

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.5192 of 2002(O&M)

Date of decision: 10.03.2017

Hem Raj

.....Appellant

versus

Union of India

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Paul S. Saini, Advocate for the appellant
Mr.Karminder Singh, Advocate for the respondent

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

This is first appeal against the judgment dated 9.8.2002, passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh (in short, 'the Tribunal'), vide which, claim application filed by the present appellant was dismissed.

Facts of the case are that on 8.10.1997, applicant who happens to be the proprietor of M/s Johri Hosiery Factory, Ludhiana booked a consignment of hosiery goods valuing at Rs.18,945/- ex-Ludhiana to Gonda against railway receipt at railway risk. The necessary charges in this regard were paid as per receipt No.015687 dated 8.10.1997. The weight of the goods was 63 kgs. It also comes out that the goods did not reach the destination till 6.1.1998. The petitioner had in the meanwhile addressed two communications, first on 15.1.1998 and second on 14.2.1998 complaining that his goods had not reached the destination. According to the applicant,

the endorsee M/s Apsara Garments refused to take the delivery. He was informed by the railway vide letter dated 25.2.1998 intimating that the consignment had reached the destination on 6.1.1998. The applicant went to Gonda to receive the consignment on 18.3.1998, where he found that the consignment has been pilfered. He requested for open delivery which was acceded to by the railway and in the open delivery, goods worth Rs.18920/- were found short. Only goods worth Rs.25/- were found in the consignment. Open delivery certificate dated 18.3.1998 was issued by the railway.

Railway in the reply has taken the stand that the consignment reached the destination on 6.1.1998 and the consignor/ consignee failed to take the delivery upto 18.3.1998 despite notice dated 25.2.1998 i.e. within seven days of the service of the notice. Therefore, they are protected under Section 99(2) of the Railway Act. From the pleadings following issues were framed:-

- 1. Whether Rly is protected u/s 99(2) of Railways Act?*
- 2. Whether any valid notice was served u/s 106 of Rlys Act within stipulated period?*
- 3. Whether applicant has a right to file claim application?*
- 4. To what amount of compensation the applicant is entitled?*
- 5. Relief.*

The Tribunal, after considering the evidence case found that since the delivery was not taken within seven days of the receipt of the notice, therefore, railway is protected under Section 99(2) of the Railway Act and accordingly dismissed the claim application.

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

First of all, the documentary evidence needs to be appreciated.

Admittedly, as per railway receipt, weight of the goods was 63 kgs and value

of the consignment was also mentioned as Rs.18,945/- The consignment was booked on 8.10.1997 at railway risk for which, charges were paid. These were to be delivered at Gonda railway station (UP). In the normal course the goods might have been delivered within 2-3 days or maximum 7 days, assuming some delay in transit. However, the letter of the appellant on file shows that he had addressed a letter on 15.1.1998 and 14.2.1998 complaining to the Station Master Northern Railway, Gonda that the goods booked by him have not reached the destination and that the original RR bills have returned by the consignee party. Therefore, they lodged a claim for Rs.18945/-. It was only after the letter dated 14.2.1998 that the railway responded and sent a communication dated 25.2.1998 that the goods were received on 6.1.1998 and still lying for delivery. The applicant was requested to collect the delivery. The fact that the goods which were dispatched on 8.10.1997, as per stand of the railway itself reached on 6.1.1998 i.e. after three months, goes to show that the delay in arrival of the goods is inordinate. Probably, by that time, winter season, for which goods might be meant, was almost over. The railway intimated the applicant for the first time on 25.2.1998. The applicant took the open delivery on 18.3.1998

Now, the further question will arise as to whether the goods were pilfered during transit or these were pilfered after these were received by the Railway Administration at Gonda?

In this regard, contents of open delivery certificate are very material. Open delivery certificate mentions that goods were received by 3019 UP on 6.1.1998 under remarks "Pbev GC Torn RS WRF 17.5 kg", which means that when the consignment was received, it was found to be

torn and re-stitched and its weight was only 17.5 kgs against 63 kgs., mentioned in the RR. It goes to show that the goods were pilfered and the consignment was re-stitched during transit. However, when the goods were delivered, only two different pieces of scarf valued at Rs.12.5 each were found.

In these circumstances, the Railway cannot take the shelter of Section 99 (1) or (2) to claim that they are not responsible for the loss. The delay in delivery coupled with the certificate goes to show that the consignment was unduly delayed and during transit, the goods were pilfered. Therefore, the findings of the Tribunal on issue No.1 are hereby set aside. The findings on issue No.4 are accordingly recorded in favour of the applicant/ claimant.

Since the above noted discussion clearly shows that the claim was made even before notice dated 25.2.1998 was issued, therefore, due compliance of Section 106 of Railway Act was also made. There is no denial that applicant being a proprietor of the firm has got the right to make the application. Accordingly issue Nos.2 and 3 are also determined in favour of the applicant/ claimant.

As a result of the foregoing discussion, the impugned judgment dated 9.8.2002 is set aside. The present application is allowed and respondents are directed to pay Rs.18,920/- to the appellant along with interest @ 9% per annum from 6.1.1998 till payment. Demurrage paid by the appellant along with proportionate cost of the charges of the consignment shall also be refunded. Costs of the claim application including the stamp for the plaint and pleadings amounting to Rs.4403/- incurred by the applicant/appellant before the Tribunal are also allowed. Another sum of

Rs.5000/- as counsel fee before this Court is also allowed.

The appeal stands allowed accordingly.

10.03.2017
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:
Whether Reportable:

Yes
Yes