

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

**HON'BLE SHRI JUSTICE PRANAY VERMA
ON THE 3RD OF JULY, 2023**

FIRST APPEAL No. 324 of 2001

BETWEEN:-

1. THE GENERAL MANAGER, WESTERN RAILWAY, CHURCH GATE MUMBAI.
2. CHIEF COMMERCIAL MANAGER, WESTERN RAILWAY, WESTERN REGION, RATLAM.
3. UNION OF INDIA, NEW DELHI THROUGH THE SECRETARY, MINISTRY OF RAILWAY, NEW DELHI.

.....APPELLANTS

(BY SHRI H.Y. MEHTA - ADVOCATE)

AND

1. M.P.E.B. RAMPUR – JABALPUR THROUGH EXECUTIVE ENGINEER (SANCHARAN & SANDHARAN), M.P.E.B., NAGDA, DISTRICT: UJJAIN (MADHYA PRADESH)

.....RESPONDENT

(NONE)

This appeal coming on for hearing this day, the court passed the following:

JUDGMENT

This appeal under Section 96 of the CPC has been preferred by the defendants/appellants being aggrieved by the judgment and decree dated 31.01.2001 passed in Civil Suit No.7-B/2000 by the Additional District Judge, Ujjain whereby the claim of plaintiff/respondent has been decreed in the sum of

Rs.1,94,000/- with interest at the rate of 10% per annum from the date of decree.

2. As per the plaintiff, on 11.04.1990, at 3:00 p.m. a goods train of the defendants within Nagda Railway Station outer which was carrying nephtha chemical in 40 tankers and was going from Mathura to Gandhidham caught fire. From one of the tankers nephtha chemical leaked and fell to the ground as a result of which it caught fire and the other tankers also got engulfed in the same. The fire was quite huge and continued for a period of about four hours. From the heat generated from the fire the electricity line of the plaintiff which was running underneath the Railway Line and its equipments were totally destroyed due to which electricity also could not be supplied to the consumers for 24 hours and their electricity connections in the houses also got burnt and damaged. As a result of damage to the electricity wires the plaintiff suffered a total loss of Rs.2,02,800/- and also loss of income from sale of electricity amounting to Rs.4,477/-. It was able to recover Rs.13,277/- from the scrap. On such contentions, the plaintiff instituted an action for recovery of a sum of Rs.1,94,000/- from the defendants along with interest.

3. The defendants filed their written statement submitting that due to the fire, no damage was caused to the electricity wires of plaintiff and no loss has been suffered by it. The fire was not a result of any negligence on part of the defendants. It was further submitted that the claim is barred by virtue of provisions of Section 13 of the Railway Claims Tribunal Act, 1987 ('the Act, 1987'). In the enquiry which was conducted it was found that there has been no fault on part of the Railway Authorities and the negligence was on part of the consignor. It was hence submitted that the suit be dismissed.

4. By the impugned judgment, the trial Court has held that on 11.04.1990 due to catching of fire as a result of nephtha leaking from tankers which were being transported in the goods train of the defendants, fire was caused which resulted in loss of Rs. 1,94,000/- to the plaintiff. The same was

due to negligence of defendants. In consequence, the plaintiff's claim was decreed.

5. Learned counsel for the defendants has submitted that the judgment is wholly illegal in as much as only a valuation report was produced by plaintiff and there was no other material to show the actual damage which had been caused. Only by relying upon the valuation report plaintiff's claim could not have been decreed which was a claim for compensation on account of damages which was strictly required to be proved. It was further submitted that the claim was barred by virtue of Section 13 of the Act, 1987. Specific plea in this regard was raised but has not been adjudicated upon. It is hence submitted that the judgment and decree passed by the trial Court be set aside.

6. No one appeared on behalf of the respondent though served and represented.

7. I have considered the submissions of learned counsel for the appellants and have perused the record.

8. Section 13 of the Act, 1987 is as under:-

“(1) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any civil court or a Claims Commissioner appointed under the provisions of the Railways Act,—

(a) relating to the responsibility of the railway administrations as carriers under Chapter VII of the Railways Act in respect of claims for—

(i) compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a railway administration for carriage by railway;

(ii) compensation payable under Section 82-A of the Railways Act or the rules made thereunder; and

(b) in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway.

[(1-A) The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of Section 124-A of the Railways Act, 1989 (24 of 1989), all such jurisdiction, powers and authority as were exercisable immediately before that date by any civil court in respect of claims for compensation now payable by the railway administration under Section 124-A of the said Act or the rules made thereunder.]

[(1-B) The Claims Tribunal shall also exercise, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, the jurisdiction, powers and authority conferred on the Tribunal under Chapter VII of the Railways Act, 1989 (24 of 1989).]

