



THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

MFA No. 1/2013

M/s Bajaj Trading Company,
C.K. Saraogi Building, M.S. Road,
Fancy Bazar, Guwahati, Assam, Pin-781001.

.....*Appellant.*

-Versus-

Union of India,
Represented by the General Manager,
N.F. Railway, Maligaon,
Guwahati, Assam, Pin-781011.

.....*Respondent.*

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

For the Appellant : Mr. D. Rathi.Advocate.

For the Respondent : Ms. M. Chatterjee.Advocate.

Date of Hearing : 19.09.2024

Date of Judgment : **17th December, 2024**

JUDGMENT AND ORDER

Heard Mr. D. Rathi, learned counsel for the appellant and also heard Ms. M. Chatterjee, learned counsel for the respondent.

2. This miscellaneous first appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 is directed against the judgment and order dated 03.09.2012, passed by the Railway Claims Tribunal, Guwahati Bench, in Original Application No.OA-I-6/2011.

3. The back ground facts leading to filing of the present appeal is briefly stated as under:-

"The appellant herein is a proprietary concern/partnership firm. On 10.11.2009 by Invoice No.2/Railway Receipt No.21200273, a consignment of 40,444 bags of salt was booked from Chirai (CHIB) Junction to Dharmanagar (DMR) Station, under Railway Risk Rate, complying with the packing conditions prescribed by railways. But, there was shortage of delivery and the respondent had delivered only 38,702 bags of salt and the shortage was 1,742 bags and that the remark recorded in the railway receipt is contradictory to the remarks recorded to the forwarding station and the consignment was subjected to a criminal interference before delivery and the seal was found defective and there was also delay in transit, negligence and misconduct on the part of the carrier for short delivery. Under such circumstances, the appellant herein, made a claim for compensation @Rs.200/- per bag.

The respondent herein had contested the said claim and filed written statement, wherein the learned Railway Claims Tribunal had framed following issues:-

1. Was there been a proper notice under Section 106?
2. Whether the applicant is entitled to any compensation? If so, what is the sum?
3. Reliefs and costs?

Thereafter, hearing both the parties, the learned Railway Claims Tribunal has decided the Issue No.1 in favour of the appellant and Issue No.2 in negative and Issue No.3 also in negative."

4. Being aggrieved, the appellant has preferred this appeal on the following grounds:-

- I. That, the learned Tribunal failed to appreciate the evidence and decided the matter arbitrarily without adhering to the materials placed on record. There lies discrepancy with respect to the number of bags loaded and number of bags delivered wagon wise i.e. some wagons had bags in excess and some had bags short when compared to the number of bags originally loaded into them and this fact eschewed consideration of the learned Tribunal.
- II. That, at the time of delivery of the goods, the respondent had issued a delivery shortage certificate, which was also presented by the respondent in its list of evidence adduced and the same was also discussed in the impugned order, but was not relied upon in the desired manner to provide relief to the appellant. The learned Tribunal had failed to consider the fact that there was shortage of delivery of goods and upon the said fact, the delivery shortage certificate confirms and as such, the appellant is liable to be compensated.

III. That, the learned Tribunal has decided the matter without application of mind and without adhering to the materials placed on record and did not provide any justice to the appellant.

5. Mr. Rathi, learned counsel for the appellant submits that the appellant had booked the consignment from Chirai Junction to Dharmanagar Station on 10.11.2009 and the total number of consignment was 40,444 bags of salt and the consignment was delivered on 06.04.2010 and there was shortage of delivery and only 38,702 bags of salt were delivered. Then the matter was apprised to the respondent and then the respondent had issued Shortage Certificate and thereafter, on 29.09.2010, the appellant herein has issued one grievance letter to the respondent and given statutory notice on 06.04.2010 and the delivery letter on 16.05.2010 and the transshipment tally report indicates that there was delay and the consignment was in open condition and there was shortage also and the total number of bags falling short of was 1,742 bags and thereafter, the claim was made before the Railway Claims Tribunal on 08.02.2011 for a sum of Rs.3,48,400/-, but the same was dismissed vide impugned judgment and order dated 03.09.2012.

