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IN THE HIGH COURT OF DELHI

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FAO No.226/1996

M/s. Sher Singh Industries Appellant
through: Mr. M.L.Bhargava, Advocate

VERSUS

UOI Respondent
through: Mr. S.R.Narayan, Advocate

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DATE OF DECISION:
24.4.2008

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether judgment should be reported in Digest? Yes

: **PRADEEP NANDRAJOG, J.**(Oral)

1. This is an appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987 against the order dated 15.02.96 passed by the learned Railway Claims Tribunal, Delhi.

2. The appellant M/s Sher Singh Industries filed a claim application against the respondent claiming a compensation of Rs.16,100/-.

3. The case set up by the appellant was that it had entrusted a consignment comprising of 1100 bags of Kabuli gram (white chana) to the respondent for transport from Wadibunder station to New Delhi.

That the consignment was booked under railway receipt no. 083740 dated 26.07.91. That the consignment was found in a damaged condition on 28.08.91 i.e. when the delivery of the consignment was taken from the respondent. That the damage took place due to gross negligence and misconduct of the employees of the respondent. That it called upon the respondent to make payment of the compensation for the loss and issued notice under Section 78-B of the Indian Railways Act, 1890 and Section 80 of the Code of Civil Procedure for settlement of the claim. That the market rate of Kabuli gram at the relevant time was Rs.1,650/- per quintal and suffered a loss in sum of Rs.42,817/-. That the respondent accepted its fault but by arbitrarily applying the rate of the Kabuli gram at Rs.1,185/- per quintal sent a cheque of Rs.25,917/- towards damages. That the said cheque was accepted under protest and the respondent is thus liable to pay a balance sum of Rs.16,100/- (Rs.42,817/- – Rs.25,917/- = Rs.16,100/-)

4. From the facts noted above it is clear that the parties were at variance regarding the rate of the Kabuli gram at the relevant time.

5. Noting the report produced by the Claims Inspector, Railways which was based upon the rates of the Kabuli gram published in the Economic Times newspaper the Tribunal has determined the market rate of the Kabuli gram at the relevant time as Rs.1,185/- per quintal. Additionally, the Tribunal has noted that the witness produced by the appellant admitted in his testimony that the rate of the Kabuli gram was Rs.900/- per quintal at the relevant time; that no documentary evidence was led by the appellant to establish that the

market price of the Kabuli gram was Rs.1,650/- per quintal; that the bill regarding the purchase of the consignment by the appellant does not contain the name of the consignor M/s Dallal K. Mangal Das; that the consignment has been described as Katta Kabuli (Double Doller) in the bill whereas same has been described as grain and pulses (Kabuli gram) in the railway receipt;

6. Taking market rate of the Kabuli gram as Rs.1,185/- per quintal the Tribunal has held that the appellant is not entitled to any compensation and thus dismissed the claim application filed by the appellant.

7. Challenge in the appeal is limited to the price of the Kabuli gram of determined by the Tribunal.

8. To establish the market rate of the Kabuli gram at the relevant time, the appellant examined one Mr.Ram Niwas, the partner of the appellants' firm, AW-1. He deposed that the appellant firm conducts its business from Delhi. That on 26.7.91 the appellant firm purchased the consignment from M/s S. Chetan Traders, Bombay. That the bill dated 26.7.91 Ex.RW1/1 was issued by M/s S. Chetan Traders in his presence. That the consignment was booked for transport from Bombay to Delhi by the firm M/s Dallal K.Mangal Das (commission agent). He also proved entries pertaining to payment in respect of the consignment in the cash book and ledger book of the appellant firm as Ex.A1/5 and Ex.A1/6 respectively.

9. Per contra, respondent examined one Sh.B.S.Sharma, Claim Inspector, Railways, AW-2. As already noted, he proved the

report made by him wherein he had assessed market rate of the Kabuli gram on the basis of the market rates published in the newspapers.

10. Learned Tribunal disbelieved the testimony of the witness of the appellant and adopted the report of the Claims Inspector, Railways which was based upon the rates published in the newspaper.

11. In so far as four circumstances noted by the learned Tribunal which are noted by me in para 5 above, it is relevant to note that the witness of the appellant, AW-1 in his cross-examination has categorically denied the suggestion that the rate of the Kabuli gram was Rs.900/- per quintal at the relevant time and has not admitted that the rate of the Kabuli gram was Rs.900/- per quintal at the relevant time as noted by the learned Tribunal.

12. The Tribunal has wrongly noted that no documentary evidence was produced by the appellant to establish that the rate of the Kabuli gram was Rs.1650/- per quintal in as much as the witness of the appellant produced the original bill as also entries pertaining to payment of the consignment in the cash book and ledger book of the appellant firm.

13. The fact that the bill dated 26.7.1991 Ex.RW-1/1 does not contain the name of the consignor M/s. Dallal K. Mangal Dass is of no relevance for the reason the consignment was purchased by the appellant firm itself. The witness of the appellant AW-1 in his testimony categorically deposed that the appellant firm had purchased the goods and that the same were booked for transport from Bombay to Delhi by M/s. Dallal K. Mangal Dass. A perusal of the railway receipt

which is on page 125 of the trial court record reveals that the same contains a noting that the consignment is to be delivered to M/s. Sher Singh Industries i.e. the appellant firm. This substantiates the case of the appellant that M/s. Dallal K. Mangal Dass was the consignor and that the appellant firm was a consignee.

14. Lastly, in so far as variance in description of the consignment in the railway receipt and bill Ex. RW-1/1 is concerned, suffice would it be to note that the bill describes the consignment as 'katta kabuli 31 U.P. (Double Doller)' and the railway receipt describes the same as '1100 katta (bags) Grain and pulses (Kabuli Gram)'. The difference in the description is of no consequence as from both the descriptions it is clear that 1100 bags of Kabuli gram were purchased/consigned.

15. The rates published in the newspapers as adopted by the Tribunal is an extrinsic evidence.

16. It is well established principle of law that where intrinsic evidence is readily available the Courts should rely upon the intrinsic evidence and eschew extrinsic evidence. (See the decision of this court reported as S.Harpreet Singh Chawla v Ceat Ltd & Anr 134 (2006) DLT 378)

17. In view of above discussion, I hold that the appellant has sufficiently established that the rate of the Kabuli gram was Rs.1650/- per quintal at the relevant time.

18. I thus allow the claim of the appellant in sum of Rs.16,100/- together with the interest @ 7.5% p.a. from the date of claim petition

i.e. 7.5.1992 till date of the payment.

19. Appeal is allowed in terms of para 18 above.

20. No costs.

April 24, 2008
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(PRADEEP NANDRAJOG)
JUDGE