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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 1666 of 1996 (O/M)

Date of decision : 17.10.2016

Punjab Small Industries and Export Corporation Limited Appellant (s)

Versus

The General Manager, Northern Railway and others Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Anil Malhotra, Advocate, for the appellant.

Mr. Karminder Singh, Advocate, for respondents No. 1 and 2.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

The documents submitted by both the learned counsels for the parties in Court today are taken on record.

The appellant booked 57.900 M.T. of Pig Iron ex-Bhilai to Dhandarikalan (Ludhiana) against RR No. 969354 dated 3.1.1992. When the consignment reached Dhandarikalan (Ludhiana) on 24.1.1992, it was found to be in pilfered condition. The appellant suspected the shortage and requested for re-weighment, which was rejected by the Railways on 29.1.1992. On account of fear of demurrage charges, the appellant surrendered the RR and took the delivery of the consignment. Then, the appellant approached a private surveyor Shri K.S. Jolly, who did the re-weighment and found the shortage of 2.080 M.T. of pig iron. The value of

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shortage comes to Rs. 11,559/- plus Rs. 5,300/- as demurrage charges and Rs. 450/- as Surveyor's fee. The appellant thereafter issued a notice under Section 78-B of the Indian Railways Act, 1989.

In the reply, the Railways denied the receipt of the notice. It was stated that the goods were received without any shortage certificate. The application has not been filed by a competent person. The goods were loaded by the sender itself. The shortage was also denied. The assessment by a private surveyor is not binding upon the Railways. After going through the evidence led by both the parties and hearing them, the claim application was dismissed.

I have heard the learned counsels for the parties and have also carefully gone through the file.

The first ground, on which the claim application was dismissed, is that the applicant Shri S.P. Verma, Regional Manager, Legal, was not a competent person to file the claim application.

I am of the view that Shri S.P. Verma, Regional Manager, Legal, acted on behalf of the appellant. His authority was never denied by the appellant. Therefore, even if there is no written authority, on the basis of implied authority, Shri S.P. Verma was competent to pursue the case being the Regional Manager, Legal. The findings to that effect are set aside.

However, coming to the remaining grounds, it comes out that the appellant did not produce the postal receipt of letter 18/20.5.1992, complaining about the shortage. Therefore, the Tribunal has rightly held that mere production of copy of the letter does not show that the registered letter produced was ever sent. Secondly, the goods were received by the

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appellant. No written protest was raised at the time of receipt of the goods. The re-weighment was done after receiving of the goods on 24.1.1992. The re-weighment is stated to have been done at Kamla Weigh Bridge, Focal Point, Ludhiana. The receipt of said Kamla Weight Bridge was not produced to show that immediately after receipt of the delivery, some shortage was detected and as to what was the actual weight of the consignment. Therefore, there is no illegality or infirmity in the findings recorded by the Tribunal. Hence, the present appeal is dismissed.

(KULDIP SINGH)
JUDGE

17.10.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes