
(2005) 01 MP CK 0028
In the Madhya Pradesh High Court
Case No : M. A. No. 1398 of 1998

Union of India

APPELLANT

Vs

Vijay Laxmi Traders and another

RESPONDENT

Date of Decision : 20-01-2005

Acts Referred:

Railways Act, 1989 — Section 23, 78B

Citation : (2005) 3 MPLJ 69

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : S.P. Sinha, for the Appellant; M.L. Jaiswal with Manoj Kushwaha, for the Respondent

Judgement

N.K. Mody, J.

Being aggrieved by the judgment dated 28-7-1998 passed by Railway Claims Tribunal Bhopal in T. A. No. 1772/1990, whereby learned Tribunal has directed the appellant to pay an amount of Rs. 10,000/- to the respondents with interest @ Rs. 12% per annum with effect from 2-8-1983 till payment with costs, the present appeal has been filed.

The short facts of the case are that the claim of the respondents was for non-delivery of goods sent vide railway receipt P. W. B No. 364287 dated 20-10-1981 whereby the goods were sent from Jabalpur to Mumbai but could not reach to its destination. A complaint thereof was made, notice was given on 12-4-1982 by both the consignee and consignor u/s 78-B of the Railways Act and it was acknowledged by the railways on 16-4-1982. Since the claim could not be settled by the railway authorities, the consignor filed claim alleging that the goods were handed over to the appellant at Jabalpur in two packages containing (one case terycotton cloth and one case G. P. cotton cloth) with value declared on each case for being carried from Jabalpur to Byculla. It was alleged that usual period of transit of parcels from Jabalpur to Byculla is hardly 2 to 4 days and accordingly the parcels ought to have been carried and delivered at destination

by or about 24-10-1981. Appellant failed to perform the contract of carriage to deliver the goods within such reasonable period of time. It was alleged that on 19-3-1982, the consignee was informed that two cases were identified pertaining to them and the consignee was asked to accept open delivery thereof. When nothing was found in these two cases on comparison with the supply invoice, a list of contents was made out and a certificate of short delivery was given to the consignee. The consignee valued the claim at Rs. 10,066/- one of the parcels containing terycotton cloth and other cotton cloth. It was prayed that appellant be directed to pay a sum of Rs. 10,000/- together with interest @18% per annum from the date of filing of the suit till the date of realization.

The appellant submitted the written statement wherein it was alleged that respondent had booked parcel containing "terrycotton cloth which fall in the category of excepted articles" mentioned in Schedule II u/s 78-B of the Railways Act, which requires the value of such articles to be declared and if it exceeds Rs. 500/-, percentage charges should be paid thereon in addition to the freight due on the value so declared by way of compensation for the increase risk. It was also case of the appellant that appellant has prescribed separate type of forwarding note to be executed by the consignee while tendering the goods falling under the category of excepted articles fill up the various claims mentioned therein.

Since the respondents did not execute the prescribed forwarding note intended for excepted articles but executed a forwarding notice intended for general merchandise and further the respondents merely declared the value of the goods however did not agree to pay the percentage charges, therefore the appellant is not liable u/s 77-B of the Indian Railways Act for payment of alleged losses. Hence, it was prayed that the claim of the respondents be dismissed.

Vide order dated 23-6-1995, the suit of the respondents was dismissed for want of legal and valid notice u/s 78-B of the Indian Railways Act against which the matter came up before this Court and vide order dated 11-8-1997 in M. A. No. 195/1996, this court set aside the order and remanded the matter back to the tribunal. Vide judgment dated 28-7-1998, learned tribunal directed the appellant to pay an amount of Rs. 10,000/- to the respondents with interest @ 12% per annum from 2-8-1983 till payment along with costs of the litigation against which the present appeal has been filed u/s 23 of the Railways Act.

Learned counsel for the appellant submits that at the relevant time, the Indian Railways Act, 1890 was in-force and as per section 77-B of the Act, the appellant is not liable to pay the value of the goods. For the convenience, section 77-B of the Act is reproduced herein below.

Section 77-B(i) mandates with respect to the responsibility of railway administration as a carrier of articles of special value, which reads as under :-

Notwithstanding anything contained in the provisions of this chapter, when any articles mentioned in the Schedule II or contained in any parcel or package

delivered to a railway administration to be carried and the value of such articles in the parcel or package exceeds Rs. 500/-, the railway administration shall not be responsible for the loss, destruction, damage or deterioration of the package unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared in writing or declared them in writing at the time of the delivery of the parcel or the package for carriage by railway, and if so required by the administration, paid or engaged to pay in writing a percentage on the value so declared by way of compensation for the increased risk.

