

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

-.-

FAO 1590 of 1997 (O&M)

Date of decision: 14.10.2019

Union of India and another

.....Appellants

Versus

M/s Bhoop Singh and Company

.....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Karminster Singh, Advocate
for the appellants

Mr. Deepak Agnihotri, Advocate
for the respondent

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Rekha Mittal, J. (Oral)

Challenge in the present appeal has been directed against award dated 19.05.1997 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (in short, 'the Tribunal') whereby application for grant of compensation in respect of loss of consignment in transit was partly allowed and the respondent/applicant was held entitle to recover a sum of Rs.24,884/- with proportionate costs and interest @ 12% per annum from the date of filing of claim application till realization with further stipulation that interest @ 15% per annum would be payable in case the amount is not paid within 60 days from the date of award.

The facts relevant for disposal of the present appeal are that the respondent/applicant booked seven containers of green peas ex-Delhi to

Bombay against Parcel Way Bills (PWBs) No. 200358 to 200361, 200363 and 200365 issued on 12.05.1992. Nothing was disclosed about its fate by the Railway. Later, it was learnt that goods had been lost in transit. The respondent/applicant served notice under Section 106 of the Railways Act, dispatched vide postal receipt No. 2749.

The respondent/applicant filed claim application for recovery of Rs.42,045/- i.e. Rs.33,502/- being price of goods and Rs.8,543/- as interest. A prayer for grant of future interest @ 18% per annum with effect from 12.10.1993 till realization of decretal amount was also made.

The Railways filed the written statement raising preliminary objections, inter alia, that claim application had not been signed and filed by a competent person; the respondent/applicant has no locus standi to file claim. On merits, factum of booking of consignment in question was admitted with the averments that it was at owner's risk. The applicant having endorsed Parcel Way Bills in favour of the consignees for taking delivery of the consignment, it lost its right of ownership in consignment and it was the consignees, who were entitled to file claim application. The consignment reached destination on 16/17.05.1992 but the consignees refused to take its delivery. They even did not produce the PWBs for taking delivery. The consignment had reached destination within reasonable time and no negligence can be attributable to the Railways. All reasonable care was taken in handling the consignment enroute. It was denied if the respondent/applicant ever made any enquiry regarding the consignment in question. No notice under Section 106 of the Railways Act was ever received by the Railway Administration. Valuation of the goods was also

denied.

The Tribunal framed issues, reproduced in para 5 of the award. All the issues were answered in favour of the respondent/applicant and eventually, the claim was partly allowed in the terms noticed hereinbefore.

Counsel for the appellant has assailed the award primarily on two counts. It is argued that as the consignee is guilty of refusing to take delivery of consignment that reached destination on 16/17.05.1992, claim for recovery of price of the goods is not sustainable, therefore, findings of the Tribunal allowing recovery of Rs.24,884/- are liable to be set aside. Another submission made by Counsel is that the Tribunal has allowed interest at a higher rate i.e. @ 12% per annum or 15% per annum in case the payment is not made within 60 days from the date of award.

Counsel representing the respondent/applicant has supported findings of the Tribunal on the premise that Railways failed to ensure safe delivery of goods in spite of the applicant having remained in touch with the Railways Administration for getting delivery of consignment.

I have heard counsel for the parties, perused the paper book and records.

In para 7(i) of the claim application, the respondent/applicant raised the plea that the applicant had been enquiring about the fate of goods booked by him but he was not given any clue and later he learnt that the goods had been lost in transit. In reply thereto, plea of the Railways is that the consignment in question reached destination on 16/17.05.1992 and the consignee refused to take delivery nor produced Parcel Way Bills. The respondent/applicant examined Satya Parkash Goel, special attorney of Shri

Bhoop Singh, sole proprietor of M/s Bhoop Singh and Company, the Mall, Solan, H.P. He tendered into evidence his duly sworn affidavit dated 04.07.1996 wherein he reiterated the version of respondent/applicant particularly para 7(i) of claim application. On the contrary, the Railways examined a witness to prove documents with regard to rates of various goods including green peas. The appellant did not examine a witness along with relevant documents to establish its plea that consignment reached destination on 16/17.05.1992 or consignee refused to take delivery. In the given scenario, it can safely be held that the appellant failed to prove the facts to their special knowledge with regard to consignment having reached destination either on 16/17.05.1992 or within reasonable time or consignee refused to take its delivery. That being so, entitlement of the respondent/applicant for recovery of amount on account of goods having not reached its destination or failure of Railways to deliver the consignment cannot be fault with.

The Tribunal awarded interest @ 12% per annum from the date of filing of claim application till payment with penal clause to pay interest @ 15% per annum in case the amount is not paid within 60 days. Taking into consideration that the matter pertains to the year 1992 and claim application was filed in the year 1993, in absence of any provision under the Railways Act prescribing rate of interest payable in claims, it can be held that the Tribunal has allowed interest at a higher rate. The respondent/applicant shall be entitle to interest @ 9% per annum from the date of claim application till realization.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

14.10.2019
Mohan Bimbura

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No