

(2009) 07 DEL CK 0413
In the Delhi High Court
Case No : FAO No. 355 of 1998

Union of India (UOI)

APPELLANT

Vs

Bharat General and Textiles Industries Ltd.

RESPONDENT

Date of Decision : 23-07-2009

Acts Referred:

Railways Act, 1989 — Section 93, 94

Citation : (2009) ILR Delhi 170 Supp

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Sanjay Kumar Pathak, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—Appellant/Union of India has filed this appeal challenging judgment dated 14th January, 1998, of Railway Claims Tribunal, Delhi (for short as "Tribunal."), vide which appellant was directed to pay a sum of Rs. 33,237/- (Rupees Thirty thousand two hundred thirty seven) to respondent, together with proportionate costs and pendent lite and future interest thereon @ 10% per annum (simple interest) from the date of filing of the application.

2. Brief facts case are that respondent booked consignment of 282 bags of groundnut deoiled cake for carriage from Guntur to Delhi Kishan Ganj, under Railways Receipt (R.R.) No. 701683, invoice No. 1035, dated 10.07.1993. Respondent is endorsed consignee of R.R. for valuable consideration. According to respondent, when consignment reached at destination station on 19th July, 1993, it was found damaged by wet to the extent of 50% on 72 bags and 70% on 98 bags. Hence, a sum of Rs. 39,480/- was claimed as compensation for damaged caused to the consignment, which represent the market value of the damaged consignment.

3. Claim of respondent was contested by appellant. Preliminary objection was raised that suit was not instituted by duly authorised person. On merits, it was

stated that damage to said goods was never caused due to any negligence on the part of the appellant, rather there had been negligence on the part of consignor himself. Loading of consignment was done by consignor himself, directly from lorry to wagon and same was not supervised by Railway staff. The consignor did not comply with packing conditions-P-7. The bagging was in defective condition and Railway took every reasonable care in carriage of the consignment. Appellant allotted water tight wagon for carriage of said consignment. The consignment was never damaged in custody and control of railway and claim of the respondent is not maintainable.

4. On 14th July, 2009, when matter was listed for hearing, nobody appeared for respondent. Even prior thereto, on 13th July, 2009 also none appeared for respondent. Hence, respondent was proceeded ex parte.

5. Learned Counsel for appellant contended that R.Rs. in question were issued on "said to contain basis. and it was the duty of respondent to establish that exact quantity/conditions of goods mentioned in R.Rs. in question were infact loaded. There was no negligence or misconduct on the part of Railway administration in carriage of consignment in question. There was an endorsement on Railway Receipts, that is, "Loading was not supervised by Railway staff" and it was done direct from truck to wagon and the contents of bags were not checked by Railway staff and goods in question reached at destination station in original wagon with seals of wagon found intact and wagon in question was also found to be "water tight". Under these circumstances, findings of Tribunal that damage to consignment by "wet" had taken place during transit, are wrong. It is also contended that endorsement on RRs, forms contract between the parties and Tribunal could not have gone beyond written contract between the parties.

6. Lastly, it is contended that appellant cannot be held liable to pay compensation, in view of protection u/s 93(g) of Indian Railways Act, 1989 (for short as Act.). Learned Counsel for appellant in support of his contentions cited Union of India (UOI) and Another Vs. Hukumchand and Others, , in which it is held that;

There is, however, no justification for drawing any such inference in this case because the railways have placed sufficient material showing that proper and requisite precautions were taken by them to provide against any such contingencies. The damage to the goods was not attributable to any negligence on the part of the railway administration or its servants but it was caused due to natural causes by percolation of rain- water during a long journey from Bareilly to Damoh.

7. I have considered the contentions raised by learned Counsel for the appellant.

8. Section 93 of the Act, provides for general responsibility of railway administration for loss, destruction, damage or deterioration in transit of any consignment etc. It 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, of 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) act, restraint of seizure under legal process;
- e) orders of 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 authorized 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 vade 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 causes, 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.

