
(2010) 04 AHC CK 0115
In the Allahabad High Court

Union of India (UOI)

APPELLANT

Vs

U.P. Asbestos Ltd.

RESPONDENT

Date of Decision : 29-04-2010

Acts Referred:

Contract Act, 1872 — Section 160
Railways Act, 1989 — Section 93, 99

Citation : (2010) 04 AHC CK 0115

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Judgement

Rajiv Sharma, J.—Heard Ms. Deep Shikha, learned Counsel for the appellants and Mr. R. K. Agarwal, learned Counsel for the Respondents.

2. As the common questions of facts and law are involved in the aforementioned cases, they are taken up together for common orders.

3. The respondents preferred cases before the Railway Claims Tribunal seeking compensation on account of damage to the cement bags. The appellant-resisted the claim on the ground that the consignment was accepted for carriage under Protective Risk Rate Remarks, which was accepted by the consignor/consignee and no protest was lodged on this score either by the consignee or consignor. It was further claimed by the appellant that the respondent being a regular customer was in full knowledge that there are no covered sheds for such inwards consignments at Mohanlalganj. The date of booking did not relate to the monsoon period. After considering all these aspects, the Tribunal passed the impugned order. Being aggrieved, the aforesaid appeals have been filed.

4. Learned Counsel for the appellants submits that the Tribunal has failed to take into consideration that the consignment reached the destination without any transit delay or negligence on the part of the appellant-respondent or any interference en route and consequently, the appellant cannot be held liable for losses, if any, occurred to the respondent on account of damage to the cement bags. Moreover, The date of booking of the consignment and its delivery did not

relate to the monsoon period. The Tribunal further failed to take into consideration that the damage to the cement bags occurred on account of sudden cloud burst, which is an act of God and on which the railway administration had no control and consequently the impugned order dated 2.6.2003 has been passed in violation of provisions of Section 93(a) of the Railway Act, 1989.

5. Further, she submits that it was the duty of the consignor/ consignee to have arranged for proper removal of the goods after unloading the rake and by virtue of the provisions contained in Section 93(f) of the Railway Act, 1989, the appellant-respondent cannot be held responsible for damages to the consignment, if any, on account of carelessness/negligence on the part of the consignee in removing the goods. Next, she contends that the appellant took all reasonable care in handling the consignment right from its booking and till delivery at destination. The consignee is a regular customer for goods like cement and was fully aware of non-availability of covered and termination facilities available at Mohanlalganj and consequently the damage to the cement bags occurred on account of negligence of the consignee and consignor themselves. On arrival of the consignment at destination, the same was handed over to the consignee/ consignor, who failed to segregate the effected cement bags. Next submission of the learned Counsel for the appellant is that after delivery of the goods, most of the bags under consignment have also been removed by the respondents and tarpaulins were also provided.

6. Thus, the Tribunal committed manifest error in applying the provisions of Section 99 of the Railways Act, 1989, as they are not at all attracted in the facts and circumstances of the case, as a consequence of which, the impugned order suffers from illegalities.

7. Learned Counsel for the respondents on the other hand contends that there is no error in the finding recorded by the Tribunal since the responsibility of the Railway administration as bailee u/s 99 of the Railways Act, 1989 is during the free time and the transit time. He, therefore, contends that even if the delivery paper was taken, the provisions of Contract Act relating to loss, destruction, damage and deterioration for nondelivery of goods would also be the responsibility of the railway administration. As the damage was caused during free time and as such, the railway administration is responsible as bailee upto the period 7 days and after the period of termination of transit, the Tribunal's Award in granting damages to the respondents cannot be said to be illegal.

8. While supporting the impugned order, Mr. R. K. Agrawal, learned Counsel for the respondents submits that till the goods are unloaded by the railway, it must be held to be in the custody of the railway and no delivery could be said to have taken place merely by signing the delivery book and surrendering the railway receipts. Thus though there was a token delivery, there was no real delivery by the railway to the consignee. In support of his submissions he has relied upon the case of Union of India (UOI) Vs. West Punjab Factories Ltd.,

9. Learned Counsel for the Appellant has drawn my attention towards the judgment and order dated 20.9.2007 passed in F.A.F.O. No. 542 of 2004 and another passed by a Division Bench of this Court, of which I was one of the members.

10. I have considered the submissions made by the learned Counsel for the parties and find that the Tribunal had recorded a finding of fact that the delivery of consignment was taken by the consignee within free time and the goods were unloaded and placed on the siding of the railways. The said goods were not removed from the railway premises even after physical delivery of goods had been taken and as such, the railway seized to become responsible as bailee in view of provisions of Section 160 of the Indian Contract Act, 1872. The finding recorded by the Tribunal is contrary on the ground that bailee is responsible for a period of 7 days after termination of period of transit cannot be upheld since admittedly, the physical delivery of goods had been taken. The question of damages of the goods within free time or beyond free time would have no relevancy for fixing responsibility upon the railway administration when it could not be treated as a bailee u/s 99 of the Railway Act. Since the goods had been delivered, the responsibility of Railway had seized. So far as the damages caused to the goods during the free time is concerned, I find that once the delivery of goods has been made, the only responsibility of the railway would be that if the goods remained at its premises and have not been removed by the consignee, the railway would be responsible to provide necessary tarpaulins for prevention from damages of goods from rain on demand made by the consignee. But such is not the dispute in the present case. The case law relied by Mr. R. K. Agrawal, learned Counsel for the respondents is not applicable in the facts and circumstances of the case, as in that case, the consignee was not authorized to remove the goods from the wagons by the Railways, whereas in the instant case, the delivery has taken place and goods have also been removed, though partly and as such, there would not be any other inference than that physical delivery of the cements bags has taken place.

11. In view of above, the impugned judgment of the Tribunal suffers from infirmities. The Tribunal lost sight of the very vital fact that the delivery of the goods had taken place by the respondent, which is proved by the documentary evidence.

12. For the reasons aforesaid, the impugned judgments and Awards dated 2.6.2003 contained in the aforementioned First Appeal From Orders are hereby quashed. Accordingly, all the F.A.F.Os. are allowed.

13. In the facts and circumstances of the case, there shall be no order as to costs.