
(2010) 11 DEL CK 0069

In the Delhi High Court

Case No : FAO 307 of 1996

Shankar Lal

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 09-11-2010

Acts Referred:

Railways Act, 1989 — Section 93

Citation : (2010) 11 DEL CK 0069

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : M.L. Bhargava, for the Appellant; Sanjay Pathak, for the Respondent

Final Decision : Allowed

Judgement

Mool Chand Garg, J.—This appeal has been filed by the appellant who was a claimant before the Railway Claims Tribunal with respect to the damages caused by the Railways in having damaged one consignment consisting of 490 kattas kabli Gram booked by them on Wadi Bunder to New Delhi on 06.10.1989 for delivery to the appellant. The booking was at Railway risk rate. The wagon containing the consignment was dispatched on 07.10.1989 and reached Delhi on 22.12.1989 i.e. two months and 15 days after the date of dispatch. On arrival when physical delivery was taken it was found that the contents were damaged and delivery was taken on assessment of damage. The assessment of damage by the Railways was as under:

(i) 20% damage on 200m Bags

(ii) 25% damage on 290 Bags

(Assessment Report Ex.RW/1/10 is at page 207)

2. A sum of Rs. 54519/- which was offered by the Railways has already been taken by the appellant but he says that the same was accepted under protest. According to the appellant, the loss caused to the appellant as per the

assessment report was to the tune of Rs. 79986/- and thus, he is claiming balance amount of Rs. 25,467/-, which was not accepted by the respondent and as such, the claim was contested.

3. On the pleadings of the parties, the Tribunal framed the following issues:

(i) Whether the sum of Rs. 54519/- was offered by the respondents to the applicant and whether the said amount was accepted by the applicant in full and final settlement of all the claims and contentions of applicant? If not, its effect.

(ii) To what amount, if any, is the applicant now entitled?

4. The only plea taken by the respondents was that the appellant had accepted the sum of Rs. 54519/- in full and final settlement but they could not produce those documents, whereas the appellant had proved on record his letters dated 08.05.1991 and 06.06.1991 exhibit AW1/RX1 and AW2/RX1 which says that the amount was accepted by the appellant under protest. The Tribunal has made a reference to these letters at page 6 of the order. Despite that, the Tribunal has not given any finding on issue No. 1.

5. It is submitted by the appellant that as per their own reports the Railway initially verified the claim of the appellant to the tune of Rs. 79986/- vide report dated 13.09.1990 exhibit RW1/4; then again verified at Rs. 64000/- vide report dated 24.03.1990 exhibit RW1/5 and finally they came out with the third report based upon some rates in economic times to the tune of Rs. 54519/-. It is submitted by the appellant that the reliance placed by the respondents in having rejected the claim of the appellant for the balance amount by referring to the third report based upon newspaper reports and on the second report which the witness of the respondents in cross-examination has admitted that the said report was given on the asking of the senior officers is not justified. Moreover, RW-1 has admitted that the first report was given after seeing the original bill and photocopy of the same was brought by the appellant. The witness also admitted that he had verified the bill from the account books of the consigner and the assessment was made after 14% reduction from the claim as per the instructions of the claimant even though such deduction was not as per the rules.

6. In these circumstances it is stated on behalf of the appellants that once their own assessment of rates as per the first report was to the tune of Rs. 79986/-, preparing a second report and third report by fixing the rate of the consigned goods on the basis of the rates in the Economic Times when bills had been produced on behalf of the appellant was absolutely of no consequence more so when it was prepared at the behest of senior officers. It is therefore submitted that the appellant is entitled to the balance amount. It is also submitted that the correspondent placed on record by the appellant also show that he has not accepted a sum of Rs. 54519/- in full and final settlement of his claim.

7. On the other hand the learned Counsel for the respondent could not show any good reason for having relied upon the second or third report. He only submits

that the commodity which was consigned through railway was imported one and that remained in the ship for 40 to 45 days and thereafter it was loaded directly in the wagon which due to the sea water was subjected to dampness. It was stated that the appellants have not complied with Rule 1841 of Commercial Manual Part-II. It is submitted that the respondent could claim protection u/s 93(g) of Indian Railways Act. However, none of these pleas were part of the written statement filed by the respondent nor any such plea was brought on record in the form of evidence produced by the respondents.

8. In these circumstances, I decide issue No. 1 in favour of the appellant and consequently, the appellant is entitled to balance amount of Rs. 25467/- after adjusting the amount of Rs. 54519/- from the claim of the respondents themselves as verified by their first report. Accordingly, the appeal is allowed. The respondents are liable to pay the balance amount of Rs. 25467/- along with interest @9% per annum w.e.f. the date when the claim petition was filed by the appellant before the Railway Claims Tribunal. TCR, if any, be sent back along with a copy of this judgment.