(2004) 11 DEL CK 0161

In the Delhi High Court

Case No : FAO 433 of 1999

Union of India (UOI) APPELLANT

Vs

IISCO and Another RESPONDENT

Date of Decision : 19-11-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Railways Act, 1989 — Section 76, 94(2)

Citation : (2005) 1 ACC 862 : (2005) 117 DLT 458

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

Bench : Single Bench

Advocate : Ajay Sahai, for the Appellant; Meena Chaudhary Sharma, for the Respondent

Judgement

R.S. Sodhi, J.—This appeal is directed against the award dated 14.5.1999 of the Railway Claims Tribunal in TA I/229/90 whereby the Tribunal awarded a sum of Rs. 17,857.97 paise to the application with pendente lite and future interest at the rate of 10% per annum and proportionate cost for short fall in the goods, namely, ribbed bars 16/20 mm dia under Invoice No. 87, Railway Receipt No. 609992 dated 7.5 1983 Ex SCOB.

2. Facts of the case are as follows:-

""This application has been filed by the applicant for recovery of a compensation amount of Rs. 18,978.88 paise from the respondent. The applicants case is that they booked a consignment consisting of ribbed bars 16/20 mm dia under invoice No. 87 Railway Receipt No. 609992 dated 7.5.1983 Ex. SCOB siding, Burnpur to IISCO siding, Okhla, New Delhi and the said consignment was loaded in wagon No. SE 49718, that when the consignment was made available for delivery at the destination there was shortage and the respondent refused to give delivery after reweightment by rejecting the application of the applicants dated 26.5.83 vide their letter dated 27.5.83.

The applicant company approached M/s Superintendence Co. of India to survey the consignment and the said company issued Survey Report dated 14.6.83 showing a shortage of 5.095 MTs. That when inspire of serving of notice dated 19.8.83 the compensation amount was not paid, this application has been filed for recovery of an amount of Rs. 18,978.88 paise.

The respondent filed their Written Statement statement that no notice under Sec. 80 CPC was served, that the respondents were protected under Sec. 76(c) of the Railways Act, that the plaint was not signed, verified and instituted by a duly authorised person that ''said to contain'' RR was issued and that there was no negligence or misconduct on the part of the respondent.

Based on rival contentions the following issues were framed:

1. Whether the plaintiff is a registered incorporated company and suit has been filed by a duly authorised person?

2. Whether the notice U/s 80 CPC has been served before filing the suit.

2A. Whether the consignment was short delivered, if so, to what extent?

3. Whether the defendants are protected u/s 76(c) of the Indian Railways Act?

4. If Issue No. 2(A) is proved in favor of the applicant, whether there was no negligence or misconduct on the part of the Rly. Admn./employees etc.?

5. Whether reweightment was unilateral arbitrary and if so, to what effect?

6. To what amount, if any, plaintiff is entitled?

7. Relief?

3. The Tribunal on the basis of evidence on record returned a finding that the consignment booked SCOB, siding, Burnpur to IISCO siding, Okhla, New Delhi vide railway receipt No. 609992 dated 4.5.83 wherein 45.00 MTs. and was loaded in BFR open wagon No. S E49718 and ''''said to contain'''' RR was issued with the remarks ''weighment witnessed by railway staff''. On reaching the destination it was found short by 5.095 MTs and there by the aforesaid award was passed.

4. It is contended by counsel for the appellant that as per rules the Railways does not weigh the material that is put on its wagons and nor is any intimation given or the material reweighed when the same is delivered to the consignee. The contention, Therefore, being that the Railways is not responsible for any shortfall in the weight of the goods.

5. Heard counsel for the parties and have gone through the judgment under challenge as also the material on record. I find that the contentions of learned counsel is quite contrary to Section 94(2) of the Indian Railways Act 1989 contained therein. Even otherwise the question over here is one of fact which has been determined on the basis of evidence led by parties. No infirmity is pointed out on its appreciation.

6. In this view of the matter since there is nothing shown to me that the evidence adduced has not been correctly recorded or appreciated. I see no reason to interfere in this matter. FAO 433/1999 is dismissed.