5.1. Mr. Rathi, further submits that the shortage certificate itself indicates about the shortage, but the same was not taken into account by the learned Railway Claims Tribunal and the respondent authority had failed to acknowledge the invoice, in view of the Section 97 of the Railways Act and that the impugned judgment and order passed by the learned Railway Claims Tribunal is perverse and as such, it is not maintainable and therefore, it is contended to allow the appeal.

5.2. In support of his submission, Mr. Rathi has referred following decisions:-

- (i) Union of India v. Bajaj Trading Company [MFA No.20/2012, decided on 26.04.2019];
- (ii) Union of India v. M/s Manas Salt Iodisation Industries (P) Ltd. [MFA No.24/2012, decided on 28.07.2022];
- (iii) Union of India v. Sunrise Traders, reported in MANU/GH/0047/2017;
- (iv) Union of India v. M/s AMBA Industries [MFA No.17/2011, decided on 14.06.2011];
- (v) Union of India v. Roop Narayan, reported in AIR 1997 Rajasthan 123;
- (vi) Union of India v. M/s Sunrise Traders, reported in 2016 (1) GLT 447;
- (vii) Union of India v. M/s Dey's Cold Storage Pvt. Ltd. [MFA No.27/2012, decided on 27.09.2021];
- (viii) Union of India v. M/s Binod Kumar Jagadish Prasad [FAO No.59/2002, decided on 05.09.2007].

6. Per contra, Ms. Chatterjee, learned counsel for the respondent submits synopsis of written argument and supplemented the same by oral argument. Ms. Chatterjee, submits that the consignment of salt containing 40,444 bags was booked on 10.11.2009, under owner's risk rate freight and under Invoice No.2, Railway Receipt No.21200273 to be transported from Chirai (CHIB) to Dharmanagar (DMR) and the said consignment was transshipped at Lumding with seal intact condition without any interference enroute and the alleged shortage of consignment was found at transshipment point from seal intact wagons.

Ms. Chatterjee, further submits that the consignment was booked under the remark "Said to Contain" and moreover, the consignment was booked without supervision of railway staff at the forwarding station and the consignment was loaded by the consignor directly from Truck/Cart to wagons and the loading was done in siding and was not supervised by railway staff and accepted the weight of the senders and packing condition outer not compliant OR.

6.1. Ms. Chatterjee, also submits that all the wagons of the train arrived at the transshipment point/Lumding with seals intact condition without any interference enroute and the alleged shortage of consignment was found at the transshipment point from seal intact wagons. However, Ms. Chatterjee submits, the appellant had contended that all the wagons of the train arrived at transshipment point/Lumding without having railway seals and card labels and all the wagons were in damaged condition and the suit consignment arrived at destination point on 19.03.2010, after an inordinate delay in transit/detention of wagons and there was criminal interference to the wagons, negligence and misconduct of railway administration and its servant, which caused shortage of 1,742 bags of salt. But, the appellant did not produce any evidence to show the remarks recorded in the Railway Receipt are contradictory to the remarks recorded at the forwarding station. There was nothing to find out that the consignor and consignee are one and the same and no endorsement was seen in the Railway Receipt and that no document was produced to show that the appellant and the consignee is one and the same person. It is also stated that since the consignment was booked at owner's risk rate and as such in view of Section 97 of the Railways Act, the Railway is not liable for any compensation and hence, the compensation was denied and moreover, the respondent had issued letter to the appellant for

furnishing power of attorney, beejuck and other relevant documents but, the appellant neither furnished nor responded to the same and on the ground of non-submission of the relevant documents, the claim was repudiated and the same was intimated to the appellant on 10.09.2007 and that there was no infirmity or illegality in the impugned judgment and order of the learned Railway Claims Tribunal and therefore, Ms. Chatterjee has contended to dismiss the appeal.

