

(2004) 09 DEL CK 0192

In the Delhi High Court

Case No : FAO 313 of 1999 and CM 7202 of 2004

Union of India (UOI)

APPELLANT

Vs

Amira Traders

RESPONDENT

Date of Decision : 10-09-2004

Acts Referred:

Citation : (2004) 114 DLT 302 : (2004) 77 DRJ 135

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Advocate : Sudha Srivastava, for the Appellant; A.P. Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Sodhi, J.—This appeal is directed against the award dated 08.04.1999 of the Railway Claims Tribunal in of 9600549 whereby the Tribunal has awarded a sum of Rs. 80,313.25 paise (Rupees eighty thousand three hundred thirteen and paise twenty five only) with proportionate costs pendente lite and future interest at the rate of 10% per annum from the date of filing of the application till the date of realization. The date of filing of the application is 4.11.1996.

2. Brief facts of the case as noted by the Railway Claims Tribunal are as follows:-

"an application for the recovery of a sum of Rs. 82,237.50 paise with costs and interest pendente lite and future at 18% per annum from the respondent. The case of the applicant is that on 5.11.93 the consignor entrusted 480 kattas of kabuli gram to the respondent vide Railway Receipt No. 107535 at Wadi Bander for carriage and delivery at Sabzimandi. The further case of the applicant is that the consignment ought to have been offered to the applicant at the destination within 6 to 7 days but it was not offered to them, that the applicant sent a claim notice dated 24.11.93 to the respondent that on 21.12.93 the applicants were informed that the consignment of the applicant was available for delivery, that the delivery was given by the respondent on assessment vide

assessment certificate dated 25.12.93 and the damages were assessed as under:

1 150 Kattas were assessed at 25%

2 200 Kattas were assessed at 35%

The applicant have further stated that when inspire of issue of another claim notice dated 13.12.93, the claim amount was not paid, this application has been filed.

The respondent filed their Written Statement contending that the application was not signed, verified and filed by a duly authorised person, that the applicant had no locus standi to sue and that the respondent are protected from their liability.

Based on rival contentions the following issues were framed:

Whether the application has not been signed, verified and filed by a duly authorised person?

1 Whether the applicant has no locus standi to sue?

1 Whether the respondents are protected U/s 93(f)(g) read with Sec. 98, 102 and Section 110 of I.R.A?

1 Whether the Tribunal has no jurisdiction to entertain the present application?

1 Whether the notice service U/s 106 is not legally valid?

1 Whether the respondent are not liable to pay compensation for the reasons as stated in the W.S.?

1 Relief."

3. The Tribunal on the basis of evidence available before it allowed the claim as already stated. Counsel for the appellant submits that issue No. 3 has been wrongly decided inasmuch as there is nothing to show that the damage to the goods was as a result of any default by the Railways. Counsel heavily relies upon the report of the Chief Principal Scientist of Pusa Institute.

4. I have heard counsel for the appellant and have gone through the award as also the material on record. It is the admitted case that Exhibit R-3 is a document indicating that the respondent had directly placed the goods from the truck into the wagon but does not show that the goods were in any manner damaged. The consignment which was carried by the Railways on 5.11.1993 was delivered on 21.11.1993 and Exhibit R-5 shows that the goods when delivered were in damaged condition. There is no other evidence on record from where it can be inferred that the goods were either loaded in a damaged condition or did not suffer damage during transit.

5. The report RW-1 although states that the type of goods ordinarily do not go bad in the short period of transit but is not a report specifically dealing with the goods in question. It is general in nature. Be that as it may, since the order

under challenge is based on the evidence on record which appreciation cannot be termed to be perverse, I see no reason to interfere with the same.

6. FAO 313/1999 is dismissed. CM 7202/2004 also stands dismissed.