

# RAJASTHAN HIGH COURT

Rajendra Textiles, Jodhpur.

Vs.

Union of India

Civil Misc. Appeal No. 41 of 1991

(H.R. Panwar, J.)

13.12.2001

## JUDGEMENT

**H. R. Panwar, J.**

1. This appeal is directed against the order dated 14-11-1990 passed by Railway Claims Tribunal, Jaipur Bench, Camp at Jodhpur (hereinafter referred to as 'the Tribunal'), whereby application (suit) filed by the appellant against the respondents was dismissed.

2. Briefly stated facts which are necessary for decision of this appeal are that; a suit was filed by the appellant before the Court of District Judge, Jodhpur for recovery of Rs. 32,872.35 which was transferred to the Tribunal established under Section 14 of Railway Claims Tribunal Act, 1987. The case as set up by the appellant before the Tribunal is that; appellant-firm had booked bales of cloth on 23-7-1986 by parcel train from Jodhpur to Hindaun City vide PWB No. 699790, dated 23-7-1986. PWB was 'self'. The appellant had sent the PWB to State Bank of India, Hindaun City with the instruction that the bilty be handed over to M/s. Gupta Cloth Store, Hindaun City on payment of Rs. 23,958.27. M/s. Gupta Cloth Store did not retire the PWB from the Bank and so it was sent back to the appellant on 21/29-8-1986 which was received by the appellant on 1-9-1986. The appellant went to Hindaun City Railway Station on 13-9-1986 and asked the Station Master for delivery of 5 bales of cloth booked by it on 23-7-1986. The Station Master of Railways, Hindaun City informed the appellant that the consignment had been re-booked to Idgah Railway Station vide PWB No. 567377 on execution of indemnity bond, whereas appellant had never given instructions to the Railway Administration for re-booking the aforesaid consignment and, therefore, the appellant claimed cost of goods, interest at the rate of 18% over the actual cost from

the date it was booked with Railways on 23-7-1986 and the cost of notice issued to the Railways. 2A. A reply to the application was filed by the respondents through Railway Administration. It was pleaded by the Railways that the consignment in question reached at the destination i.e. Railway Station, Hindaun City on 26-7-1986 and on 29-7-1986, the representative of the appellant-firm approached the Railway Official, Hindaun City and informed that PWB has been lost by the appellant and instructed the Railway Administration to give delivery on furnishing indemnity bond on 1-8-1986. The representative of the appellant-firm produced indemnity bond and requested the Railway Administration for re-booking of consignment to Idgah Railway Station and accordingly, the Railway Station, Hindaun City re-booked the said consignment to Idgah Railway Station vide PWB No. 567377 and accordingly, the consignment was sent to Idgah Railway Station. The respondent pleaded that the Railway Administration is not responsible to pay the compensation for non-delivery of the said consignment.

3. On the pleading of the parties, the Tribunal framed following issues:-

"Issue No. 1 - Whether the applicant-firm is entitled to sue ?

Issue No. 2 - Whether bale of cotton cloth booked in the suit consignment was re-booked Ex. Hindauncity to Agra Idgah on 1-8-86 on the instructions and directions of the applicant-firm (burden respondent) ?

Issue No. 3 - Whether the suit consignment has not been delivered at all to the applicant ?

Issue No. 4 - Whether the applicant suffered a loss of Rs. 23,803.27 on account of abovesaid non-delivery and the applicant is entitled to get it?

Issue No. 5 - Whether the applicant is entitled to get interest at the rate of 18% per annum and Rs. 500/- as cost of notice?

Issue No. 6 - Whether the respondent is not liable to pay for the compensation ?

Issue No. 7 - Relief ?"

4. Issue No. 1 was decided in favour of the appellant. While deciding issue No. 2, the Tribunal held that some other person who impersonated himself as Jasraj Chopra had signed the indemnity bond. Thus, from the finding on issue No. 2, it is very clear that neither Jasraj Chopra, the partner of the appellant-firm had furnished indemnity bond nor requested the Railway Administration, Hindaun City to re-book bales of cloth for Idgah Railway Station.

5. Issue No. 3 was also decided in favour of the appellant. The Tribunal held that the original consignment booked by the appellant-firm had not been delivered to the appellant. Issue No. 4 was also decided in favour of the appellant and the Tribunal held that on account of non-delivery of consignment, the appellant-firm has suffered loss of Rs. 23,803.27. The Tribunal, however, held that the appellant is not entitled to get compensation because of the provisions of Section 77(2) of the Indian Railways Act, 1890 (hereinafter referred to as 'the Act').

6. While deciding Issue No. 5, which relates to entitlement of the interest and the cost of notice, the Tribunal held that since in view of the finding on Issue No. 4, the appellant is not entitled for compensation and as such, the appellant is not entitled to interest and cost of notice. Finding on Issue No. 6 was covered by the finding on Issue No. 4 and accordingly, while deciding Issue No. 7, the Tribunal held that the appellant is not entitled to get anything from the Railway Administration and dismissed the application vide order impugned dated 14-11-1990.

