
(2013) 02 AHC CK 0002

In the Allahabad High Court

Case No : First Appeal from Order No's. 58, 59, 60, 61, 62, 63, 64, 65, 66, 69, 70, 71 and 72 of 2002

Union of India

APPELLANT

Vs

M/s. Kalyanpur Cement Ltd.

RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Citation : (2013) 8 ADJ 570 : (2014) 2 ALJ 159 : (2013) 99 ALR 239 : (2014) 2 RCR(Civil) 98

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Govind Saran, for the Appellant; O.P. Singh and Shambhavi Nandan, for the Respondent

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Heard Sri Govind Saran, learned counsel for the appellant and Sri O.P. Singh, learned Senior Advocate, assisted by Ms. Shambhavi Nandan, learned counsel for the respondent.

These thirteen First Appeal From Order arise from the common judgment dated 24th January, 2001 of the Railway Claims Tribunal, Gorakhpur Bench by which thirteen Claim Petitions have been decided by the Tribunal awarding the compensation aggregating to Rs. 6,31,512/-. Since in each claim petition, the compensation awarded is less than Rs. One lakhs, therefore, this Court has the jurisdiction to decide these First Appeals. Since in all the appeals, common judgment is being assailed and common question is involved, therefore, all the appeals are being decided together by a common judgment.

The brief facts of the case are that the respondent was the manufacturer of the cement. One M/s. Prayag Sales Corporation, Allahabad was its consignment agent. Seven consignments of cement have been sent on 4th January, 1995 from Dehri Aan Sone to Varanasi and six consignments of cement have been sent on

31st May, 1996 from Sone Nagar to Varanasi. For each consignment, separate Railway receipt has been issued in the name of self which has been endorsed in favour of Dinesh Gupta of M/s. Prayag Sales Corporation. It appears that the goods were sent by way of stock transfer for sale on consignment basis without any consideration. When the goods have been unloaded at the mineral open siding on 7th January, 1995, rain started causing damage to the cement. Similarly, when the other consignment reached on 3rd June, 1996, due to rains, some of the bags filled with cement have been damaged. The claim petitions were filed by the respondent on the ground that proper protection has not been taken by the railway for stacking the goods, which caused damage to the goods. The railway contested the claim petitions mainly on the ground that the months of January and June were not rainy season and the rains were not expected. In an affidavit, filed by one Sri J.N. Sinha, working as the CMI, Northern Railway, it was stated that the consignee was in hurry in unloading the goods and instead of direct transferring the goods into Truck, after unloading from wagons, the goods have been stacked at the siding, which resulted into the damage. It was further stated that staff of the railway has provided Tarpaulin etc. to protect the cement bags when the rain started, therefore, adequate protection has been taken by the railways. However, the tribunal has not accepted the plea of the railways. The Tribunal has not believed the averment made in the affidavit filed by Sri J.N. Sinha, CM, on the ground that he was not posted at the time when the goods have been damages. There is no affidavit of the staff working at the time of unloading of the consignment, therefore, averments made in the affidavit have been disbelieved. On the basis of the materials on record, the Tribunal held that if adequate protection has not been taken by the railways and if the same would have been taken, no damage would have been caused to the consignment.

2. Learned counsel for the appellant submitted that the Tribunal has erred in rejecting the averments made in the affidavit filed by Sri J.N. Sinha. The rains were unexpected on both the occasions, however, adequate protection has been taken by the railways by providing Tarpaulin to the consignee to protect the consignment. However, the consignee was in hurry for unloading the goods. The goods should have been transported immediately through the Truck after unloading from the wagons, instead of unloading the goods at the side. He further submitted that the burden lies upon the respondent to prove the quantity of the damaged goods. Certificate issued by the Railway relating to quantity of the goods was not admissible and on the basis of said certificate, the compensation should not have been awarded by the Tribunal.

3. Learned counsel for the respondent relied upon the judgment of the Tribunal and further referred a decision of the Learned Single Judge of this Court rendered in FAFO No. (450) of 1997, The Union of India v. M/s. Jai Dayal & Sons, which has been followed in another decision of the Learned Single Judge of this Court in FAFO (Defective) No. 451 of 1997, Union of India v. M/s. Jai Dayal & Co.

