IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 625 OF 1996

Union of India …. Appellant
v/s.
Metropolitan Traders Private Ltd. …. 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. :-

. By this Appeal under section 23 of the Railway Claims Tribunal Act, 1987, the Appellant has challenged the order dated 17/11/1995 passed by the Railway Claims Tribunal allowing Claim Application being Case No.OA/279 of 1992 and directing the Appellant to pay an amount of Rs.1,65,129/- with interest towards damage caused to the cement bags covered under six RRs mentioned in the Application.

2. It is the case of the Respondent-claimant that on 17/07/1989, they had entrusted a consignment of cement bags to the Respondent for transport from CDCR L and T Siding to New Mulund Goods NGSM covered by six RRs. On arrival at the destination, it was found that some bags of cement were damaged due to rain. The damage was

assessed at 37835, 43080, 39175, 16320, 21780 and 32670 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.2,48,166.63/- 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 Petition was filed before the Railway Claims Tribunal for compensation alleging that the damage was caused due to the negligence of the Appellant.

3. The Respondent admitted that the consignment was booked under train load under 'L' condition and 'said to contain' RRs were issued. The Respondents claimed that the consignment reached the destination on 23/07/1989 and was unloaded and placed in a covered shed. The Appellant claimed that the assessment of damage was to the extent of 26484 kgs, 30156 kgs, 27422 kgs, 11424 kgs, 15246 kgs and 22869 kgs. It was contended that the loss was not caused due to negligence of the Applicant but due to heavy and unprecedented rain which was an 'Act of God'. The Appellant claimed that the goods were damaged in rain despite reasonable care and caution and that the Respondents have absolved of its 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 the Appellant had failed to prove that the goods were damaged in an 'Act of God', hence, the Appellant is 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-8, the loss assessed was 26484, 30156, 27422, 11424, 15246 and 22869 kgs. Thus, the total damage was assessed at 1,33,601 kgs of cement. The Tribunal held that the value of the cement was 61.80 per bag of 50 kgs and thus held that the Respondent is entitled for compensation of Rs.1,65,129/- towards the value of 1,33,601 kgs of cement bags. Being aggrieved by this order, the Appellant has preferred this Appeal.

5. Heard Mr. Pandian, learned counsel for the Appellant. 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 17/07/1989, the Respondent – claimant had booked a consignment of cement bags covered under six RRs mentioned in the Exhibit – A of the Application. The said consignment was to be transported from CDCR L and 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 1,33,601 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 arise 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 or goods.

8. In the instant case, the Appellant had examined Rajaram Pothu, Chief Goods 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 Appellant 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 Appellant – Railway Administration has not adduced 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 Appellant had 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 infact been used/taken. In the absence of such evidence, the Appellant cannot be relieved of its 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 Exhibit – A3 to A8 reveals that the total

damage was to 1,33,601 kgs of cement. Thus, on the basis of Damage Assessment Certificate at Exhibit – A3 to A8 and the bills at Exhibit – 10 to 12, the value of the damaged consignment was Rs.1,65,129/-. The Claims Tribunal was therefore justified in awarding compensation of Rs.1,65,129/-. 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

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(SMT. ANUJA PRABHUDESSAI, J.)