

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

FIRST APPEAL NO. 951 OF 1996

Union of India	 Appellant
v/s.	
Dippy Oil	 Respondent

Mr. T.J. Pandian a/w. Dheer Sampat for the Appellant.
None for the Respondent.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 20th AUGUST, 2022.

P. C. :-

. The Appellant has challenged the judgment dated 10/04/1996 whereby the Railway Claims Tribunal allowed the Claim Application filed by the Respondent-claimant and directed the Appellant to pay to the Respondent sum of Rs.33,348/- with interest.

2. The case of the Respondent-claimant was that on 30/06/1992, it had booked consignment of 210 bags of Ground Nut Oil Cakes vide RR No.041358, Invoice No.299 at Railway Risk rate from Ex. Kurnoo Town Goods to Wadibunder, Bombay. According to the claimant, the value of the consignment was Rs.76,440/-. The consignment did not reach the

destination and as such, vide letter dated 14/09/1992, the Respondent-claimant lodged a claim for non-delivery of the consignment. The Respondent-claimant alleged that subsequently, all 210 bags were delivered to them, in totally damaged condition. It was stated that there was shortage of 142.20 quintals against RR weight of 147 quintals. The Appellant therefore claimed compensation of Rs.63,137/- towards damage of shortage of goods. The claim notice under section 106 was also served upon the Appellant but there was no response. The Respondent claimed that the goods which were loaded under RR were perfectly in good condition and that the damage/loss was due to the negligence of the Respondent.

3. The Respondents admitted that the claimants had booked the consignment. The defence raised by the Appellant was that the Respondent-claimant had accepted a cheque of Rs.27,975/- towards full and final settlement of the claim. Hence, Respondents are not entitled to claim any further compensation.

4. The Railway Claims Tribunal observed that the cheque was issued after filing of the Claim Application. Despite receiving the cheque, the Tribunal has held that the Respondent-claimant had not accepted

amount towards full and final settlement. After considering the Assessment Report at Exhibit – 5, the Tribunal held that the total damage was to the extent of 11793 kgs. Considering the rate of the commodity at Rs.5.20 per kg, the Tribunal assessed damage to the tune of Rs.61,323/-. Upon deducting amount of Rs.27,975/-, the Tribunal awarded compensation of Rs.33,348/-. Being aggrieved by this judgment, the Appellant has filed this Appeal.

5. Heard Mr. Pandian, learned counsel for the Appellant. I have perused the records.

6. It is not in dispute that on 30/06/1992, the Respondent-claimant had booked the consignment of 210 bags of Ground Nut Oil Cakes vide RR No.041358 & Invoice No.299 at Railway Risk rate from Ex. Kurnoo Town Goods to Wadibunder, Bombay. It is also not in dispute that the said consignment did not reach its destination on the scheduled date and that it was received subsequently totally in damaged condition. The Damage Assessment Report at Exhibit – A5 as well as the shortage certificate reveals that the total loss was to the extent of 11,793 kgs. At the relevant time, the price of the goods was Rs.5.20 per kg.

7. Considering the extent of damage/shortage certificate, the claimants are entitled for compensation of Rs.63,137/-. It is not in dispute that the Appellant had issued a cheque of Rs.27,975/- towards full and final settlement. It is to be noted that though the Appellant had already raised a claim before filing of the claim petition, there was no response from the Appellant-Railways. The cheque was issued after filing of the claim petition. The same was not received by the Respondent-claimant unconditionally, towards full and final settlement of the amount. As such, the Railways cannot be absolved of its liability to pay the total amount of compensation. Thus, the Tribunal has rightly deducted the amount which was paid by the Appellant – Railways and held that the Respondent is entitled for balance amount of Rs.33,348/-.

8. The judgment is based on the evidence on record. There is no illegality or infirmity. Hence, the Appeal is dismissed.

PREETI
H
JAYANI

Digitally
signed by
PREETI H
JAYANI
Date:
2022.08.30
16:15:44
+0530

(SMT. ANUJA PRABHUDESSAI, J.)