

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

FIRST APPEAL NO. 826 OF 1996

Union of India	Appellant
V/s.	
Shree Laxmi Trading Corporation	Respondent

Mr. T.J. Pandian for the appellant.
None for the respondent.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 27th AUGUST, 2019**

ORAL JUDGMENT :-

. Heard the learned counsel for the appellant. I have perused the records.

2. The appellant herein has challenged the judgment and order dated 13/02/1996 whereby the Railway Claims Tribunal, Bombay Bench, Bombay has directed the appellant to pay to the respondent a sum of Rs.18,640/- with proportionate costs and interest @ 12% p.a. from the date of the application till the date of the payment.

3. The respondent herein was the consignee covered under RR No.708442 Inv. No.1 dated 08/04/1993 ex-Budhiada to Wadi Bunder. According to the respondent, 244 bags of rice were booked at Railway Risk and loaded in wagon No.SR 24780. The consignment had not

reached its destination and hence, the claim for non delivery was preferred vide letter dated 10/06/1993. Subsequently, the consignment reached its destination on 07/07/1993. . At the time of delivery, 130 bags were found in damaged condition. 15 bags were damaged to the extent of 60%, 30 bags to the extent of 45% and 40 bags to the extent of 30% and 45 bags to the extent of 20%. The damaged rice had salvage value of 15%. The applicant had stated that the price of rice at the relevant time was Rs.800/- per quintal. The applicant had stated that the total loss was in respect of the 5057 kgs of rice @ Rs.800 per quintal which worked out to Rs.40,456/-. The appellant had paid only an amount of Rs.16,330/-. Hence, the respondent filed a claim for the balance amount of Rs.24,126/-.

4. The appellant has resisted the claim on the ground that the respondent had received Rs.16,330/- full and final settlement. It is pertinent to note that the respondent had received the said amount of Rs.16,330/- was received under protest and hence, claim for balance amount was maintainable. The appellant having paid part compensation, the dispute is only in respect of the compensation.

5. The evidence of Morarji Gada and the Damage Certificate at Exhibit – 5 indicate that damage was to the extent of 15 bags – 60%,

30 bags – 45%, 40 bags – 30% and 45 bags to the extent of 20%. Damaged goods had salvage value of 15%. As per the certificate at Exhibit – 6, total weight of all 244 bags was 222 quintals as against RR weight of 236.36 quintals. The appellant had admitted that the total value of the consignment i.e., 244 bags was Rs.1,65,203/-. The value of one bag was Rs.677/-. Considering that the damage was caused to 36.976 bags, the value of damaged goods works out to Rs.25,032/- and the value towards short delivery i.e., 14.68 bags would be Rs.9,938/-. Thus, total damage was to the tune of Rs.34,970/-. The respondent has been paid Rs.16,330/-. The appellants were therefore liable to pay Rs.18,640/-.

6. Having gone through the entire records, in my considered view, the finding of the Railway Tribunal are based on the evidence on record and do not warrant interference. Hence, the Appeal is dismissed. The learned counsel for the appellant states that the amount as per the judgment and award has been deposited before the Railway Tribunal, Mumbai. Liberty is granted to the respondent to apply for withdrawal of amount before Railway Tribunal.

Preeti H.
Jayani

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Preeti H. Jayani
Date: 2019.10.22
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(SMT. ANUJA PRABHUDESSAI, J.)