7. Aggrieved by the order impugned, the appellant has filed this appeal under Section 23 of the Railway Claims Tribunal Act, 1987.

8. I have heard the learned counsel for the appellant and perused the record.

9. Learned counsel for the appellant contended that the appellant has suffered loss of Rs. 23,803.27 on account of non-delivery of consignment and the non-delivery was because of the Railway Administration, Hindaun City had wrongly re-booked 5 bales of cloth to Idgah Railway Station on 1-8-1986 without there being any instruction from the appellant and the period of 7 days is to be computed from the date when the consignment reached to its destination, Railway Station, Hindaun City, i.e. on 26-7-1986. Learned counsel for the appellant submits that the respondents-Railway Administration had re-booked the consignment on 1-8-1986 to Idgah Railway Station and as such even if the appellant wanted to claim the delivery on expiry of 7 days from the date of termination of transit, then also Railway Administration had no goods with them because the goods were already re-booked to another destination for which the appellant never instructed the respondent-Railway Administration. From the material and the finding arrived at by the Tribunal, it is amply established that the appellant never instructed the Railway Administration to re-book the said consignment

and, therefore, for the fault of the Railways, the claim of the appellant cannot be denied.

10. The learned counsel for the appellant further submits that the respondent claims exemption under sub-section (2) of Section 77 of the Indian Railways Act in respect of the consignment, which was booked by the appellant on 23-6- 1986 to Railway Station, Hindaun City. Section 77 of the Act reads as under :-

"77. Responsibility of a railway administration after termination of transit.- (1) A railway administration shall be responsible as a bailee under Sections 151, 152 and 161 of the Indian Contract Act, 1872 (9 of 1872), for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway within a period of seven days after the termination of transit:

Provided that where the goods are carried at owner's risk rate the railway administration shall not be responsible for such loss, destruction, damage, deterioration or non-delivery except on proof of negligence or misconduct on the part of the railway administration or of any of its servants.

(2) The railway administration shall not be responsible in any case for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway, arising after the expiry of the period of seven days after the termination of transit.

(3) Notwithstanding anything contained in the foregoing provisions of this section, a railway administration shall not be responsible for the loss, destruction, damage, deterioration or non-delivery of the goods mentioned in the Second Schedule, animals and explosives and other dangerous goods carried by railway, after the termination of transit.

(4) Nothing in the foregoing provisions of this section shall relieve the owner of animals or goods from liability to any demurrage or wharfage for so long as the animals or goods are not unloaded from the railway wagons or removed from the railway premises.

(5) For the purposes of this Chapter,-

(a) unless otherwise previously determined, transit terminates on the expiry of the free time allowed (after the arrival of animals or goods at destination) for their unloading from railway wagons without payment of demurrage, and where such unloading has been completed within the free time so allowed, transit terminates on the expiry of the free time allowed for the removal of the animals

or goods from railway premises without payment of wharfage;  
(b) demurrage" and wharfage" have the meanings respectively assigned to them  
in clause (d) and clause (h) of Section 46-C."

11. The burden is on the Railways to establish that goods under railway receipt were safe for the period of 7 days from the termination of the transit, which expired on 2-8-1986. Admittedly, the Railways has re-booked the consignment on 1-8-1986 and as such, on 2-8-1986, the date when the period of 7 days was to expire, the goods were not safe with the Railways. From the established facts, since the goods were not in existence with the Railways on the date when the period of 7 days was to expire and, therefore, the respondent cannot claim exemption as provided under sub-section (2) of Section 77. The learned counsel for the appellant further submits that in the written statement, no such plea of exemption as envisaged in sub-section (2) of Section 77 was raised. The respondent also did not plead that the goods remained intact up to 2-8-1986 i.e. for the period of 7 days after termination of transit. The respondent can only claim exemption under sub-section (2) of Section 77, if they plead and prove that goods/consignment booked by the appellant remained intact for the period of 7 days after the termination of the transit. In the instant case, neither the respondent pleaded this fact nor proved. Admittedly, the respondent did not lead any evidence.

12. The learned counsel for the appellant further submits that the Railway Administration has not followed the provisions of Rule 144(7) of the Indian Railways Conference Association Coaching Tariff, which provides the measures to be taken by the Railways before delivery of the consignment on the indemnity bond. Rule 144(7) reads as under :-

"(7) In the case of V. P. parcels or parcels consigned by the sender to self" when the Railway Receipts have been lost, delivery may be granted only when the person claiming the consignment produces a stamped Indemnity Note signed by the sender and countersigned by the Station Master of the forwarding station. The name stamp of the forwarding station must be impressed on the note immediately below the signature of the Station Master. This note must be endorsed by the sender in favour of the person to whom the consignment is to be delivered."

