

(2006) 10 AHC CK 0129

In the Allahabad High Court

Case No : First Appeal From Order No.246 of 1999

Union of India

APPELLANT

Vs

Krishak Bharti Cooperative Ltd.

RESPONDENT

Date of Decision : 05-10-2006

Acts Referred:

Railways Act, 1989 — Section 74

Citation : (2006) 10 AHC CK 0129

Hon'ble Judges : Rakesh Sharma, J

Final Decision : Allowed

Judgement

Rakesh Sharma, J.—Heard Sri Anil Srivastava, learned counsel for the appellant North Eastern Railway, Gorakhpur and Sri A.K. Bhatnagar, learned counsel for the respondent M/s Krishak Bharti Cooperative Ltd., hereinafter referred to as the KRIBHCO.

2. This First Appeal From Order has been filed against the judgment and award dated 30.3.1999 passed by the Railway Claims Tribunal, Lucknow Bench, awarding the compensation to the respondent to the tune of Rs.16,878/ along with interest and cost, etc.

3. It emerges from the record that 28780 bags of Urea were handed over to the respondent KRIBHCO siding in Surat, Gujrat for carrying the consignment to Haldwani in Uttranchal. The respondent, claimant before the Tribunal had claimed itself to be a registered Society, registered under the Cooperative Society Act, 1972, having its headoffice at Delhi and areaoffice at Gorakhpur.

4. The claimant carries on business in the manufacture of urea and supplying it to different branches all over India. This factory was located in Surat, Gujrat. The consignment booked was loaded in Railways wagon but at the destination, 27756 bags were delivered leaving a shortage of 1024 bags weighing 51.2 Mt. The claimant had sought to realize a sum of Rs 1,41,312/ being the value of the short delivered urea. When the claim was not honoured, the claimant approached the

Tribunal. In the other connected cases, similar booking were made through parcel way bills. The details of these cases have been indicated in the judgement.

5. The common defence taken by the Railways in all these cases was the claimant had no title to the good; notices were not issued in accordance with law and that there was no negligence or carelessness on the part of the Railways due to which storage had occurred.

6. As far as the issue of title or right to sue is concerned, the tribunal has held that the claimant KRIBHCO had title to the goods and to maintain the claim petition in the capacity of consignor. As per tribunal the sender was the person with whom the railways had entered into an agreement and as long as it was not shown that the petitioner had lost interest in the goods, it had locusstandi to file the claim petition.

7. The learned counsel for the appellant has challenged this findings on various grounds. He has drawn the attention of this Court to the Sections 74, 75 and 80 of the Railways Act, 1989 under Chapter IX relating to Carriage of Goods. The tribunal has excluded from consideration the letter of authority given by the KRIBHCO and has not properly appreciated the endorsement on the R.R. filed before the tribunal by the claimant alongwith a duly approved affidavit and agreements. The period of the agreement as indicated in the judgment had come to an end and the same was not extended. As per the consequences the property in the consignment covered by the R.R. had already passed to the consignee who had taken the delivery of the consignment.

8. The other material submissions put forth by the appellant were also ignored by the tribunal. Sri Anil Srivastava, learned counsel for the appellant has submitted that the controversy regarding the endorsement in view of Sections 74, 75, 80 of the Railway Act 1989 has been set at rest by this Court in the judgment dated 7.2.2006 in F.A.F.O. No.123 of 1997, M/s. Raymond Cement Works v. Union of India.

9. I have heard the learned counsel for the parties and perused the record.

10. This Court, while deciding F.A.F.O. No.123 of 1997, has observed in its judgment and order as follows:

?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 Supreme Court Cases, 417 and Union of India v. The West Punjab Factories Ltd., AIR 1966 SC 395. 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.

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 herebelow:

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.

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.

11. It is thus settled that in view of the provisions of Section 74 of the Railways Act 1989, the property of the consignment covered by any railway receipt shall pass 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 tribunal has ignored the specific provision contained in Sections 74, 75, 76 and 80 of the Railway Act 1989. It ought to have taken into consideration the endorsement put forth on the R.R. and appreciated the role of the consignor.

12. In view of above, the appeal is allowed and the judgment/award dated 30.3.1999 passed in Claim Case No.OC 9700388 is set aside. Consequently, the amount released in favour of the respondent KRIBHCO shall be refunded to the appellant North Eastern Railway, Gorakhpur.

(Appeal allowed)