IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.1999 of 1997 (O&M)
Date of decision: 16.01.2017

General Manager

…..Appellant

versus

M/s Sudhir Industries and others

……Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Sanjeev Ghai, Advocate for the appellant
Ms.Anju Arora and Ms.Saigeeta, Advocate for respondent no.1
Mr.Rohit Goswami Advocate for
Mr.D.P.Gupta, Advocate for the respondent No.3

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 7.7.1997 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (in short, 'the Tribunal') vide which, claim application of the applicant-respondent No.1 (herein) was allowed and a compensation to the tune of Rs.181189 was allowed along with the proportionate costs and interest @ 12% per annum from the date of filing of claim petition i.e. 14.6.1996 till realization. It was further ordered that if the amount is not paid within 60 days then rate of interest will be 15% per annum from the date of order till payment.

The short facts required to be noticed for the purpose of the disposal of the present appeal are that on 15.6.1993 the applicant booked a consignment of 57 bales of cloth flannel of hospital grey colour for dispatch to Commandant no.1, Maintenance Group, Assam Rifles, c/o 99 APO. The consignment did not reach the consignee in time and reached only on 1.12.1993. Only 13 bales of cloth were delivered and at the time of delivery shortage of 44 bales was found. The shortage certificate was issued by the Station Superintendent, N.F. Railway, Dimapur on 1.12.1993.

In the reply, Railway took the plea that the applicant is not entitled to any compensation, as responsibility of the railway is restricted under Section 103 of the Railway Act. The applicant has claimed Rs.1,95,563/- in para no.3, whereas he has claimed Rs.2,17,593/- in the relief clause. No difference of application fee has been paid. The booking was not denied. It was stated that the applicant did not declare value of the consignment nor paid the percentage charge thereon. From the pleadings, following issues were framed:-

1. *Whether the applicant has the locus standi to file the present claim application? OPA*
2. *Whether the claim application has been signed and verified by a competent and authorised person? OPA*
3. *Whether the applicant is entitled to the claim amount as mentioned in the claim application? OPA*
4. *Relief.*

The Tribunal held that there was a shortage in delivery and while repelling the argument of the railway regarding payment of percentage charges, the compensation was ordered to be paid for the shortage along with the refund of the shortage amounting to Rs.1,74,777/- plus Rs.6172/- as refund of proportionate freight, total amounting to Rs.1,81,189/-.

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

Learned counsel for the appellant has impugned the judgment mainly on the two grounds one is non-payment of the percentage charges and the other is interest part. The same plea was raised before the Tribunal. While dealing with the plea of the percentage charges, the Tribunal dealt with the same as under:-

> *"Respondent Railway Administration had argued that as the applicant had not paid percentage charges, as required under the Railway Act, the applicant is only entitled compensation @ Rs.50/- per k.g. Counsel for the applicant, however, argued that the consignor i.e. M/s Sudhir Industries had paid full amount as asked for by the railway and at no stage was asked to pay any additional amount. In the forwarding note, description of the cloth has been given as 2700 kgs. Woolen cloth consisting of 57 bales. Though the Railways Act requires the party to pay percentage charges after declaring value of the goods, it is also incumbent on the railways to make such provisions known to their clients who come and offer traffic. As a measure towards his, railway administration vide their letter No.89/TG-III/I/6/RA 80, dated 21.6.1990 advised the zonal railways to make necessary amendments in the forwarding note and railway receipts indicating the requirements for paying percentage charges and to declare value of the goods. Till the formats were re-printed, railway administration was required to put necessary stamp on the existing formats so that parties booking consignments with the Railways can comply all the requirements of paying percentage charges and declaring value of the goods. In the aforesaid case, the forwarding note which was given to the party for being filled up has no such amendments nor there is any stamp indicating provisions regarding declaring of value of goods and paying percentage charges. Under the circumstances, the applicant could not be penalised for not having paid the percentage charges or declaring the value of the goods."*

Admittedly, under the relevant provisions at that time, the applicant was required to declare the value of the goods and pay the percentage charges. However, it comes out that a proforma of forwarding note is given to the appellant, which is required to be filled in by him. In the said forwarding note proforma, the said percentage charges were not mentioned nor the applicant was required to declare the value of the goods. The railway at the time of the accepting the consignment could insist on declaring the value of the goods. They could also insist on the payment of percentage charges along with freight charges. But these were not claimed or pressed and rather deemed to have been waived. It also comes out that in subsequent forwarding note such amendment has been incorporated to apprise the party about the requirement to declare value of the goods and pay the percentage charges. It being so, no fault can be found with the findings recorded by the Tribunal on this issue. Same are accordingly affirmed.

Now, coming to the rate of interest part. The Tribunal has awarded interest @ 12% per annum from the date of filing of the claim application till realization and in case the amount is not paid within 60 days then the rate of interest was enhanced to 15% per annum.

Learned counsel for the appellant has argued that at the time of admission of the appeal, only 50% amount of compensation deposited by the appellant that too without any interest, was ordered to be released to the applicant.

Learned counsel for the respondent on the other hand argued that in the year 1993 rate of interest was much higher and therefore, 12% interest and penal interest @ 15% per annum is justified.

After considering the rate of interest as applicable in the year

1993, I am of the view that interest @ 12% per annum on the amount of compensation is justified. However, the penal interest @ 15% per annum is not justified. Therefore, second part of the impugned judgment imposing penal interest @ 15% per annum if the amount is not deposited within 60 days is hereby set aside.

Consequently, the present appeal stands dismissed with above noted modification. However, it is made clear that the appellant shall have to be pay 12% per annum interest from the date of the filing of the application i.e. 14.6.1996 till the date of deposit of 50% of the awarded amount in this Court on said 50% @ 12% and will also have to pay same rate of interest on the remaining 50% awarded from the date of filing of claim application till payment.

16.01.2017 **(Kuldip Singh)**
gk **Judge**

Whether speaking/ reasoned: Yes
Whether Reportable: Yes