

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

FIRST APPEAL NO.634 OF 1996

The General Manager, Central
Railway and Anr.

...Appellants

Versus

Metropolitan Traders Private
Limited

...Respondent

...

Mr. T.J. Pandian with Mr. Dheer Sampat for the Appellants.
None for the Respondent.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 20th AUGUST, 2022.

P. C. :-

. By this Appeal under Section 23 of the Railway Claims Tribunal Act, 1987, the Appellants have challenged the order dated 17/11/1995 passed by the Railway Claims Tribunal, Bombay allowing the Claim Application being Case No.OA/278 of 1992 and directing the Appellants to pay an amount of Rs.6,46,772/- with interest towards damage caused to the 27 cement bags covered under RRs mentioned in the Application.

2. It is the case of the Respondent-claimant that on 14/07/1989, they had entrusted a consignment of cement bags to the Respondent

for transport from GDCR L & T Siding to New Mulund Goods-NGSM. On arrival at the destination, it was found that some bags of cement were damaged due to rain. The damage was assessed at 5,23,926 kgs of cement. The quantity which was certified as damaged had no salvage value. The claimants alleged that the value of the damaged consignment was Rs.8,37,649.25/- and hence, lodged a claim for compensation under Section 78-B of the Indian Railways Act, 1980. Since the Respondents did not respond to the claim, the Claim Application was filed before the Railway Claims Tribunal for compensation alleging that the damage was caused due to the negligence of the Appellants.

3. The Respondent admitted that it was a train load consignment. The Respondents claimed that the consignment reached the destination on 24/07/1989 and was unloaded and placed in a covered shed. The Appellants claimed that the assessment of damage was to the extent of 5,23,926 Kgs. It was contended that the loss was not caused due to negligence of the Appellants but due to heavy and unprecedented rain which was an 'Act of God'. The Appellants claimed that the goods were damaged in rain despite reasonable care and caution and that they are absolved of their liability under Section 73(a) of Indian Railways Act,

1890.

4. The Tribunal upon considering the evidence adduced by the respective parties, held that the Respondent had proved that the consignment was dispatched in good condition and was received in damaged condition. The Tribunal held that there was no evidence of heavy rain and gusty winds on 23/07/1989. The Tribunal therefore held that Appellants had failed to prove that the goods were damaged in an 'Act of God', hence, the Appellants are not entitled for protection of Clause (a) of Section 73 of the Indian Railways Act, 1890. The Tribunal held that as per the damage assessment certificate at Exhibit-A-3 to A-29, the total damage was assessed at 5,23,926 Kgs of cement. The Tribunal held that the value of cement was 61.80 per bag of 50 kgs and thus held that the Respondent is entitled for compensation of Rs.6,46,772/- towards the value of 5,23,926 Kgs of cement. Being aggrieved by this order, the Appellants have preferred this appeal.

5. Heard Mr. Pandian, learned counsel for the Appellants. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

6. It is not in dispute that on 14/07/1989, the Respondent -claimant

had booked a consignment of cement bags covered under Railway Risk mentioned in the Exhibit A of the Application. The said consignment was to be transported from GDCR L & T Siding to New Mulund Goods-NGSM. It is not in dispute that some of the cement bags were received in damaged condition. It is not in dispute that as per the Damage Assessment Certificate, the total damage was 5,23,926 Kgs of cement. The Respondent had claimed protection under Clause (a) of Section 73 of the Indian Railways Act,, 1890 on the ground that the consignment was damaged due to heavy rain which was an 'Act of God'.

7. A plain reading of Section 73 of the Railways Act, 1890, as amended in 1961, would indicate that the Railway Administration is responsible for loss, destruction, damage, deterioration or non-delivery of goods delivered to the administration for carriage except where any such loss, damage, destruction has occurred due to any of the reasons stated in Clauses (a) to (i) of the Section 73. The proviso to Section 73 stipulates that even where such loss, destruction, damage, deterioration or non-delivery is proved to have arisen due to any of the causes in clauses (a) to (i), the Railway Administration is not relieved of its responsibility unless it proves that it had used reasonable foresight and care in the carriage of the animals and goods.

8. In the instant case, the Appellants had examined Rajaram Pothu, Chief Goods Clerk at Mulund Goods Shed, who has deposed that on 24/07/1989, water had entered onto the platform due to heavy rain in Mumbai. The Appellants had stated in the written statement that the consignment had reached its destination on 23/07/1989 and was to be unloaded on the same day. The Appellants-Railway Administration have not adduced evidence to prove that there was excessive rain, gale or storm, etc. on 23/07/1989 which had caused damage to the goods. Hence, regular rains during monsoon cannot be construed as an 'Act of God'. Furthermore, the Appellants have not adduced evidence to prove that Railway Administration had taken care and caution to move the goods to a safer location to prevent the damage due to rains. There is no evidence to prove that whatever care and foresight was possible had in fact been used/taken. In the absence of such evidence, the Appellants cannot be relieved of their responsibility as envisaged under Section 73 of the Railways Act, 1890.

9. As regards the value of the damaged goods, the Damage Assessment Certificate at Exhibits A/3 to A/29 reveals that the total was to 5,23,926 Kgs of cement. Thus, on the basis of Damage

Assessment Certificate at Exhibits-A/3- to A/29 and the bills at Exhibits A/31 to A/36, the value of the damaged consignment was Rs.6,46,772/-. The Claims Tribunal was therefore justified in awarding compensation of Rs.6,46,772/-. The order of the Claims Tribunal is based on evidence on record and does not warrant interference. The Appeal has no merits and is accordingly dismissed.

**PREETI
H JAYANI**

(SMT. ANUJA PRABHUDESSAI, J.)

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