediately after the complaint while liability is determined subsequently. Going for assessment of loss

does not mean the admission of liability of railways or admission of negligence of the railway administration.

21. From the above discussions, I came to the conclusion that railway administration was not responsible for damage to the goods.

22. The appeals, therefore, fail and are hereby dismissed with costs.

Appeals Dismissed.