

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

C.M.A.No.603 OF 2006

JUDGMENT:

The Civil Miscellaneous Appeal, under Section 23 of the Railways Claims Tribunal Act, 1987 is directed against the order, dated 12.04.2006, in T.A.No.17 of 1992 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, (for short, 'the Tribunal'), whereunder and whereby, the claim of the respondents/applicants for recovery of Rs.3,73,704/- for damages from the appellant/Railways was allowed.

2. Heard learned Standing Counsel for the appellant/Railways and the learned counsel for respondent No.1/applicant No.1. Perused the material on record.

3. Learned Standing Counsel for the appellant/Railways would contend that two consignments of armatures were consigned on 31.03.1983 and 06.05.1983 respectively by BHEL, Bhopal to applicant No.2 for delivering the same at Sanath Nagar, Hyderabad and the said consignments were booked under railway risky rate; that on the ground that the loading was not supervised by the Railway staff, applicant No.2 complained regarding the damage after a gap of 18 days of the placement of wagons at their siding; that the Railways objected to the complaint because loading and unloading was not supervised by their staff, however, damage certificates were issued without prejudice; that the claim of the applicants is not maintainable; that grant of claim basing on the letter of subrogation is not sustainable and that the claim of the

applicants is liable to be dismissed and prays to set aside the impugned order.

4. On the other hand, Sri V.Srinivasa Rao, learned counsel for respondent No.1/applicant No.1, would contend that the Tribunal had dealt with all the relevant factors and rightly assessed the damage payable to the applicants at Rs.3,73,704/- without any interest thereon; that the Tribunal also rightly held that if the Railways fail to pay the aforesaid amount within 60 days from the date of the order, interest shall be paid at the rate of 12% per annum from the due date till payment; that there is no infirmity in the impugned order and ultimately, prayed to sustain the impugned order and dismiss the appeal.

5. In view of the submissions made by the learned counsel on either side, the points that arise for determination are:

- “1. Whether the respondents/applicants are entitled for damages of Rs.3,73,704/-?”***
- 2. Whether the applicants are entitled for interest at the rate of 12% per annum from due date till payment? and***
- 3. Whether respondent No.1 is entitled to represent respondent No.2?”***

6. **POINT No.1:-**

While dealing with the subject matter, the Tribunal held that there is extensive survey report of the Surveyor, who was appointed to assess the damage caused to the consignments. Further, in the damage certificates given by the Railways, there is a specific mention of the damage to a tune of Rs.3,73,704/-. Further, no oral evidence was adduced to rebut the certificates of

damage given by the Railways. Placing reliance on the oral and documentary evidence on record, the Tribunal held that the claim of the applicants is valid under law and the appellant is liable to pay the damages as estimated and claimed to a tune of Rs.3,73,704/-. The findings are supported by the evidence on record. There is no infirmity in the impugned order.

7. **POINT No.2:-**

Conflicting opinions existed as to the award of interest on the compensation amount awarded in the claim petitions presented under the Railway Claims Tribunal Act, 1987. One view was that the Tribunal has the discretion to stipulate the date with effect from which the interest would accrue and that a claimant does not have the right to insist on award of interest from the date of presentation of the claim petition. In certain cases, it was observed that interest must be awarded from the date of presentation of claim.

8. The controversy or the difference of opinion has been set at rest by the Hon'ble Supreme Court through its judgment, dated 14.05.2009, in Civil Appeal No.3658 of 2009 (Arising out of SLP (C) No.26654 of 2008) in **TAHAZHATHE PURAYIL SARABI AND OTHERS VS. UNION OF INDIA AND ANOTHER¹**. It was held that the amount awarded as compensation by the Railway Claims Tribunal shall carry interest at 6% per annum from the date of presentation of the claim petition till the date of award and at 9% per annum from the date of award till the date of realization.

¹ 2009 ACJ 2444

Under these circumstances, the award of interest cannot be faulted.

9. **POINT No.3:-**

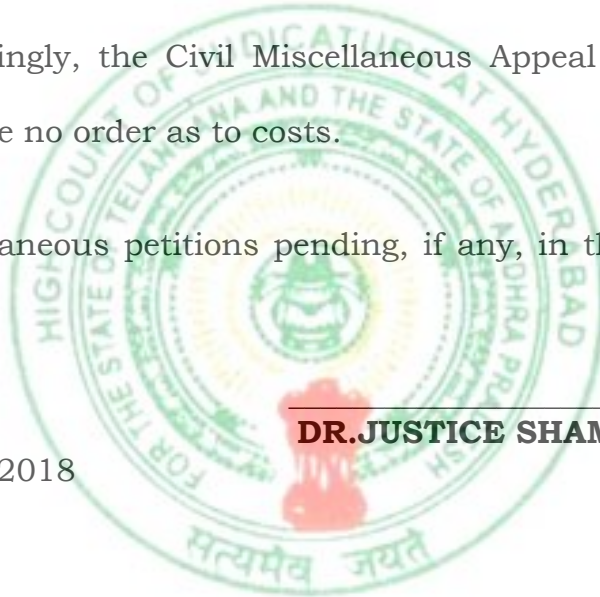
When respondent No.1/United India Insurance Company Limited had paid damages to respondent No.2, certainly, respondent No.1 can file a claim petition and seek the damages from the Railways. There is no infirmity in maintaining the claim petition filed by respondent No.1. Point No.3 is answered accordingly.

10. Accordingly, the Civil Miscellaneous Appeal is disposed of. There shall be no order as to costs.

11. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

Date : 24.09.2018
AMD

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