
(2004) 10 DEL CK 0080

In the Delhi High Court

Case No : FAO 5 of 2000 and CM 12 of 2000

Union of India (UOI)

APPELLANT

Vs

The Indian Iron Steel Co. Ltd.

RESPONDENT

Date of Decision : 04-10-2004

Acts Referred:

Railways Act, 1989 — Section 76C, 78B

Citation : (2004) 3 ACC 940 : (2004) 115 DLT 191

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

Bench : Single Bench

Advocate : Ajay Sahai, for the Appellant; None, for the Respondent

Judgement

R.S. Sodhi, J.—FAO 5/2000 is directed against the order dated 26th September, 1999 of the Railway Claims Tribunal, Delhi Bench (for short "the Tribunal") in OA-I-222/90, whereby the learned Tribunal has held the Railways liable to compensate the respondent for the shortfall in the transact of the consignment.

2. The brief facts of the case as has been noted by the Tribunal are as under :

"The brief facts as set out in the claim application are that the applicant company booked a consignment of 28 mm Untwisted Ribbed Steel Bars in 8 bundles, weighing 59.000 MTs, vide Railway Receipt No. 665345 dated 03.08.88, ex SCOB Siding, Burnpur to Badli, at Railway's risk rate. At destination, however, only 43.750 MTs of Untwisted Ribbed Steel Bars were delivered to the applicant, thus, there was a short delivery of 15.250 MTs, due to which the applicant suffered a loss of Rs.91,652.50. The applicant also incurred Rs.350/- as survey charges and Rs.4,575/- as stockyard remuneration. The applicant has alleged that the short delivery in the consignment was due to negligence and misconduct on the part of the respondent and its employees. The applicant served a claim notice dated 26.09.88 u/s 78B of Indian Railways Act, 1890 (hereinafter referred to as I.R.Act), however, its claim was not settled, Therefore, the applicant has filed this claim application in this Tribunal.

2. On notice, the railway administration appeared and filed its reply denying its liability to pay any compensation to the applicant on the ground that the application was not signed and verified by the duly authorized person, there was no negligence on the part of the railway administration as the consignment as booked on said to contain basis and loading was not supervised by the railway staff. Protection u/s 76-C of the I.R.Act was also sought and the validity and legality of notice u/s 78-B was challenged.

3. The applicant filed replication reasserting its pleas made out in the claim application and denying the allegations of the respondent in reply.

4. From the pleadings of the parties, following issues were framed :-

(1) Whether the application is signed and verified by a duly authorized person on behalf of the applicant?

(2) Whether the claim notice is not legal, valid and sufficient?

(3) Whether the applicant proves shortage due to negligence and misconduct on the part of the respondent? If so, to what extent?

(4) Whether the prescribed packing conditions were complied with, if not its effect?

(5) Whether the goods were booked on "Said to Contain" basis, if so, its effect?

(6) To what amount, if any, the applicant is entitled?

(7)Relief."

3. It is contended by counsel for the appellant that the moment the consignment is handed over to the respondent the liability of the Railways ceases. Consequently, since the respondent has taken the delivery of consignment, it cannot claim damages for the shortfall from the Railways.

4. Heard counsel for the appellant and have gone through the material on record as also the judgment under challenge. It appears to me that the Tribunal has arrived at findings on the basis of evidence produced before it. After appreciating the same. it finds that the Railways have failed to prove delivery of 59.000 MTs of consignment at destination. Hence a shortfall of 15.250 Mts was detected. Consequently, the Railways are liable to pay compensation. I see no defect in the order under challenge. FAO 5/2000 is accordingly dismissed. CM 12/2000 also stands dismissed.