

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Amk

APPEAL (L) NO. 132 OF 2019
IN
ARBITRATION PETITION NO. 980 OF 2015

New Hariyana Transport Co. .. Appellant
Vs.
The General Manager, Govt of India & Ors. .. Respondents

Ms. Leena Tembkar i/b Kalyani G. Parmar for the Appellant.
Mr. Parag Vyas a/w. Mr. D. R. Shah for Respondent Nos.1 & 2.
Ms. Shilpa Kapil for Respondent No.3.

**CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 7th NOVEMBER, 2019.**

P.C. :

1. Heard learned Counsel for the parties.
2. Challenge in the Appeal is to the Judgment dated 01.02.2019 dismissing the Appellant's challenge to an Award dated 27.03.2015 pronounced by the learned sole Arbitrator. Contention advanced in the Appeal is that the learned Single Judge has overlooked the fact that the claim before the Arbitrator was limited to short delivery of 10 cartridge cases and as per the documents filed by the Respondents the value of each short delivery cartridge case was ₹ 3210/- and thus, at best, the Award could be in sum of ₹ 32,100/- and not ₹ 5,72,965.93. Learned Counsel urges that the learned Arbitrator wrongly awarded the amount by treating 169 cases to be damaged.

3. The submission of learned Counsel for the Appellant appears not to have been taken note of and that is why the same has not been dealt with by the learned Single Judge.
4. The amount is being petty, we are not inclined to remit the matter to the learned Single Judge and prefer to deal with the contention with reference to the record of the learned Arbitrator.
5. The communication dated 14.12.2010 at pages 158 and 159 of the Appeal paper-book throws light on the issue.
6. The Appellant a transporter was handed over 1180 numbers of 105 mm, 130 mm cartridge cases. At the time of delivery it was noted that 169 cases were found damaged and it was recorded that 11 number of cases were short supplied. The value per case being ₹ 3210/- for 11 cases amount deducted was ₹ 35,310/- and pertaining to the damaged cases noting that the same were beyond repair, reducing the scrap value which was realized, loss was ₹ 4,96,696.29. Adding costs towards polythene bags, polythene cap, repacking charges etc. total amount came to be ₹ 5,72,965.93. The learned Arbitrator found that the number of boxes short supplied was 10 and thus has directed refund of ₹ 4,550 from the sum of ₹ 5,72,965.93 withheld from the payment payable to the contractor. It is thus a case of not only 10 cases short delivered but additionally 169 damaged.
7. Needless to state the goods were being transported at the risk of the Appellant. Thus, we find no infirmity in the impugned Award and as a result, dismiss the Appeal.

[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]

Arjun
M.
Kadam

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by Arjun M.
Kadam
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