

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

FIRST APPEAL NO. 692 OF 1996

Union of India	Appellant
V/s.	
Shah Lalji Devji and Co.	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 22/01/1996 passed by the Railway Claims Tribunal, Bombay Bench, Bombay in Case No.OA 68/1992.

3. By the impugned judgment, the Railway Tribunal had directed the appellant to pay to the applicant sum of Rs.36,293/- with cost and interest @ 12% p.a. from the date of the application till the date of payment.

4. The respondent had claimed compensation of Rs.36,293/- from the appellant for damage to the consignment covered under RR No.258652 and 258653, both dated 20/05/1990 in respect of 245 bags of gram dal weighing 50 kgs each. The said consignment was booked for carriage from Ex. Saugor to Wadibunder at Railway Risk Rate. The consignment did not reach its destination for about one month. The respondent therefore served a claim notice for non delivery of the consignment. The respondent learnt that the consignment had reached its destination on or before 11/09/1990 i.e., after a delay of about four months. The same found to be in damaged condition.

5. As per the damage certificate issued by the respondent, 401 bags out of 490 bags were damaged to the extent of 60 to 25%. After taking delivery of the said consignment, the respondent sorted out the dal in two lots i.e., slightly damaged and highly damaged. The goods in good condition were sold @ between Rs.1,121/- and Rs.1,141/- per quintal. The respondent claimed that he had suffered loss of Rs.1,48,000/- on account of damage caused due to non delivery of consignment. He preferred two claims dated 17/12/1990 claiming compensation of Rs.47,098/- and Rs.46,872/-. The Area Superintendent, Wadi Bunder sanctioned compensation of Rs.21,881/- and Rs.21,776/-. The

respondent accepted compensation of Rs.43,657/- under protest and thereafter filed claim for balance amount of Rs.36,293/-.

6. The appellant had resisted the claim mainly on the ground that the respondent had accepted the compensation of Rs.43,657/- and hence, was not liable to raise any further claim. It is to be noted that the respondent had accepted the amount of Rs.43,657/- under protest and hence, the claim for the balance amount was maintainable.

7. The respondent had examined Shri. Shantilal Devji Dedhia, one of the partners of the firm. The evidence of this witness indicates that the Dal from the said consignment which was in good condition and was sold at an average rate of Rs.1131/- per quintal. As per the assessment certificate which was produced by the applicant and not controverted by the respondent, total 4168 kgs Dal in one consignment and 4148 kgs of Dal in the other consignment. After deducting the salvage value of 15%, the net loss works out to 7069 kgs. The price of 7069 kgs of gram dal @ Rs.11.31 per kg works out to Rs.79,950/-. The respondent had already received an amount of Rs.43,657/- and hence, was entitled for compensation of Rs.36,293/-. It was in these circumstances, the Railway Tribunal has directed the respondent to pay

the balance amount of Rs.36,293/- with cost and interest @ 12% p.a. The findings recorded by the Railway Tribunal are based on the evidence on record. The order does not suffer from any illegality and hence, there is no reason to interfere with the same. The appeal is therefore devoid of merits and the same is accordingly dismissed.

8. The learned counsel for the appellant states that the compensation as per the impugned judgment and award, is deposited before the Railway Tribunal, Mumbai. Liberty is granted to the respondent – firm to file an application for withdrawal of the amount.

Preeti
H.
Jayani

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Preeti H.
Jayani
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(SMT. ANUJA PRABHUDESSAI, J.)