6.2. Ms. Chatterjee has also relied upon following decisions:-

- (i) **Sreenivas Basudeo vs. Union of India And Ors.**
reported in 2002(1) GLT 605;
- (ii) **Hari Sao and Another vs. The State of Bihar**
reported in AIR 1970 SC 843;
- (iii) **The Union of India vs. M/S P.P. Enterprise**
reported in MFA 272/2010;
- (iv) **Union of India vs. M/S Indian Oil Corporation Ltd.**
MFA 92/2016;
- (v) **Union of India vs. M/S Indian Oil Corporation Ltd.**
MFA 85/2016;
- (vi) **The Union of India vs. M/S North East Iodized Salt (P) Ltd.,** MFA 15/2011;
- (vii) **Union of India vs. Aluminium Industries Limited**
reported in AIR 1987 Orissa 149(1);
- (viii) **Union of India vs. B.D. Jhunjhunwala,** reported
in AIR 1988 Orissa 267;
- (ix) **Union of India vs. Industrial Development Corporation of Orissa Limited** reported in AIR 1995 Orissa 298;

- (x) Dominion of India vs. Firm Museram Kisunprasad, Melonigunj, Jubbulpore reported in AIR (37) 1950 Nagpur 85;
- (xi) The Union of India vs. M/S Manas Salt Iodisation Industries Ltd. Unit-II, MFA 24/2012;
- (xii) The Union of India vs. M/S Joypakash Associates Ltd., MFA 36/2011;

7. Having heard the submission of learned Advocates of both the parties, I have carefully gone through the memo of appeal and the grounds mentioned therein and also perused the impugned judgment and order passed by the learned Railway Claims Tribunal, Guwahati Bench, as well as the decisions referred by learned counsel for both the parties.

8. It is not in dispute that the appellant herein, on 10.11.2009, vide Invoice No.2/Railway Receipt No.21200273, had booked a consignment of 40,444 bags of salt from Chirai to Dharmanagar. It is also not in dispute that the consignment was delivered on 19.03.2010 at Dharmanagar Station. Further, it is not in dispute that there was short delivery and the respondent herein, had delivered 38,702 bags only. As such, there was shortage of 1,742 bags and to that effect the respondent herein had issued one Short Delivery Certificate on being insisted by the appellant herein. But, admittedly he had demanded for open delivery. It is also not in dispute that after the short delivery, the appellant herein had issued a Notice under Section 106 of the Railways Act, 1989, on 06.04.2010, and it was issued within the stipulated period. Thereafter, appellant herein, made a claim for compensation @Rs.200/- per bag. But, the same was rejected by the respondent herein.

9. Thereafter, the appellant herein had preferred an appeal before the learned Railway Claims Tribunal. During the course of hearing, the appellant had exhibited as many as 8 documents as Exhibit-A1 to Exhibit A8. For the purpose of this appeal, only Exhibit-A1 i.e. Copy of Record of Joint Survey of Open Delivery for Shortage and Damage, the Copy of Notice, dated 06.04.2010, under Section 106 i.e. Exhibit-A2, The Copy of CCM/FM/N.F. Railway's Letter dated 18.08.2010, i.e. Exhibit-A3 and Copy of Applicant's letter, dated 29.09.2010, i.e. Exhibit-A4, as well as Copy of Invoice i.e. Exhibit-A5, are only found to be relevant to address the issue in this appeal.

10. It appears that based upon aforesaid documents, the appellant here in had claimed and also argued at the time of hearing that the consignment was booked under Railway Risk Rate complying with the packing conditions prescribed by railways. But, it appears that the remark recorded in the Railway Receipt (Exhibit-R4) is contradictory to the remarks recorded to the forwarding station. It also appears that the contention of the appellant was that the consignment was subjected to a criminal interference before delivery and that the seal was found defective and there was negligence and misconduct on the part of the carrier for short delivery. The appellant has also relied upon the Copy of the Transshipment Tally, exhibited by respondent herein as R2, to contend that consignment of 40,444 bags of salt was booked from Chirai to Dharmanagar.

11. On the other hand, the respondent herein had exhibited as many as seven documents as Exhibit-R1 to R7 to substantiate its stands. It appears that it had exhibited Copy of Forwarding Notes as Exhibit-R1, Copy of Transshipment Tally as Exhibit-R2, Copy of Record of Joint Survey of Open Delivery for Shortage and Damage as Exhibit -R3, Copy

of Railway Receipt as Exhibit-R4, Copy of Delivery Book as Exhibit R5, Copy of Notice dated 06.04.2010, under Section 106 as Exhibit-R6 and Copy of Applicant's Letter dated 20.01.2010 as Exhibit-R7.

12. And based upon the said exhibits, the respondent herein claimed that the consignment of salt containing 40,444 bags was booked on 10.11.2009, under owner risk rate freight and under Invoice No.2, Railway Receipt No.21200273 (Exhibit-R4) to be transported from Chirai (CHIB) to Dharmanagar (DMR) and it was transshipped at Lumding with seal intact condition without any interference enroute and the alleged shortage of consignment was found at transshipment point from seal intact wagons.

13. It is also being claimed that the consignment was booked under the remark "Said to Contain" and moreover, the consignment was booked without supervision of railway staff at forwarding station and the consignment loaded by the consignor directly from truck/cart to wagons and the loading done in siding was not supervised by railway staff and accepted the weight of the senders and packing condition outer not compliant OR.

14. Further, it is being claimed that the appellant did not produce any evidence to show the remarks recorded in the Railway Receipt are contradictory to the remarks recorded at the forwarding station and since the consignment was booked at owner's risk rate, under Section 97 of the Railways Act, the Railway is not liable for any compensation and on the ground of non-submission of the relevant documents, such as Lorry Challan to indicate number of bags/packets and payment of Sales Tax, Books of Accounts, Balance Sheet and Beejuck/Sale Invoice and lack of initial complaint to the Railway, demanding open delivery under Section

81 of Railways Act, and that there is no infirmity or illegality in the impugned judgment and order of the learned Railway Claims Tribunal.

15. On consideration of the arguments of learned Advocates of both sides, in the light of materials on record and within the existing legal framework, the submission of learned counsel for the respondent appears to be justified and acceptable. A careful perusal of the Railway Receipt-Exhibit-R4, indicates the followings:-

- (i) Loaded directly from the Truck/Cart to wagon;
- (ii) Loading not supervised by railway staffs;
- (iii) Sender's weight accepted;
- (iv) Packing condition outer not compliant;

16. The aforesaid facts in the Exhibit-R4 are not disputed by the appellant herein. That being so, the contention of the appellant that the consignment was carried at Railway's Risk, got no legs to stand upon. In this context, reference to Section 97 of the Railway Act is found to be necessary. The section read as under:-

97. Goods carried at owner's risk rate.-
Notwithstanding anything contained in section 93, a railway administration shall not be responsible for any loss, destruction, damage, deterioration or non-delivery in transit, of any consignment carried at owner's risk rate, from whatever cause arising, except upon proof, that such loss, destruction, damage, deterioration or non-delivery was due to negligence or misconduct on its part or on the part of any of its servants:

Provided that,-

- (a) where the whole of such consignment or the whole of any package forming part of such consignment is not delivered to the consignee*

or the endorsee and such non-delivery is not proved by the railway administration to have been due to fire or to any accident to the train; or

(b) where in respect of any such consignment or of any package forming part of such consignment which had been so covered or protected that the covering or protection was not readily removable by hand, it is pointed out to the railway administration on or before delivery that any part of that consignment or package had been pilfered in transit, the railway administration shall be bound to disclose to the consignor, the consignee or the endorsee how the consignment or the package was dealt with throughout the time it was in its possession or control, but if negligence or misconduct on the part of the railway administration or of any of its servants cannot be fairly inferred from such disclosure, the burden of proving such negligence or misconduct shall lie on the consignor, the consignee or the endorsee.

