(1992) 12 NCDRC CK 0051

In the National Consumer Disputes Redressal Commission

SAWHNEY EXPORT HOUSE PVT. LTD. — APPELLANT

Vs

PAKISTAN INTERNATIONAL AIRLINES — RESPONDENT

Date of Decision : 17-12-1992

Acts Referred:

Citation : 1993 1 CLT 534 : 1993 1 CPJ 96

Hon'ble Judges : V.Balakrishna Eradi , A.S.Vijayakar , Y.Krishan , B.S.Yadav J.

Final Decision : Appeal dismissed

Judgement

1. THE appellant- complainant sent an item of silver jewellery studded with precious and semiprecious stones to the consignee at Istanbul Turkey on 6.5.1988. On the instructions of the consignee, this consignment was not delivered in Turkey; it was diverted to Frankfurt to be delivered to the sister-concern of the consignee. This item of jewellery was exported in response to a specific order from an Istanbul party on the 15th February, 1988. On 30th November, 1988 it was reported to the party to whom it was to be delivered in Frankfurt that the consignment was not traceable. In consequence the consignee cancelled the order. THE consignment, however, reached Frankfurt in January/ February, 1989 but the consignee did not take delivery thereof.

2. THE consignee claims to have suffered a loss of US Dollars 3659.15 and demurrage US Dollars 154.00. The appellant-complainant filed a complaint before the State Commission on the 12th November, 1991 claiming the value of the loss of consignment and demurrage charges plus interest on these amounts from 1st of September, 1988 onwards.

The State Commission after examining the law and the case law came to the finding that the claim was barred by limitation and dismissed the same. The appellant has challenged the order of the State Commission and at the hearing before this Commission the arguments were confined to the legal aspect of the case viz, whether the complaint is barred by limitation or not.

3. ACCORDING to the appellant-complainant the period of limitation in this case

has to be deter mined by Article 11 of the Limitation Act. Article 11 of the Limitation Act prescribes: period of limitation of three years "Against a carrier for compensation for non-delivery or, or delay in delivering goods". This is to be computed from the time when the goods ought to have been delivered. He argued that the item of silver jewellery exported by him should be deemed to be of perishable'' nature inasmuch as it had no value whatsoever after the consignee refused to take delivery due to delay in carriage by which time the consumer taste/fashion has undergone change making the item of jewellery as not sealable. He, therefore, contended that it had virtually perished in consequence of the fact that it had lost its commercial value: the silver content is small and its value is due to highly skilled labour input. Therefore, after cancellation of the order, it had little residual value. This, according to him tantamounts to destruction or loss or damage to the consignment during the carriage by air as envisaged in Rule 18 of Schedule I of the Carriage by Air Act, 1972.

4. THE appellant-complainant also submitted that the air consignment note did not contain all the particulars as set out in Rule 8(a) to (i) & (q) of the Rules in Schedule-I to the Act, 1972 and as such, by virtue of Rule 9 of the said rules, the Carrier is not entitled to avail himself of the provisions of Rule 29 of that schedule which excludes or limits his liability. The Counsel for the respondent submitted that Rule 29 of Schedule-I to the Carriage by Air Act provides a period of two years for filing the claim for damages against the carrier. The rule reads as under: "The right of damages shall be extinguished if an action is not brought within two years reckoned from the date of arrival at the destination or from the date on which the aircraft ought to have arrived or from the date on which the carriage stopped."

This is a case of delay in delivery and this is squarely and directly covered by Rule 19 of the Schedule, the relevant portion of which reads as under: "19. "The carrier is liable to damage occasioned by delay in the carriage by air...of goods."

5. THE right to damages is thus founded in Rule 19 and not 18 of the said schedule as contended by the appellant. Rule 18 makes the carrier liable for damage sustained due to destruction or loss or damage to the goods during the carriage by air. On the face of it the consignment was neither destroyed nor lost nor damaged during carriage. In fact it had reached its destination intact but late.

6. THUS according to the respondent''s Counsel, the carrier''s liability in this case arose under Rule 19 after the goods reached Frankfurt in January/February, 1989 and as the complaint was filed before the State Commission only on the 12th November, 1991, the claim had become extinguished and barred by limitation. Since there is a special law prescribing the period of limitation different from that in the Limitation Act, the special law would prevail (see Section 29 of the Limitation Act).

The appellant''s contention that by virtue of Rule 9 of Schedule-I to the Act, 1972 the limitation provided in Rule 29 of the Schedule gets excluded is not a correct understanding of the law. All that Rule 9 of Schedule-I to the Act, 1972 provides is that the carrier cannot get any special exemption from the provisions of the schedule giving rise to his liability for any lapses in performance.

7. AT the hearing the appellant-complainant also cited some rulings of the High Courts, the Hon''ble Supreme Court and of this Commission as supporting his contentions but we do not find them to be useful or relevant for deciding the questions arising in this case. The provisions of the law as contained in the Carriage by Air Act, 1972 being quite clear and specific, we agree with the State Commission that the claim is barred by limitation. The appeal is, therefore, dismissed and the order of the State Commission is confirmed. Appeal dismissed.