

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 943 OF 1996

Union of India

..Appellant

v/s.

Indian Rayon & Industries Ltd.

..Respondents

Mr. T.J.Pandian for the Appellant.
None for the Respondent.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 17th OCTOBER, 2019.**

ORAL JUDGMENT.

1. The appellant has challenged the impugned judgment and order dated 11.4.1996 whereby the Railway Claims Tribunal has awarded compensation of Rs.57,600/- with cost and interest @ 12% per anum from the date of application i.e. 6.12.1993 till date of final payment.

2. The respondent had filed a claim application under Section 23 of the Railway Claims Tribunal Act for compensation of Rs. 67,200/- for short delivery of the consignment covered by RR

No.676631 Invoice No. 241 dated 4.5.1992. It is not in dispute that the respondent had loaded 1107 cement bags at railway risk rate ex-Malkhaid Road to New Mulund. According to the respondent these goods were loaded in Wagon No. SE 28506. It was alleged that at the destination point only 467 bags were delivered. The respondents did not get any response to the statutory notice under Section 106 of the Railways Act. The respondent therefore raised a claim for short delivery of 640 cement bags at the rate of Rs.105/- per bag.

3. The appellant claimed that the wagon was loaded and sealed at the premises of the sender. Loading was not supervised by the railway staff and hence a R.R. was issued with a remark "said to contain". The appellant claimed that the burden of proving the quantity of goods booked and shortage found at the destination lies with the consignor. The appellant denied the rate of the cement bag, and further denied any negligence in delivering the consignment.

4. The Railway Claims Tribunal after considering the evidence

on record held that the respondent had proved short delivery of 467 cement bags and considering the value at Rs.90/- per bag, awarded compensation at Rs.57,600/-.

5. Assailing the said order, the learned Counsel for the appellant contends that the onus was on the respondent to prove that 1107 bags were in fact loaded. He submits that a mere shortage of goods would not justify grant of compensation, more so, when the railway receipt contains remark "Said to Contain". He has relied upon the judgment of this Court in Hindustan Petroleum Corporation Ltd. vs. Union of India in FA/309/1999, wherein the Single Judge of this Court has held that mere remark "Said to Contain" & "Loading not supervised by the railway staff" indicates that the railway did not accept as correct the quantity of goods dispatched. It has been held that the burden to prove the weight stated in the railway receipt is on the consignor, and not on the respondent Railway Authorities.

6. In the instant case, Shri J.A.Malpani, the Officer, (Despatches) of the respondent company had filed his affidavit in

evidence. In para 3 of the affidavit he had stated that the goods were cleared by excise duty and Excise Gate pass No.24704 dated 5.4.1992 was issued. He has further deposed that 1107 cement bags were loaded in wagon at SE 28506 under his supervision and that this fact has been incorporated under the statement of despatch. He has stated that 1107 cement bags were loaded in the said wagon and entrusted to the railway authorities at booking point, together with the forwarding note duly filled in completely, in the form prescribed by the railways. The evidence of this witness has gone unchallenged. Taking note of this fact, the Railway Claims Tribunal has held that the applicant had discharged the onus of proving that in fact 1107 bags were loaded in wagon no. SE 28506.

7. Shri Gajanan Tandel, who was working as Chief Goods Clerk at Mulund has confirmed that only 467 cement bags were received and he has thus confirmed the contention of the applicant that there was short delivery of 640 bags. It is on record that the value of cement bags was Rs.90/- per bag. The respondent, having discharged the onus of proving the issue of short delivery,

the Railway Claims Tribunal was justified in awarding compensation of Rs.57,600/-. The judgment is based on the evidence on record, and I do not find any reason to interfere with the same.

8. The appeal has no merits and is accordingly dismissed. Liberty is granted to the respondents to withdraw the amount deposited by the appellant insurance company, if the same is not yet withdrawn.

Prasanna
P.
Salgaonkar

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(ANUJA PRABHUDESSAI, J.)