

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

FAO No.303 of 1996 (O&M)

Date of decision : February 21, 2017

M/s Janak Steel Tubes Limited

..... Petitioner

Versus

The Northern Railways

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Jaswant Jain, Advocate for the petitioner.

Mr. Karminder Singh, Advocate for the respondent.

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 ?

KULDIP SINGH J. (ORAL)

This is the first appeal against the judgment dated 27.09.1995 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (in short 'the Tribunal'), whereby the claim application of the applicant-appellant was dismissed.

Brief facts of the case are that Steel Authority of India Limited booked a consignment of 21.900 M.T. of H.R. Skelp for delivery to the applicant-appellant on 28.07.1986 vide RR No.229844 ex-Durgapur to Hissar. The goods did not reach the destination and ultimately, the applicant-appellant lodged the claim with the railway administration, which was settled on 08.09.1993 and a cheque of ₹1,57,995/- was sent by the railway, which was accepted by the applicant-appellant under protest. Thereafter the present application was filed on 02.09.1994, claiming 27% interest per annum with monthly rests from the date of booking the consignment till the payment of the aforesaid amount and also the damages

The railway in the reply admitted the booking particulars and also admitted the payment of ₹1,57,995/- for full and final settlement with the applicant-appellant. It is stated that there is no privity of contract between the parties for payment of interest. Therefore, the question of payment of interest does not arise. The applicant is not entitled to the indirect damages as barred under Section 102(d) of the Railway Act, 1989.

After hearing both the parties, the Tribunal held that the applicant-appellant is not entitled to claim the interest prior to the period of receiving the principal amount through the aforesaid cheque. Therefore, the application was dismissed thereby declining the claim of interest as well as damages.

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

Admittedly, in this case, the consignment was booked on 28.07.1986 vide RR No.229844 ex-Durgapur to Hissar and was never delivered. The goods were supposed to be delivered within a reasonable time i.e. within one month. Thereafter, the applicant-appellant is stated to have made the claim.

According to learned counsel for the applicant-appellant, the claim was made on 04.10.1986. Receipt in this regard was issued on 03.12.1986. Thereafter, the matter was kept pending and was not decided for about six years, ten months. The questions would arise whether the period during which the claim of the applicant-appellant was kept pending, the interest is payable to the applicant-appellant and whether the applicant-appellant is entitled to the damages?

The damages are payable only when the applicant-appellant suffered the loss. In this case, there is no evidence to show that on account of non-delivery of the goods on time, the applicant-appellant had to buy the goods at the higher rate and suffered actual loss. The presumptive damages are not to be paid. However, so far as the interest is concerned, the claimed amount of the applicant-appellant was used by the railway for six years and ten months. The claim should have been settled immediately. The railway erred in withholding the claimed amount for six years and ten months and then denied the interest also. In this way, by way of payment of interest, the applicant-appellant will be compensated for the use of its money by the railway.

Therefore, I am of the view that the Tribunal erred in declining the interest. Thus, giving one month as a reasonable time to the railway to settle the claim, the interest is payable from 03.01.1987 till the date of actual payment on principal amount of ₹1,57,995/- i.e. on 08.09.1993.

Consequently, the present appeal is allowed. The railway is ordered to pay interest @ 9% per annum on the principal amount from 03.01.1987 till 08.09.1993, thereafter, 6% per annum interest shall be payable on the principal amount till the actual date of payment.

(KULDIP SINGH)
JUDGE

February 21, 2017

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes