

(2008) 03 DEL CK 0100
In the Delhi High Court
Case No : FAO No. 109 of 2007

Union of India (UOI)

APPELLANT

Vs

Rajesh Kumar Parveen Kumar

RESPONDENT

Date of Decision : 27-03-2008

Acts Referred:

Citation : (2008) 03 DEL CK 0100

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : S.R. Narayan and Kumar Sheel, for the Appellant; J.P. Sikka, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Heard Learned Counsel for the parties.

2. The Railways is aggrieved by an order dated 16.11.2006 disposing of a claim petition filed by the respondent and awarding compensation in sum of Rs. 3,24,044/- to the respondent holding that 55% value of the consignment of Moong Dal which was entrusted to the Railway authorities vide RR No. C-304305 dated 10.9.1999 for carriage from Ahmednagar to Delhi got damaged due to delay in transit and lack of reasonable steps taken by the Railway authorities to protect the Moong Dal. From the sum awarded, Rs. 57,624/- already paid by the Railway authorities has been directed to be adjusted, meaning thereby, net amount payable is Rs. 2,66,420/-. Interest @ 6% p.a. from date of the order till realisation has also been directed.

3. The Railways did not dispute receipt of 280 bags of Moong Dal for onward shipment from Ahmednagar to Delhi. Railways also did not dispute delay in transit and goods being damaged. However, Railways pleaded that value of the goods deteriorated was only 10% of the consignment.

4. The respondent alleged that the value of the goods damaged was 60%.

5. The Railways relied upon an assessment made by their officers. The respondent relied upon the valuation pertaining to the deterioration of the goods by Government approved valuers, namely, Rakesh Kumar Malhotra and Shri Sadi Ram Sheo Shankar. The former assessed the damage to be 58% to 60%. The latter assessed the damage to be 55% to 60%.

6. The Railway authorities also took an additional defense that there was a full and final settlement of the claim when on 20.8.2001, vide cheque No. 851186, it paid Rs. 57,624/- to the respondent on account of goods being damaged to the extent of 10%.

7. On the plea of accord and satisfaction the Tribunal has noted that the evidence does not establish the same.

8. I have perused the record of the Tribunal. The record reveals that on 23.7.2001 (letter being at page 143 of the record of the Tribunal) the Railways intimated to the respondent that it was prepared to pay Rs. 57,624/- to the respondent on account of the loss of the value of the goods. Said letter dated 23.7.2001 written by the Railway authorities, on being received by the respondent was immediately replied vide respondent's letter dated 31.7.2001 (at page 131 of the record of the Tribunal). The letter dated 31.7.2001 written by the respondent clearly informs to the Railway authorities as under:

Therefore hereby categorically informed the Railway Administration that we shall accept the payment of Rs. 57624/- as a Part payment of our claim and we shall hold the Railway Administration liable for the balance amount which may kindly be noted. The amount of Rs. 57624/- if sent to us shall be accepted under Protest as a part-payment of claim. Please acknowledge the receipt of this Notice.

9. The record reveals that thereafter the Railway authorities sent the cheque in question to the respondent by post and on receipt of the cheque, vide letter dated 11.9.2001, the respondent wrote back that it was receiving and encashing the cheque under protest and was treating the payment tendered as a part payment. The said letter dated 11.9.2001 is at page 135 of the record of the Tribunal.

10. The letter concludes as under:

In the meanwhile, we are encashing the above cheque under protest as a part payment after service of this notice by you.

11. Photocopy of the cheque dated 20.8.2001 is at page 133 of the record of the Tribunal.

12. Thus, the plea of the appellant that there was accord and satisfaction and that the respondent received Rs. 57,624/- in full and final satisfaction of its claim is contrary to the record. The plea is rejected.

13. On the quantification of the loss, suffice would it be to state that the Tribunal had before it the version of the Railways and 2 valuation reports submitted by

the respondent. The valuation reports were prepared by the Government approved valuers.

14. As noted above, one valuation report assessed the loss to be between 58% to 60%. The other report assessed the loss to be between 55% to 60%.

15. The evaluation of the reports is a matter pertaining to appreciation of evidence. No infirmity has been pointed out to This Court in the valuation reports. It has not been shown as to in what manner the reports were not good evidence.

16. I note that the Tribunal has recompensed the respondent on the lower percentage of the loss i.e. 55%.

17. I thus find no infirmity in the impugned order.

18. The appeal is dismissed.

19. Costs shall follow.

20. CR be returned forthwith.