13. In *Jesraj Subhachand v. Union of India*,<sup>1</sup> the Calcutta High Court held that the

defendant had to establish that goods under the Railway Receipt were lost after 30 days of termination of their transit before the defendant could claim exemption under sub-section (2) of Section 77. The period of 30 days has been reduced to 7 days by the Indian Railway Amendment Act, 1972 w.e.f. 22-12-1972.

14. In *Firm Naraindas Pitamchand v. Firm Shanker Lal Mohandas*,<sup>2</sup> Allahabad High Court while considering the provisions of sub-section (2) of Section 77 of the Act held that the Railway Administration has to take the same amount of care not only during the period of transit of the goods but for a period of 30 days after the termination of the transit. It is for the railways to explain as to how they deal with the goods in their charge not only during the transit but also for the subsequent period of 30 days after the goods have reached the destination. In that case, there was no evidence to show that goods remained intact during the period of 30 days after the goods had reached the destination station.

15. Hon'ble Supreme Court in *St. Joseph Textiles v. Union of India*,<sup>3</sup> held that sub-section (1) of Section 77 of the Act states that the Railway Administration shall be responsible as a bailee under Sections 151, 152 and 161 of the Indian Contract Act, 1872 for loss, destruction, damage, deterioration or non-delivery of the goods carried by Railways if such loss etc. has occurred within a period of 7 days after the termination of transit of goods. According to this provision, therefore, to entitle a claimant to make claim the liability on account of loss etc. should have arisen within the specified period of seven days after the transit is terminated.

16. In *Palur Ramaiah v. Potta Venkata Reddy*,<sup>4</sup> a Division Bench of Andhra Pradesh High Court held that a careful reading of Section 77(2) will show that Railway Administration will not be liable for any damage caused to the goods after the termination of transit. Therefore, in order to escape liability, the Railway Administration is duty-bound to prove that the destruction or damage was caused after expiry of period of seven days from the termination of the transit.

17. In *Rani Kraya Vikraya Sahakari Samiti Ltd. v. Union of India*,<sup>5</sup> this Court held that where the cheque issued towards the settlement of claim due to non-delivery of the consignment at the destination could not be encashed because the description of consignee was wrongly mentioned in the cheque, the consignee was entitled to damages by way of interest.

18. In the instant case, the respondent neither pleaded nor proved by evidence that the goods remained intact for the entire period of 7 days after the termination of the transit. From the record, it is established that the period of seven days expires after the termination of transit on 2-8-1986 and according to the admission of the Railways in the written statement admittedly, on 1-8-1986, neither the goods were intact nor were in the possession of the Railways at the destination i.e. Railway Station, Hindaun City and as such, the loss had occurred prior to the expiry of the period of 7 days. The Railway has not led any evidence in this regard. From the admitted facts also, it is established that the Railways had lost the consignment on 1-8-1986, may be on account of re-booking on an indemnity bond filed by a person unauthorisedly impersonating himself to be a partner of the appellant- firm. The Tribunal categorically reached to the finding while deciding issue No. 2 that goods were re-booked on indemnity bond filed by unauthorised person who impersonated himself to be partner of appellant-firm. Thus, Railway was under legal obligation to keep the goods intact at least for a period of 7 days after the termination of transit i.e. from 27-7-1986 to 2-8-1986. In the instant case, the Railway has also failed to explain as to how they dealt with the goods in their charge not only during transit but also for the subsequent period of 7 days. There is nothing on the record to show that before re-booking the consignment on the indemnity bond furnished by a person impersonating himself to be a partner of the appellant-firm, Railway has complied with and followed the procedure and the provisions of sub-rule (7) of Rule 144 of the Indian Railways Conference Association Coaching Tariff. In this view of the matter, the claim of Railway respondents for exemption under sub-section (2) of Section 77 of the Indian Railways Act cannot be sustained and the loss occurred to the appellant has to be made good by the Railways. The appellant is also entitled for interest in view of the judgment of this Court passed in *Rani Kraya Vikraya Sahakari Samiti Ltd. v. Union of India* (AIR 1997 Rajasthan 208) (supra). From the evidence, it is crystal clear that the damage occurred to the appellant was on account of non-delivery of the consignment and the appellant has claimed real value of the consignment as also the interest on account of non-delivery of the consignment. In my considered opinion, it was the appellant who has been deprived of the consignment on account of wrong delivery of the consignment made by the Railways within the period of 7 days from the termination of the transit and, therefore, the appellant firm is entitled for the damages as claimed by the firm along with interest.

19. In view of the aforesaid discussion, the finding arrived at by the Tribunal cannot be sustained and the case is liable to be set aside. Accordingly, this appeal succeeds and is allowed. The order impugned dated 14-11-1990 passed by the Tribunal is set aside and the application (suit) filed by the appellant, is allowed with interest at the rate of 12% per annum from the date of filing of the application till realisation. No order as to costs.

Appeal allowed.

Cases Referred.

1. AIR 1978 Cal 536
2. AIR 1974 All 255
3. AIR 1993 SC 1692
4. AIR 1979 NOC 42 (Andh Pra)
5. AIR 1997 Raj 208