
(2004) 04 MP CK 0014

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 1560 of 1996

Union of India

APPELLANT

Vs

Muse Ram Kishun Prasad

RESPONDENT

Date of Decision : 13-04-2004

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23
Railways Act, 1989 — Section 106

Citation : (2005) 1 MPLJ 571

Hon'ble Judges : Sugandhi Lal Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.L. Jain, J.

Being aggrieved by the order dated 1-3-1996, passed by Railway Claims Tribunal, Bhopal, in Case No. OA/173/95, the appellant Union of India, through the General Manager, Central Railway, Bombay V.T. has filed this appeal u/s 23 of the Railway Claims Tribunal Act, 1987.

The facts needed to be stated are that jaggery was booked on 29-4-1992 vide R.R. No. 094081 from Anakapalle to Jabalpur. The goods reached the destination after undue delay of 145 days on 20-9-1992 and at the time of delivery there was short delivery of 23 lumps and there was damages in 756 lumps. According to the damage certificate the damage was of 64.52 quintals of jaggery. After service of notice claim petition was filed by the respondent.

The Claims Tribunal on the basis of the material produced by the parties held that the appellants were negligent and are liable to pay Rs. 40,000.00 with pendent lite and future interest at the rate of 10% per annum. The appellants have also been held liable to pay the costs of the proceedings to the respondent.

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

On behalf of the appellant it is contended that Railway Claims Tribunal has erred in holding that the appellant was negligent. The contention cannot be accepted. Consignment in question was accepted and booked by the representative of the appellant at Anakapalle vide R.R. No. 094081 dated 29-4-1992 for transporting the same to Jabalpur. The appellant took nearly five months in making the consignment available for delivery at Jabalpur. The appellant did not explain this abnormal delay in transit, therefore, the Tribunal has correctly held that the appellants were negligent.

The learned counsel for the appellant next contended that Railway Claims Tribunal has erred in holding that the market price of the goods not delivered or damaged was Rs. 40,000.00 at the relevant time. The counsel submitted that the determination of the aforesaid price by the Tribunal is based on surmises and there was no material to come to the conclusion that the value of undelivered or damaged article was Rs. 40,000.00. This contention also is sans substance. The claims Tribunal has recorded the reasons for coming to this conclusion. The claim of the respondent was supported by an affidavit and also by the assessment made by the appellants themselves. No counter affidavit was submitted on behalf of appellants to contradict the averments made in the affidavit filed on behalf of the respondent. The finding of the Tribunal is based on the material on record and there is no reason to interfere with the conclusion arrived at by the Tribunal.

A bogie was raised by the learned counsel for the appellants that a person is not entitled to claim compensation against railway administration for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway, unless a notice thereof is served by him or on his behalf, but no notice was served by the respondent to the appellants.

This contention also cannot be accepted. The respondent has proved a copy of notice Annexure A-2 in which the reference of previous notice No. C-289 dated 14-7-1992 has been mentioned. Notice was issued in time to the authorities. In his return before the Tribunal the appellant did not specifically deny the receipt of this notice. Annexure A-1 also demonstrates that the notice was received by the railways. Ex.A-1 refers to the notice dated 14-7-1992. The actual date of receipt of notice should be proved by the railways only. In the absence of any proof to the contrary, the Tribunal has rightly held that the notice was received within the period of six months from the date of entrustment of the goods. Therefore, the contention that no notice as per requirement of section 106 of the Railways Act, 1989 was served, cannot be accepted.

It is also the contention of the learned counsel for the appellant that the goods were not consigned by the respondent, therefore, he is not entitled to any compensation. Admittedly, the respondent is an endorsed consignee and as such the respondent to whom the goods were delivered much after the date of consignment, was entitled to the damages.

Learned counsel for the appellant lastly contended that the claim was filed by the

partnership firm. No suit to enforce a right can be instituted in any Court by or on behalf of any person suing as partner in a firm against any person unless the firm is registered and the persons suing is or has been shown in the register of firms as a partner in the firm. It is alleged in the petition that the petitioner is a partnership firm and claim has been filed through its partner. This fact was not denied before the Tribunal. According to the learned counsel for the appellant in the return the appellant has stated that this fact is denied for want of knowledge and appellant is put to strict proof thereof, but this is in fact, an evasive denial. In the absence of specific denial it will be presumed that the fact has been admitted. Therefore, it cannot be said that the respondent was not a registered partnership firm.

No other point was raised before me for determination.

In view of the aforesaid discussion, I find that the Railway Claims Tribunal, Bhopal did not commit any error in accepting the claim of the respondent. Therefore, the appeal fails and is dismissed accordingly. The appellant shall bear their own costs as also the costs of the respondent of this appeal. Counsel fee Rs. 1000.00 (Rupees one thousand), if certified.