The last item of the articles to be declared and insured mentioned in Schedule II is as under :- terylon, terywool, nylon and their fabrics. On the strength of section 77-B of the Act, learned counsel for the appellant placed reliance on a authority of this Court reported in 1969 MPU 696 : 1969 JLI 772, Union of India vs. Neeckal Das, wherein Single Bench of this Court has held that railway administration is not required to prove that it asked the consignor to pay additional charges for damages. In the above case, this Court has observed that once the declaration is given by the consignor, he cannot say that the administration did not require him to pay the additional charges. It was further observed that the form filled in by the consignor itself contains the declaration both as to the value of goods and as to its refusal to pay the necessary charges. Learned counsel further placed reliance on a case reported in Union of India (UOI) Vs. Kailash Chand Jain and Company, wherein it is held that the railway administration was entitled to the benefit of section 77-B and absolved of liability, as the plaintiff neither paid nor engaged to pay the required percentage on the value declared of the goods by way of compensation for the increased risk. Learned counsel further submits that on the forwarding note for general merchandise Exhibit R-12 whereby the declaration of the value of the goods was made by the appellant bears an explanatory note. Clause n of the said explanatory note reads as under :- Railways are not responsible for any loss, destruction, damage or deterioration of package containing piece of article(s) specified in Schedule II to the Indian Railways Act whose value exceeds Rs. 500/- per package piece or contents unless contents of each package and value of excepted articles are declared at the time of booking and engagement entered into pay the percentage charges on value for increased risk. The declaration must be made in Clause II "over-leaf and word engaged or the words" do not engage struck out as required.

Shri M. L. Jaiswal, learned senior counsel appearing for the respondents submits that section 77-B of the Railways Act is not applicable in the present case because section 77-B of the Act comes in play only in four circumstances that is loss, destruction, damage or deterioration. It was submitted that since it is the case of non-delivery, therefore the railway authorities cannot absolve from their liability. It was also submitted that the case reported in 1969 MPU 696 : 1969 JLI 772 (supra) is not applicable in the present case. It was also submitted that in this case the consignor has himself given declaration both as to the value of the

goods and as to the refusal to pay the percentage charges. Similarly, learned counsel further submits that the case of Union of India (UOI) Vs. Kailash Chand Jain and Company, is also not applicable because in that case the claimant appeared in witness-box and evaded the answer when questioned whether in those forwarding note also, he had not similarly scored out the words and engaged as in the instant case.

Learned counsel for the respondents placed reliance on a decision reported in ILR 19 Cal 538, The Secretary of State For India in Council vs. Budhu Nath Paddar and others, wherein it was held that unless a demand for percentage charges is made by the railway administration, it cannot be absolved of the liability to pay damages. In the aforesaid case, it was found as a fact that the consignor booked a wooden box containing specie worth Rs. 4,291-14-5 and asked a booking clerk as to what would be the charges for sending it safely. The booking clerk demanded Rs. 9-1, which amount was paid by the consignor. Neither any declaration about the value of the articles was secured from the consignor, nor any demand was made for increased charges to cover insurance. Shri M. L. Jaiswal, Senior Advocate for the respondents further placed reliance on a case reported in AIR 1971 Del 79, M/s Uttam Singh vs. Union of India. Learned counsel emphasized on para 8 wherein the divisional Bench of Delhi High Court has held that "it is, therefore, clear that such percentage need not be paid if the railway administration does not require it to be paid in spite of declaration of value. The case of the appellant is that demand was made by railway administration in respect of the parcel in question".

In the present case, there is no dispute about the value of the goods as the document Exhibit R-12 contains a declaration of the railway authorities to the effect. "I do hereby certify that I have satisfied myself that the description marks and weight or quantity of goods consigned by me has been correctly entered in the forwarding note.

In the case of Uttam Singh vs. Union of India reported in AIR 1971 Del 79 (supra), High Court of Delhi in para 20 has observed that on a review of all the cases and the construction of section 75 of the Act, we are of the view, that if in respect of an article of value, the percentage charge required to be paid u/s 75 of the Act has not been paid, the railway administration would not be liable for the loss of the article even though the loss has been occasioned by the negligence/misconduct of its servant or by theft even by the very servant to whom the goods are entrusted but there would be no "loss" within the meaning of section 75 of the Act.

In view of aforesaid, since it is an admitted fact that no percentage charges were paid, the appeal stands allowed and the judgment passed by Railway Claims Tribunal, Bhopal is set aside. No order as to costs.