

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.980 OF 2015

New Hariyana Transport Co.

....Petitioner

vs

The General Manager And 2 Ors.

...Respondents

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Ms. Leena Temkar, a/w. Ms. H.D. Kapadia, i/b. Ms. Kalyani Parmar, for the Petitioner.

Mr. Parag Vyas, i/b. Mr. Dhanesh R. Shah, for the Respondents.

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CORAM : S.C. GUPTE, J.

DATED: 1 FEBRUARY 2019

P.C.:

. Heard learned Counsel for the parties. This arbitration petition challenges an award passed by a sole arbitrator in respect of disputes arising out of a transportation contract. Respondent No.1 herein, who is the General Manager of Ordinance Factory Ambarnath, awarded a contract for transportation of defence material from Ambarnath to Bolangir. The material was loaded at Ambarnath. On its way to Bolangir, the delivery truck met with an accident, which resulted in loss of certain goods. There was a short delivery of 10 number of cart. cases. Respondent No.1 deducted from the amount payable to the Petitioner against its bill a sum of Rs.5,72,965 towards this loss. The Petitioner repudiated the Respondents' claim and invoked the arbitration agreement forming part of the contract. The arbitral tribunal, by its impugned award dated 27 March 2015, accepted the Respondents' case

on loss of goods. The arbitrator held that the goods were at the risk of the Petitioner carrier and, accordingly, the Petitioner was liable to make good the Respondents' loss of goods. The arbitrator, however, held that the loss calculated by the Respondents was after considering 11 cartridge cases as loss instead of 10, as was mutually agreed between the parties. The additional loss of one cartridge was deducted from the loss actually payable by the Petitioner. So also, the total loss worked out was corrected arithmetically and, accordingly, it was held that an excess amount of Rs.4,550/- was recovered from the Petitioner towards the loss and/or the Respondents were liable to refund the same to the Petitioner. The reference was, in the premises, partly allowed only to the extent of Rs.4,550/.

2. Learned Counsel for the Petitioner submits that the award is passed without any evidence. Learned Counsel submits that there was no oral evidence tendered by the Respondents. Learned Counsel submits that the loss was, accordingly, not proved by the Respondents. There is no merit in the submission. It was not a matter of dispute that the transporter's vehicle met with an accident. When the material was delivered at the destination, the Petitioner's representative acknowledged by an appropriate endorsement on the rear side of the consignment note that the material received was 1170 cc, that is to say, 10 cases short. The arbitrator then considered the terms and conditions of the transport contract which inter alia provided that the transport was at the 'carrier's risk' and in case of any shortage/loss/damage to the Government stores in transit, the cost of the same would be recovered from the transporter and no risk charges would be paid separately. The terms of the contract,

i.e. Point No.18 of General Terms and Conditions for purchase printed at the rear of the order, provided for the Respondents' ability to appropriate any sum of money due and payable to the contractor for payment of any money due from the contractor out of any other contract with the Respondents. The arbitrator, in the premises, held the loss of 10 nos. of cases as payable by the Petitioner transporter. The arbitrator did not find fault with the Respondent's recovery of money as a matter of principle. He, however, found an excess recovery on account of one additional case being unauthorisedly treated as loss and also some arithmetic errors in calculation. The learned arbitrator, accordingly, passed his award for refund of Rs.4,550/- to the Petitioner.

3. There is no infirmity to be found in the impugned award as suggested by learned Counsel for the Petitioner or otherwise under Section 34 of the Arbitration and Conciliation Act, 1996. The arbitrator has assessed the evidence before him reasonably; the award is supported by evidence. The only factual controversy in the matter was of loss of goods. There being evidence of a mutually acknowledged assessment of loss by an appropriate entry in the consignment note, the arbitrator could rely upon the same and give a finding of such loss. The rest of the controversy was a matter of law, i.e. interpretation of a contract. The arbitrator's interpretation of the particular term concerning the carrier's risk, as also the Respondents-employers' ability to recover the amount of its loss from the carrier, clearly suggests a reasonable interpretation. The arbitrator's view on such interpretation is a possible view. It is not a view, which no fair and judiciously minded person would take, or a view which would shock the conscience of the Court.

4. Accordingly, there is no merit in the petition. The arbitration petition is dismissed.

(S.C. GUPTE, J.)