

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

FAO No.1957 of 1998.

Date of Decision: 31.05.2016.

Union of India

....Appellant.

VERSUS

The New India Assurance Co. Ltd. and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Karminder Singh, Standing counsel
for the appellant-Union of India.

Mr. Vinod Chaudhari, Advocate for respondent No.1.

Service of notice on respondents No.2 and 3 was dispensed
with vide order dated 12.07.1999.

SNEH PRASHAR, J.

Assailing the judgment dated 01.06.1998 passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for short, “the Tribunal”), by virtue of which the plaintiff-applicant (respondent No.1 herein) was held entitled to recover a sum of Rs.14679/- as compensation from the appellant-railway administration with costs and interest in claim Case No.TA-I/196/90, the appellant-Union of India, through General Manager, Northern Railway, New Delhi preferred this appeal.

The relevant facts extracted from the record are that the respondent-applicant pleaded in the claim application that a consignment of 24 bales containing woollen goods was entrusted by M/s VXL (India) Ltd. (respondent No.2) to the railway administration at Amritsar in perfect sound

accepted by the railway authorities against clear RR No.046039 dated 07.11.1984. Respondent No.2, being the owner of the consignment, sent the original RR alongwith relevant documents to respondent No.3 for taking delivery at destination station on its behalf. The consignment reached in a loose and torn condition at the destination station. Respondent No.3 requested for open delivery which was acceded by the railway authorities. On opening the consignment, 131.95 meters of cloth was found short in respect of which the railway administration issued a shortage certificate dated 18.01.1985. Respondent No.3, having no right, title or interest in the short delivered goods, sent the original shortage certificate of respondent No.2 for lodging claim with the railway administration. Since the shortage occurred due to negligence and misconduct on part of the railway administration, respondent No.2 served notice under Section 78-B of the Indian Railways Act, 1989 (for short, "the Act, 1989") upon the railway administration provisionally on 15.01.1985 and finally on 13.02.1985.

The consignment was insured by respondent No.2 with the insurance company (respondent No.1 herein). Respondent No.2 preferred a claim before the insurance company, who paid a sum of Rs.22,323/- to the insured (respondent No.2) and in turn respondent No.2 executed a letter of subrogation and special power of attorney in favour of the insurance company. After serving a notice under Section 80 of the Code of Civil Procedure (for short, "the Code") on the railway administration for making good the loss, as the railways failed to settle the matter, the respondent-insurance company filed the claim petition for recovery of Rs.22,323/- alongwith costs and interest at the rate of 18% per annum from the date of filing of the petition till realization of the decretal amount.

The petition was contested by the appellant-railways raising various preliminary objections. It was alleged that the applicant-insurance company was not the owner of the goods and had no locus standi to file the petition. The petition was also alleged to be bad for want of notice under Section 78-B of the Act, 1989 and Section 80 of the Code. Replying on merits, the factum of partial delivery was admitted, but it was alleged that on opening the consignment the goods were found to be 'excepted article' being polyester cloth and because the consignor at the time of booking had not declared its exact value and had also not paid the percentage charges thereon, the railway administration was protected under Section 77-B, 78(a) and 58(30) of the Act, 1989 and was not liable to pay anything to the applicant by way of compensation. The shortage certificate was said to have been issued by the railway authorities without prejudice to their rights.

On the basis of the pleadings of the parties, issues were settled. Both the parties were given adequate opportunity to adduce evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, the learned Tribunal held the applicant entitled to recover a sum of Rs.14679/- as compensation from the appellant-railway administration with proportionate costs and interest at the rate of 12% per annum from 08.12.1987 to 19.10.1994 and from 11.03.1998 till payment and further interest at the rate of 6% per annum from 20.10.1994 to 11.03.1998 with proportionate costs. The Railway administration was allowed 60 days time to make payment failing which the applicant was held entitled to recover the said amount with interest at the rate of 15% per annum from the date of order till realization.

Feeling aggrieved, the appellant-Union of India preferred the instant appeal.

The submissions made by Mr. Karminder Singh, standing counsel for the appellant and Mr. Vinod Chaudhari, learned counsel for respondent No.1 have been have and record perused.

It appears that there is not much dispute between the parties regarding the facts. The only contentious issue raised by learned counsel for the appellant is that the consignment was an article of special value falling under the Second Schedule of the Act of 1989 and thus being an 'excepted article' the consignor was under obligation to declare the value of the goods as per provisions of Section 77-B of the said Act. Learned Tribunal erred in holding that the goods in question were not 'excepted articles'. There being breach of provisions of Section 77-B on part of the consignor, the railway administration was absolved of its liability to pay compensation to the consignor.

Rejecting the objection of the appellant that the consignment in question was covered in the category of 'excepted articles', the findings of learned Tribunal are as under:-

“A perusal of Goods Tariff 39, Part-I, Volume I shows that it is only the polyester which is covered under the category of excepted articles. Woollen cloth blended with polyester does not find mention in the list of excepted articles. Even woollen cloth is not added to the category of excepted articles. As such, it can safely be held that the consignment in question did not consist of excepted articles and the plaintiff/applicant, as such, was not required to disclose the exact value of the consignment and to pay the percentage charges thereon. This issue, therefore, is decided in favour of the plaintiff/applicant and against the respondent-railway administration.”

Learned counsel for the appellant failed to demonstrate any

misreading or misappreciation of by learned Tribunal. The appellant-railway failed to controvert the plea of the applicant that the consignment when booked was in perfect and sound condition and when it reached the destination station, 131.95 meters of cloth was found short. From the very fact that the railway administration issued a shortage certificate and there was no endorsement of the railways on the Parcel Way Bill about the quality of the consignment when booked and no evidence was produced to show how the consignment enroute became short, it can be concluded without hesitation that the shortage in the consignment occurred due to negligence on part of the railway administration and its employees.

Deciding the quantum of compensation, learned Tribunal noticed that in the invoice produced by the applicant, the rate of consignment per meter was shown as Rs.132.89 paise which was inclusive of marginal profit. Deducting 15% from the said price as element of profit, the rate of the consignment per meter was fixed as Rs.111.25 paise and the applicant was held entitled to recover a sum of Rs.14679/- alongwith interest at the rate of 6% per annum for the period the case remained sine die i.e. from 20.10.1994 to 11.03.1998 and at the rate of 12% per annum from 08.12.1987 to 19.10.1994 and from 11.03.1998 till the payment is made. The findings of learned Tribunal are well reasoned and call for no intervention.

There being no merit in the appeal, it is dismissed.

(SNEH PRASHAR)
JUDGE

31.05.2016.
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