



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

107

FAO-1654-1993**Date of decision : 11.12.2024****Union of India and others****..... Appellants****versus****Punjab State Tubwell Corporation Ltd. and another.... Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Ms. Puneeta Sethi, Senior Panel Counsel with
Mr. Yashoodev Singh Thakur, Advocate
for the appellant-UOI.

Mr. Aman Sharma, Advocate
for respondents No.1 and 2.

PANKAJ JAIN, J. (Oral)

1. Present appeal is directed against order passed by the Railway Claim Tribunal, Chandigarh whereby the claim filed by the respondents stands allowed.

2. Claimants preferred present appeal claiming that 12439 bags of cement were booked with the railways vide receipt Nos.512611-14 and 512616 dated 30.09.88 to be carried from Jawad to Bathinda. However, the consignment never reached its destination. Notice under Section 77 of the Indian Railways Act was served upon Chief Commercial Superintendent, Bikaner on 29.06.89. Thereafter, notice under Section 80 was served firstly on 04.01.89, 27.03.89 and thereafter on 29.06.89. Claimants prayed for grant of decree of ₹6,62,200/- alongwith interest. The claim petition was contested by the railway administration. Receipt of notice was admitted. The railways admitted



entrustment, however, claimed that they are ready to pay compensation subject to filing of railway receipts by the applicants.

3. On the basis of pleadings, following issues were framed:-

- “1. Whether the applicant has a right of suit?
2. Whether notice served on the Railways under Section 78-B of Indian Railways Act is not legal and valid, as alleged?
3. To what amount of compensation is the applicant entitled?”

4. Tribunal after analysing the evidence threadbare, came to the conclusion that the consignment was admittedly booked on 30.09.1988 and the same related to purchase from M/s. New Vikram Cement. Invoices thereof were placed on record and proved. Resultantly, Tribunal awarded compensation amounting to ₹8,11,114.39 alongwith interest pendente lite and future @ 12% per annum.

5. Ms. Sethi, while assailing the impugned order passed by RCT submits that the onus was upon the applicant to prove the material entrusted to the railways. She further submits that in fact there was a flood which caused breach in the railway track. The cement bags were utilized to plug the said breach. Railways very fairly offered to pay the compensation, subject to the claimants producing receipt with respect to entrustment of consignment. She further submits that had the bags not been utilized to plug the breach, the cement otherwise also would have got damaged.

6. *Per contra*, Mr. Sharma submits that in terms of Section 93 of the Railways Act, railways has to account for the damage of the consignment. Once consignment was admitted to have been entrusted,



the railways have to account for the damages.

7. I have heard counsel for the parties and have carefully gone through the records of the case.

8. Though, at the first blush, argument raised by counsel for the appellants seems to be attractive. However, the same sans merit. Once railways admit entrustment, the claimants having discharged the initial burden, the burden shifted upon the railways to dispel the claim raised by the claimants. Admittedly, the consignment was entrusted to the railways and the same was consumed and utilized by the railways. The boggy of consumption to avoid the destruction of the material cannot be accepted. Admittedly, Railways utilized the material to plug the breach in the railway track, thus needs to pay.

9. Having observed with respect to liability, this Court finds that the interest part needs to be modified. Though, it is a commercial transaction, yet this Court finds that the interest awarded @ 12% is on higher side. The claim was filed before the Sub-Judge in January 1990 and the same was returned on 19.04.1991. It was then filed before the Tribunal on 10.05.1991. Thus, the interest part is modified to the extent that the railway administration shall be liable to pay compensation amount of ₹8,11,114.39 along with interest @ 9% per annum. However, it is made clear that if the amount has already been released without any surety, no recovery shall be made. Whereas, in case the amount has been released subject to some surety, the railways shall be entitled to recovery of the differential amount.



10. In view of above, present appeal is disposed off.

(PANKAJ JAIN)
JUDGE

11.12.2024

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No