(2) The provisions of the [Railways Act, 1989 (24 of 1989)]and the rules made thereunder shall, so far as may be, be applicable to the inquiring into or determining, any claims by the Claims Tribunal under this Act.”

09. Section 124-A of the Railways Act, 1989 (the Act, 1989’) is as under:-

“124-A. When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to—

- (a) suicide or attempted suicide by him;*
- (b) self-inflicted injury;*
- (c) his own criminal act;*
- (d) any act committed by him in a state of intoxication or insanity;*

(e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation.—For the purposes of this section, “passenger” includes—

*(i) a railway servant on duty; and
(ii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.]”*

10. Under Section 13 of the Act, 1987, the Claims Tribunal has been authorized to exercise jurisdiction, power and authority as were exercisable immediately before the appointed day by any Civil Court or a Claims Commissioner appointed under the provisions of the Railways Act. The same are in respect of compensation for loss etc. and refund of fares or freight paid for animals or goods entrusted for carriage by Railway. They are further in respect of matters covered under Section 124-A of the Railways Act, 1989 which is regarding a passenger or a dependent who has been killed or injured to claim damages for the same and matters covered under Chapter-VII of the Act, 1989 which are primarily regarding contravention of provisions of Section 70, charging for the carriage of any commodity between two stations or levying any other charge at a rate which is unreasonable. Though, there is reference to Section 82-A of the Railways Act in Section 13 of the Act, 1987 but in the Railways Act, 1989 as well as in the Indian Railways Act, 1890 which was repealed thereunder there is no such Section 82-A reference to which is hence apparently erroneous.

11. The aforesaid alone is the jurisdiction expressly conferred upon the Claims Tribunal which does not include any claim for damages caused to any third person meaning any person who is not a passenger of the train or excluded under the proviso to Section 124-A of the Act, 1989. It also does not include any property other than the property covered under all the provisions

referred to above. Thus, if any loss is caused to any person or damage is caused to any property who is not a person or is not a property to which jurisdiction of the Claims Tribunal extends by virtue of Section 13 of the Act, 1989, the Tribunal will not have any jurisdiction to adjudicate upon a claim in respect thereof and it would only be the Civil Court which shall have such jurisdiction.

12. The present is a case for claiming compensation in respect of damage caused to the electricity lines of the plaintiff laid underneath the railway track and other properties which suffered damage on account of fire caused due to negligence of the defendants. This claim is totally beyond the matters to which the Railways Claims Tribunal has exclusive jurisdiction and it was only the Civil Court which had such jurisdiction. The contention of learned counsel for the defendants that the suit was barred before the Civil Court by virtue of Section 13 of the Act, 1987 is hence misconceived and is accordingly rejected.

13. For the purpose of proving damage caused to it, the plaintiff has produced a valuation report accompanied by supporting documents to prove the loss caused to it on account of occurrence of fire due to leakage of naphtha chemical from the tankers. Details have been given in the documents regarding calculation of the loss. The same have been prepared by officers of plaintiff and have been duly proved by the witnesses examined its part. A perusal of cross-examination of these witnesses does not show that any infirmity, contradictions or omissions having been brought out therein to discredit their statements.

14. The document Ex.D.1 produced by defendants is a finding of a committee constituted by it which states that it has come to the conclusion that there has been irregularity on part of the consignor and not the defendants. The same cannot be accepted. The loading of naphtha chemical in the tankers was not only the responsibility of the consignor but also of the defendants as the loading had been done in its oil tankers which it was to transport. It was imperative for the defendants to ensure that loading was properly done and

there was no possibility of any untoward incident occurring in transit. Moreover, the report has been signed by four officers of the defendants but none of them have been examined to prove the same. The witnesses examined have expressed their total ignorance about the contents of the report and also the reason as to why none of the committee members have been examined. They have total lack of knowledge about the cause of fire. The report has hence not been proved and cannot be relied upon.

15. In absence of any legal and cogent rebuttal of the evidence led by the plaintiff as regards the loss suffered by it on account of the incident, there is no reason to disbelieve the same. The trial Court has hence rightly held that the loss occasioned to the property of the plaintiff was due to negligence on part of the defendants and that it is entitled for award of damages as claimed by it.

16. In view of the aforesaid, I do not find any error, illegality or perversity in the reasonings and the findings recorded by the trial Court which are based upon a proper appreciation of the evidence available on record and application of legal principles applicable to the facts of the case. The appeal is hence found to be devoid of any merits and is hereby dismissed.

No costs.

(PRANAY VERMA)
JUDGE

Shilpa