4. I have considered rival submissions and perused the record.

It would be useful to refer Sections 93 and 99 of the Railways Act, 1989, which read as under:

93. General responsibility of a railway administration as carrier of goods.-- Save as otherwise provided in this Act, a railway administration shall be responsible for the loss, destruction, damage or deterioration in transit, or non-delivery of any consignment, arising from any cause except the following, namely:

- (a) act of God;
- (b) act of war;
- (c) act of public enemies;
- (d) arrest, restraint or seizure under legal process;
- (e) orders or restrictions imposed by the Central Government or a State Government or by an officer or authority subordinate to the Central Government or a State Government authorised by it in this behalf;
- (f) act or omission or negligence of the consignor or the consignee or the endorsee or the agent or servant of the consignor or the consignee or the endorsee;
- (g) natural deterioration or wastage in bulk or weight due to inherent defect, quality or vice of the goods;
- (h) latent defects;
- (i) fire, explosion or any unforeseen risk;

Provided that even where such loss, destruction, damage, deterioration or non-delivery is proved to have arisen from any one or more of the aforesaid cause, the railway administration shall not be relieved of its responsibility for the loss, destruction, damage, deterioration or non-delivery unless the railway administration further proves that it has used reasonable foresight and care in the carriage of the goods.

Section 99. Responsibility of a railway administration after termination of transit.--(1) A railway administration shall be responsible as a bailee under Sections 151, 152 and 161 of the Indian Contract Act, 1872 (9 of 1872), for the loss, destruction, damage, deterioration or non-delivery of any consignment up to a period of seven days after the termination of transit:

Provided that where the consignment is at owner's risk rate, the railway administration shall not be responsible as a bailee of such loss, destruction, damage, deterioration or non-delivery except on proof of negligence or misconduct on the part of the railway administration or of any of its servants.

(2) The railway administration shall not be responsible in any case for the loss, destruction, damage, deterioration or non-delivery of any consignment arising

after the expiry of a period of seven days after the termination of transit.

(3) Notwithstanding anything contained in the foregoing provisions of this section, a railway administration shall not be responsible for the loss, destruction, damage, deterioration or non-delivery of perishable goods, animals, explosives and such dangerous or other goods as may be prescribed, after the termination of transit.

(4) Nothing in the foregoing provisions of this section shall affect the liability of any person to pay any demurrage or wharfage, as the case may be, for so long as the consignment is not unloaded from the railway wagons or removed from the railway premises.

Section 93 of the Act imposes a general responsibility on the railways as a carrier of the goods, which provides that the railway administration shall be responsible for the loss, destruction, damage and deterioration in transit or nondelivery of any consignment arising from any cause, except the causes mentioned therein. The proviso further provides that even where such loss, destruction, damage deterioration or non-delivery is proved to have arisen from anyone or more of the aforesaid cause, the railway administration shall not be relieved of its responsibility for the loss, destruction, damage, deterioration or non-delivery, unless the railway administration further proves that it has used reasonable foresightness and care in the carriage of the goods. Even from the pleadings of the railways, it is not established that the railways has used reasonable foresightness and care in carriage of the goods. The cement is an item which is very sensitive to the water and moisture. It can be damaged by the rain, therefore, at the time of stacking the goods at the siding, the railways should have taken proper protection and should have ensured that the cement bags should not have been stacked in the open area. Therefore, it is a case where proper protection has not been taken by the railways and the railways failed to prove its case that proper protection has been taken. Only providing of Tarpaulin when the rain started does not amount to use of reasonable foresightness and care inasmuch as there is no evidence on record to show that Tarpaulin has infact been provided and the cement bags have been covered by the Tarpaulin.

5. I have also perused Section 99 of the Act.

Section 99 imposes the responsibility on the railway administration upto the period of seven days after termination of the transit for the loss, destruction, damage, deterioration or non-delivery of any consignment as a bailee, unless the railway administration proves that there was no negligence or misconduct on the part of the railway administration or any of railway servants. In the present case, the Tribunal recorded the finding that the railway failed to prove that there was no negligence on the part of the railway administration.

In this view of the matter, I am of the view that the Tribunal rightly came to the conclusion that the railway has not taken proper protection to protect the consignment.

So far as the submission of learned counsel for the appellant that the assessment of loss on the basis of the certificate is not justified inasmuch as such certificate was not admissible is concerned, it cannot be accepted. The Tribunal recorded the finding that the loss has been assessed as per the joint assessment report. The joint assessment report has been made in the presence of the respondent and the authorities of the railways. Thus, it cannot be said that the burden has not been discharged by the respondents. There is no contrary material on record to dispute the quantity of the cement bags damaged.

In view of the above, I do not find any merit in the Appeals, which require interference. In the result, all the Appeals fail and are dismissed.