17. It appears from the Railway Receipt (Exhibit-R4) that the consignment was booked under Owner's Risk category. And as such, in view of Section 97, and in view of the Section 101 of the Evidence Act, burden to prove that such loss, destruction, damage, deterioration or non-delivery of the consignment was due to negligence or misconduct on its part or on the part of any of its servants, lies upon the appellant herein, notwithstanding Section 93 of the Railways Act.

18. That Section 65 of the Railways Act deals with Railway Receipt. The Section read as under:-

Railway receipt.—(1) A railway administration shall,—

- (a) *in a case where the goods are to be loaded by a person entrusting such goods, on the completion of such loading; or,*
- (b) *in any other case, on the acceptance of the goods by it, issue a railway receipt in such form as may be specified by the Central Government.*

(2) *A railway receipt shall be prima facie evidence of the weight and the number of packages stated therein:*

Provided that in the case of a consignment in wagon-load or train-load and the weight or the number of packages is not checked by a railway servant authorized in this behalf, and a statement to that effect is recorded in such railway receipt by him, the burden of proving the weight or, as the case may be, the number of packages stated therein, shall lie on the consignor, the consignee or the endorsee.

19. Herein this case, Exhibit-R4 indicates the remark "Said to Contain" and further indicates that the consignment was booked without supervision of railway staff at forwarding station and the consignment loaded by the consignor directly from Truck/Cart to wagons and the loading was not supervised by railway staff and the weight of the senders was accepted and packing condition outer not compliant OR.

20. But, the appellant herein had failed to establish the fact that consignment of salt containing 40,444 bags was booked on 10.11.2009 and loaded in the wagon, by producing relevant documents such as Lorry Challan and payment of Sales Tax, Books of Accounts, Balance Sheet and Beejuck/Sale Invoice.

21. Further, it appears from the record that the appellant herein had not demanded for open delivery of the consignment at the destination point. Rather he had demanded for issuing one delivery certificate. And accordingly, the respondent herein had issued the delivery certificate- i.e. Exhibit-R3. But, said Exhibit does not indicate that the condition of seal of wagons was broken or there was pilferage or there was any criminal interference.

22. Section 81 of the Railways Act, 1989 provides that where the consignment arrives in a damage condition or shows sign of having been tampered with and the consignee or the endorsee demands for open delivery, the Railway Administration shall give open delivery in such manner as may be prescribed and read with Para No. 1840, 1842 (i) to (vi) of IRCM- Vol-II.

23. That being so, the learned Tribunal had rightly held that the applicant/appellant had not produced any evidence to show that the remarks recorded in the Exhibit-R4 are contradictory and he had not raised any objection to those recordings. The finding so recorded by the learned Tribunal is also strengthened by the decision of Orissa High Court in **Union of India vs. Industrial Development Corporation of Orissa Limited**, reported in **AIR 1995 Orissa 298**, so relied upon by it.

24. I have carefully gone through the decisions referred by learned Advocates of both sides. There is no quarrel at the Bar about the proposition of law laid down therein. But to decide the issue raised here in this appeal, reference to all those decision is found to be not necessary. Therefore, I am not inclined to burden this judgment with the discussion of all those decisions.

25. In the result, and in view of foregoing discussions and findings, I find this appeal bereft of merit, and accordingly, the same stands dismissed leaving the parties to bear their own cost. Send down the record of the learned Tribunal with a copy of this judgment and order.

Sd/- Robin Phukan
JUDGE

Comparing Assistant