
(2010) 04 RAJ CK 0073
In the Rajasthan High Court

United India Insurance Company Ltd.	APPELLANT
Vs	
Bhanwariya and Others	RESPONDENT

Date of Decision : 12-04-2010

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23
Railways Act, 1989 — Section 103

Citation : (2011) 2 RLW 1233

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J.—This appeal has been filed u/s 23 of the Railways Claims Tribunal Act, 1987 against order dated 12.04.1996 passed in O.A. Case No1-340/94 by the Railway Claims Tribunal, Jaipur (Camp Jodhpur), whereby, the Tribunal partly decreed the claim of the appellant.

2. As per facts of the case, the appellant booked one bale of cloth valuing Rs. 7650/- Ex. Jodhpur to Palanpur vide parcel way bill No. 371291 dated 03.09.1991. The value of the cloth was declared in P.V. Bill and in the forwarding note. The above consignment was however not delivered to the consignee due to negligence of the Railways. The consignee returned the bill and original P.V. Bill to the appellant.

3. Thereafter, the appellant served notice u/s 78B of the Indian Railways Act under registered A/D cover on 11.11.1991 which was received by the respondents on 13.11.1991. The Railway administration sent a cheque on 17.07.1992 for Rs. 1700/-. The said amount was not accepted by the appellant because, as per appellant, he was entitled for full cost of the goods according to "beejak", therefore, the appellant claimed Rs. 7641/- for the cost of goods and Rs. 4348/- as interest from the date of booking at the rate of 18% per annum.

4. The respondent did not file any reply in the claim petition filed by the

appellant. Learned Tribunal decided the matter in favour of the appellant partially and awarded Rs. 1,800/- with 12 per cent interest from the date of filing the claim petition.

5. This appeal has been filed by the appellant against the judgment of the Tribunal on the ground that the learned Tribunal has committed a grave illegality and material irregularity in not awarding value of the goods which is Rs. 7650/- though value was declared in P.V. Bill and in the forwarding note; but, it was overlooked by the Tribunal on the plea that the amount of percentage charges was not paid by the consignor and consignment was not insured whereas insurance is not binding.

6. The appellant is also challenging the award on the ground that the Tribunal has committed a grave error in law while awarding the claim according to weight shown on the P.V. bill at the rate of Rs. 50/- per kg vide notification dated 07.06.1990 issued by the Ministry of Railway ignoring the fact that notification dated 07.06.1990 has no place in law, therefore, the award passed by the Tribunal deserves to be modified.

7. As per the appellant, the Railway administration is required to disclose the discharge of consignment and delivery of the same to the consignee. On the pretext of non-insurance and limited monetary liability u/s 103 of the Railway Act, it may encourage misappropriation of the valuable goods of the consignee which may never be the intention of Section 103 of the Railway Act. Therefore, compensation of meagre amount is not justified.

8. It is also submitted that the Tribunal has erred in law in not allowing interest from date of booking which is arbitrary. The claimant is entitled for interest at the rate of 18 per cent as per custom and market rate.

9. Learned Counsel appearing on behalf of the respondent vehemently argued that no error has been committed by the learned Tribunal and has taken into consideration all relevant aspects of the claim petition filed by the appellant. The finding of learned Tribunal is based upon sound reasons which does not require any interference.

10. After hearing both the parties and upon perusal of the pleadings, it appears that the claim was filed due to non-delivery of consignment and this fact is not disputed by both the parties. It is also not disputed that a notice was served by the appellant upon the respondent and in the notice dated 11.04.1997 the appellant claimed higher amount of compensation whereas in the claim filed on the basis of the notice compensation of Rs. 7600/- was claimed. Admittedly, the consignment was not insured by the consignor and the percentage charged on the declared value was not paid by the consignor.

11. The Railway administration gets protection of limited monetary liability u/s 103 of the Railways Act, 1889 if the goods are not insured and for non-payment of percentage charged on the declared value. The maximum monetary liability in

the case of percentage charges not paid by the consignor is fixed as per circular/ notification of the Railways, therefore, it is clear from the certified copy of the parcel way-bill that weight of 36 kg at the time of booking is registered and the monetary liability of the Railway administration has been fixed by the Tribunal at Rs. 50/- per kg which, upon being multiplied by 36, as per declared weight registered in the way bill, comes to Rs. 1800/-.

12. The Railway administration had itself allowed amount of compensation of Rs. 1700/- and offered the same to the claimant on 17.07.1992 but how the said amount of Rs. 1700/- was calculated is not shown before the Court. Therefore, in the above background, the learned Tribunal allowed interest at the rate of 12 per cent from the date of filing of the claim application along with proportionate cost.

13. In my opinion, when in the event of non-insurance of consignment and non-payment of percentage charged on the value, the Railway administration cannot be held liable for claim as claimed by the appellant in view of the notification dated 07.06.1990 which is taken into consideration by the Tribunal. Identical situation had arisen in S.B. Civil Misc. Appeal No. 405/1996, decided on 15.07.2002, in which, the above proposition for calculating liability as per notification dated 07.06.1990 was upheld. Therefore, I am of the considered opinion that if the Tribunal has come to the conclusion that the Railway circular is applicable and liability is required to be assessed on the basis of the said notification, then, there is no error in the finding arrived at by the learned Tribunal. Therefore, while following the judgment dated 15.07.2002 passed in S.B. Civil Misc. Appeal No. 405/1996, I do not find any force in this appeal.

14. Hence, this appeal is dismissed.