
(2006) 04 DEL CK 0104
In the Delhi High Court
Case No : FAO. No. 12 of 1999

Union of India (UOI)

APPELLANT

Vs

Raja Ram Madan Lal

RESPONDENT

Date of Decision : 28-04-2006

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23
Railways Act, 1989 — Section 102, 74, 92, 93, 98(1)

Citation : (2006) 04 DEL CK 0104

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Altemesh Rein, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—The present Appeal has been filed by the Union of India through the General Manager, Northern Railway u/s 23 of the Railway Claims Tribunal Act, 1987 for setting aside the impugned Order dated 24th September, 1998 allowing the claim of M/s. Raja Ram Mohan Lal, the respondent herein, for a sum of Rs. 22,491/- along with interest 10% per annum from the date of filing of the Claim Petition, i.e. 25th June, 1996 till payment with costs and advocate fee, if certified.

2. 490 bags of maize were booked by two railway receipts Nos. 676175 and 676176 dated 22nd August, 1993 for being transported from Bangalore Cantt. Railway Station for delivery at Kishan Ganj.

3. At the time of delivery, some of the goods were found to be in a damaged condition. The delivery was given on assessment of damage, which was as under:-

(a) 80 bags damage assessed at 55%. (b) 40 bags damage assessed at 40%. (c) 45 bags damage assessed at 30%.

4. The respondent thereafter filed a claim petition before the railways claims tribunal and as mentioned above, the same was allowed by the impugned Order dated 24th September, 1998.

5. Learned counsel for the appellant submitted that the impugned Order was liable to be set aside as the respondent/claimant did not have any authority from the consignor to issue notice and Therefore did not have locus standi to file the claim petition. It was further argued that Northern Railway cannot be held responsible for the damage of the goods and liable to pay compensation in view of the Sections 92(f), 98(1)(b) and 102(c)(i) of the Indian Railway Act, 1989 (hereinafter referred to as the Act, for short). Learned counsel for the respondent controverted the said arguments and relied upon the impugned order.

6. I have examined the contentions raised by the learned Counsel for the appellant. The learned Tribunal had noticed that the consignor- A.R.K. and Company had endorsed the railway receipts in favor of the respondent-claimant. In view of Section 74 of the Act, the property in the goods passes on to the consignee or to the endorsee on the delivery of the railway receipt to him. Accordingly, under the aforesaid provision the consignee or the endorsee has all rights and liabilities of the original consignor. Learned Tribunal was Therefore right in holding that the consignee or the endorsee could file the claim petition and/or issue notice. It is also on record and as noticed by the learned Tribunal the original consignor had received the amount payable for the goods from the consignee/endorsee i.e. the respondent. This contention of the appellant is, Therefore, rejected.

7. Regarding protection u/s 93(f) of the Act, I do not find any merit in the same. Section 93(f) of the Act specifically states that the railway administration will be responsible for the loss, destruction, damage or deterioration in transit or non-delivery of any consignment arising from any cause. Thereafter, nine exceptions have been carved out. Clause (f) to Section 93 provides one such exception. Under the aforesaid clause, Railway Administration could be absolved of its liability if there was any act or omission or negligence on the part of the consignor, consignee, endorsee or any agent or servant appointed by them. Admittedly, in the present case, there was damage and loss to the goods that had been given to the Railways for transportation. At the time of delivery, the goods were not in a damaged condition. It was for the Railways 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 the goods had got damaged. The normal law is that once the goods were handed over to the Railways in a proper condition, the Railways would be liable for any loss or damage. In such cases doctrine of "res ipsa loquitor" applies. It is also on record that normal period of transit from Bangalore to Delhi at that time was ten days. However, in the present case it took more than 21 days before the wagons with the goods were delivered in Delhi. This delay in transit was not explained by the Railways and requirement/condition to bring the case under the exception mentioned in Clause

(f) of Section 93 had not been proved and established.

8. Similarly, the plea of protection u/s 98(i)(b) of the Act is also liable to be rejected. Section 98 of the Act applies when the goods were in a defective condition or were defectively packed or not packed in the manner prescribed and as a result of such defective or improper packing the goods were liable to damage, deterioration, leakage or wastage. It was the case of the appellant that the consignor had not used dunnage and gunny strips and Therefore packing conditions P7/P8 had not been complied with. However, no oral evidence was led by the appellant to prove and substantiate the appellant's case u/s 98(1)(b) of the Act. It was for the appellant to show and prove that the goods were defectively packed or not packed in a manner as prescribed and also establish that as a result of defective or improper packing the goods were liable to damage, deterioration, leakage or wastage. The appellant-Railways did not lead any evidence to show or establish that because of the alleged defective packing or failure to pack in accordance with the rules, the goods had become susceptible to deterioration and as a result had suffered damage, deterioration, leakage or wastage. Normally, without any evidence to the contrary, it has to be presumed that there was negligence on the part of the Railways as the goods had been admittedly received in a proper condition. In the forwarding notes and the railway receipts it was merely mentioned that packing conditions P7 and P8 had not been complied with. There is no indication of the exact nature of defect in packing and no evidence whatsoever was led to show and prove that non-compliance of packing conditions P7 and P8 had resulted in the damage.

9. The last contention raised by the appellant was that the Railways was protected u/s 102(e)(i) of the Act as there was improper loading and unloading by the consignor. It is submitted that the consignor had not left space of 18" x 6". There is again no evidence to substantiate this plea on behalf of the Railways. No oral evidence was led to prove and establish the said plea. The learned Tribunal after examining the material on record came to the conclusion that there was nothing on record to show that adequate space as was required not left and the relevant report was not filed by the appellant.

10. In view of the above, I do not find any merit in the present appeal and the same is accordingly dismissed. No costs.