

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

FIRST APPEAL NO. 513 OF 1997

Union of India	 Appellant
v/s.	
Sunbright Cement Agencies Ltd.	 Respondent

Mr. T.J. Pandian a/w. Dheer Sampat for the Appellant – UoI.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 04th AUGUST, 2022.

P. C. :-

. The Appellant herein has challenged the judgment and award dated 31/01/1997 in Appeal No.513/1997 in Case No.OC9600232 of 1996.

2. Heard learned counsel for the Appellant. I have perused the records. The Appellant had claimed compensation of Rs.25,163/- from the Central Railway Administration as compensation for damages in respect of the consignment covered by RR No.772316 dated 09/10/1995 under which the Respondent had transported cement bags in open wagons from Chandrapur to Pune. The claimant had alleged that the consignment was perfectly in good condition at the time of dispatch. However, when the same was received, about 669

consignment bags were found in damaged condition. The Railways assessed loss to the extent of 22077 kgs and after deducting salvage value, the value of the damaged consignment bags was assessed at Rs.50,326/-. The Respondent claimed half of the amount i.e., Rs.25,163/- under section 104 of the Railways Act, 1989.

3. The Appellant contested the proceedings on the ground that the Respondent had selected a block rake of open wagons for loading the consignment, by availing 5% rebate in freight and had therefore relinquished the right to claim compensation for damages. The Appellant claimed that a sum of Rs.11,374/- was paid to the Respondent towards full and final settlement and as such, the Respondent was not entitled for any additional amount towards loss or damages.

4. The Railway Claims Tribunal after considering the evidence on record observed that the Respondent has placed on record invoice (Exhibit – A4) which proves that the rate of cement was Rs.1,707/- per M.T. and after adding the freight, the rate works out to Rs.2,309/- per M.T. The Appellant had assessed the damages to the extent of 22,877 kgs and after deducting the salvage value, the value of the consignment

was Rs.50,953/-. The Tribunal held that the Appellant had paid Rs.11,375/-. There was no evidence to show that the Respondent had relinquished their rights to claim balance amount towards damages. Considering the fact that the Respondent had restricted their claim to Rs.25,163/- and after deducting an amount of Rs.11,374/- paid by the Appellant, the Tribunal directed the Respondent to pay the balance amount of Rs.13,789/- with interest at the rate of 12% p.a. from the date of the application till the date of the payment.

5. The Appellant had not disputed that the Respondent had booked consignment from Chandrapur to Pune under RR No.772316. When the consignment reached the destination, 669 bags were found to be in damaged condition. The Railway had assessed the damage and issued certificate without prejudice. Though the Railway had paid Rs.11,374/- towards full and final payment, the receipt produced by the claimant reveals that the value of consignment was Rs.1,707/- per M.T. and after adding freight charges it was Rs.2,309/- per M.T. Since the Respondent had restricted their claim to Rs.25,163/-, the learned Judge has deducted the amount paid to the Respondent and awarded an amount of Rs.13,789/-. The judgment and order is based on the evidence on record. I do not find any reason to interfere with the

impugned judgment. Moreover, the amount awarded is very meager.
Hence, the Appeal is dismissed.

PREETI
H JAYANI

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(SMT. ANUJA PRABHUDESSAI, J.)