
(2014) 01 BOM CK 0171
In the Bombay High Court
Case No : First Appeal No. 30 of 2004

Union of India

APPELLANT

Vs

Shri Sravan Kumar Saoji Gour

RESPONDENT

Date of Decision : 13-01-2014

Acts Referred:

Railways Act, 1989 — Section 103 2(9)

Citation : (2014) 5 ALLMR 317 : (2014) 6 MhLj 256

Hon'ble Judges : S.B. Shukre, J

Bench : Single Bench

Advocate : P.S. Lambat, for the Appellant; V.S. Kondalay, for the Respondent

Final Decision : Partly Allowed

Judgement

S.B. Shukre, J.—This appeal is directed against the order dated 31.7.2002 passed in Case No. 71/OA-I/RCT/NGP/2001 allowing the claim of the respondent for damages. The appellant was entrusted with a consignment by one M/s. Arjun Raut from Howrah for its delivery to the respondent at Nagpur. The consignment consisted of one basket containing Pomfret fish and it was packed along with ice as preservative. It was agreed by the appellant to deliver it to the respondent in good condition or pay damages, in case of loss, reduction in value or destruction of the contents of the consignment. Railway receipt No. 863660 dated 23.7.1998 was issued and copy of the same was given to the respondent. It was to be delivered to the respondent on 24.7.1998 at Nagpur. When the respondent went to the Parcel Office of the appellant at Nagpur on 24.7.1998, he was not given the delivery of consignment. On 25.7.1998 also, initially no delivery of consignment was given. Later on, on the same day, it was revealed that the consignment was received at Nagpur, but in rotten condition. The Railway Authorities at Nagpur got inspected the state and condition of the contents of the consignment through its Health Inspector. He found them to be unfit for human consumption and on his recommendations, the contents of the consignment were destroyed. The appellant was also issued a damage certificate to the extent of

100% of the weight of the consignment. Thus, the respondent suffered complete loss in respect of consignment and, therefore, he claimed damages from the appellant. Since they were denied to him by the appellant, he was required to raise the claim against the appellant before the Railway Claims Tribunal, Nagpur.

2. After considering the evidence available on record, the learned Presiding Officer of the Railway Claims Tribunal partly allowed the claim of the respondent, out of the total claim of Rs. 3,501.35 ps. together with interest. This claim was allowed to the extent of Rs. 2,695/- together with interest at the rate of 6% p.a. from 16.7.2001 till final payment by the learned Member (Judicial) of the Railway Claims Tribunal, Nagpur on 31st July, 2002.

3. Not satisfied with this order, the appellant has preferred the present first appeal.

4. I have heard the learned counsel for the appellant. I have carefully gone through the memo of appeal, impugned order and record of the Tribunal. Now the only point which arises for my consideration is:

Whether the Railway Claims Tribunal was justified in law to grant damages to the respondent in the sum of Rs. 2,695/- with costs in accordance with the prevailing law?

5. It is seen from the impugned order that the learned Member of the Railway Tribunal, Nagpur has placed heavy reliance upon the damage certificate in arriving at his conclusions in the matter. He has found that since the weight of the fish content of the consignment was 30 kilogram, the respondent would be entitled to receive damages to the extent of Rs. 2,605/- together with interest at 6% p.a. and costs. While, there is no dispute about the fact that the fish content of the consignment was 30 kilogram, the appellant has seriously questioned the value of the fish taken into account by the Tribunal in determining the damages payable by the appellant to the respondent. Learned counsel for the appellant has invited my attention to the certificate which shows that value of the consignment was not declared in this case. He submits that when the value of the consignment is not declared and extra charges on percentage basis are also not paid, the compensation or the damages are required to be calculated in accordance with Rule 3 of Section 103 of the Railways Act, 1989 and Rule 3 of Railways (Extent of Monetary Liability and Prescription of Percentage Charges) Rules, 1990 (hereinafter referred to as, "the Rules 1990"), which prescribed that this should be done on ad-valorem basis.

6. If the damage certificate dated 26.7.1998 is perused, it becomes clear that the respondent had not declared value of the consignment nor had paid any extra charges on percentage basis. Section 103 of the Railways Act, 1989 lays down that in such a case, the amount of liability of the Railway Administration for the loss or destruction of the consignment shall be equivalent to the amount calculated with reference to the weight of the consignment in a manner prescribed for it. The manner of such calculation is prescribed under Rule 3 of the

Rules 1990. It lays down that where a Railway Administration is held responsible for loss or damage of any consignment, the amount of liability in respect of loss or damage, in case of any consignment consisting of animals or baggage, would be equivalent to an amount calculated at Rs. 50/- per kilogram. In the instant case, the consignment admittedly did not consist of animals and, therefore, as laid down in the relevant Rule 3(iii) of the Rules 1990, the compensation for the loss or damage or destruction in the instant case would be required to be calculated at the rate of Rs. 50/- per kilogram of the weight of the fish booked under the consignment to be delivered at Nagpur.

7. At this juncture, we would have to consider what is the meaning assigned to the term "consignment". In Section 2(9) of the Railways Act, 1989 the term "consignment" has been defined to mean "goods entrusted to a railway administration for carriage". In the instant case, the total or gross weight of the consignment was 90 kilogram and as per the admission given by the respondent, fish content of this consignment was weighing only 30 kilogram and rest of the weight was accounted for by the ice kept along with the fish for its preservation and weight of the basket in which the fish was being transported. The expression "goods entrusted for carriage" can only be understood as what is actually intended to be carried by the Railways, and not any items of packing or those required for preserving the goods intended to be carried. In the instant case, it were the fish that was intended to be carried by the Railways and not the ice or the packing in which the fish was kept for its proper carriage. Needless to say, no item used for packing or preserving an article under transport, could be, by any logic meant to be sent or carried by the consignor just for the sake of it. Therefore, the weight of the consignment would have to be taken as the weight of the goods entrusted to the Railway Administration and intended by the consignor to be transported by it. In other words, it is the net weight of the consignment and not the gross weight of the consignment, which is required to be considered for the purposes of Rule 3(iii) of the Rules, 1990. In the instant case, it were the fish that was entrusted and intended to be transported. Therefore, the weight of the fish would have to be taken as the weight of the consignment in terms of Rule 3(iii) of the Rules 1990. It was 30 kilogram in the instant case and therefore the amount of compensation liable to be paid by the Railway Administration i.e. the appellant to the respondent, could not have been more than Rs. 1500/-, by application of multiplier of 50 to the weight of the consignment, as per the Rule 3(iii).

8. I, therefore find, learned Member of Railway Claims Tribunal, Nagpur had committed an error of law in determining the amount of compensation liable to be paid by the appellant to the respondent in the instant case. The impugned order deserves to be modified accordingly. The point is answered in these terms and the appeal needs to be allowed partly.

9. The appeal is allowed partly. The impugned order dated 31.7.2002 passed in Claim Application No. 71/OA-I/RCT/NGP/2001 is modified by substituting it with

the following directions.

A) The appellant shall pay to the respondent within two months of the order, the sum of Rs. 1,500/- with costs in addition to the interest at the rate of 6% p.a. with effect from 16.7.2001 till the date of final payment.

B) Rest of the impugned order is maintained.

Appeal is accordingly disposed of.