9. Clause (g) of Section 93 of the Act, under which appellant is claiming protection, provides "if there is natural deterioration or wastage in bulk or weight due to inherent defect, then railway shall not be responsible of the loss, destruction, damage etc".

10. In the present case, there is nothing on record to show that goods which were handed over to railways for transportation were in damaged condition.

11. It was for the railway to show and prove that there was negligence, act or omission on the part of the consignor, consignee or endorsee, as a result of which goods got damaged. The basic question is, if the goods are handed over to railways in proper condition, then railway would be liable for any loss/damage or not.

12. No evidence has been produced by appellant that goods handed over to it by respondent, were in damaged condition or respondent had not taken proper care

or not following the directions, while packing these goods.

13. On the other hand, AW-1 Vijay Kumar Kochar, Sales Manager of respondent, in his statement stated that "The consignment covered under RR Nos. 701683 was tendered to respondent for carriage in perfectly sound condition and none of the packets were in wet and damaged condition at the time of booking".

14. AW-1, further stated that "above consignment was received at the destination station in badly damaged and rotten condition, damaged by water. The losses were assessed by railway authorities and assessment certificate was issued".

15. In cross-examination AW-1, denied that the said goods were not in perfect condition when they were packed. He also denied that goods have been damaged by consignor's negligence and not by railway negligence.

16. Tribunal in this regard held;

The consignment was entrusted on 10.7.93 under RR No. 701683. The forwarding Note Ex.R-1 and the copy of RR Ex. R-2 produced by the Respondents go to prove that 282 bags of Ground-nut de-oiled cake weighing 225 qtls. were entrusted to the Respondents for carriage and that the consignment was booked at Railway risk. There is nothing in the Forwarding Note to show that the consignment was not in sound condition at the time of booking. Respondents has not produced any evidence to prove that the goods were not in sound condition at the time of booking. The DDPC(Ex.R-6) and the Assessment Report (Ex. R-3) show that the consignment was damaged by wet to the extent of 70% in respect of 98 bags; and 50% in respect of 72 bags. Once when the entrustment of the consignment to the Railway for carriage is proved, the liability of the Railway Administration to pay compensation for the damage caused to the consignment is absolute except in case where Railways plead and prove that they are entitled to protection under provisos (a) to (i) of Section 93 of the Railways Act. Even then the Railway Administration has to further prove that they have exercised reasonable care and foresight in the carriage of the consignment." The Tribunal further held;

It is clear from DDPC that Respondents have not taken proper monsoon precautions by providing gunny strips in the door crevices, as a result of which damage by rain water occurred to the consignment and that Respondents have not exercised reasonable care and foresight in carrying this consignment. Hence they are not entitled to protection u/s 93 (g) of the Indian Railways Act and are liable to pay compensation.

17. This Court in a similar case, Union of India v. Hindustan Petroleum Corporation Limited, 2004 VIII AD (Delhi) 661 held;

Counsel for the appellant submits that the Railways are protected under Sections 93 & 94 of the Railways Act inasmuch it was the duty of the respondent to ensure that the consignment entrusted to the Railways was properly secured and

to prove that damage was caused during transit. The question whether the consignment was properly secured at the time of placement with the Railways is one of fact. The Tribunal finds that there is no evidence on record to show that the Railways can claim protection u/s 93 by insinuating that the consignments were not properly sealed and/or handed over in defective condition. On the contrary, there is positive evidence on record to show that the sealed were checked when the container moved into the yard as also was examined by the Railway staff for any leakage of wagon. In that event of the matter, the Railways can hardly claim protection u/s 93 of the Railways Act.

18. In the present case, Tribunal has held that appellant has not taken proper monsoon precaution by providing gunny strips in the good crevices and appellant has not exercised reasonable care and foresight in carrying the consignment.

19. Thus, I do not find any ambiguity or infirmity in the impugned judgment of the Tribunal.

20. There is no merit in the present appeal and same is hereby dismissed.

21. No order as to costs.

22. Trial court record be sent back.