

(2008) 07 OHC CK 0047
In the Orissa High Court

Dr. Guru Prasad Chhotaray

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 23-07-2008

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23
Railways Act, 1989 — Section 100, 103, 110, 93

Citation : (2008) 2 OLR 966

Hon'ble Judges : Pradip Mohanty, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Pradip Mohanty, J.—This appeal u/s 23 of the Railway Claims Tribunal Act, 1987 is directed against the judgment and award dated 16.06.1997/06.12.1997 passed by the Railway Claims Tribunal, Bhubaneswar in O.A. No. 40 of 1996. Initially, the matter was heard by a Division Bench of the Tribunal consisting of the Member (Technical) and Member (Judicial). The Member (Technical) assessed the liability of the railways at Rs. 2,600/- with interest at the rate of 12% per annum from the date of application, i.e., 23.08.1996, and cost of Rs. 370/-. The Member (Judicial), however, assessed the said liability at Rs. 65,500/- with interest at the rate of 12% per annum from 14.06.1996 along with Rs. 1857/- towards application fee and Rs. 1521/- towards Advocate's fee. Since there was conflicting of opinion, the matter was referred to the third Member, namely, Member (Judicial) Ghaziabad, who agreed with the view taken by the Member (Technical).

2. Thus, by majoring, the Tribunal awarded an amount of Rs. 2,600/- with interest at the rate of 12% per annum from the date of application, i.e., 23.08.1996 and cost of Rs. 370/-.

Case of the appellant is that after his arrival at New Delhi from Soudi Arabia, he boarded Rajdhani Express on 14.06.1996 for Bhubaneswar and booked the luggage of eleven cartoons on payment of necessary freightage as advised by

the Railway authorities. On verification at Howrah station, he found that one out of the eleven cartoons was missing and informed the fact to the concerned Railway staff.

3. Ten cartoons were delivered to him at Bhubaneswar. Thereafter, complaint was lodged before the Railway authorities at Bhubaneswar and on their failure to do anything, the matter was carried to the Railway Tribunal where claim of Rs. 65,500/- was laid.

The Railway filed its reply stating therein that the appellant did not declare the value of the consignment and percentage of charge was not paid as per Section 103(2) of the Railways Act. Therefore, the appellant is entitled to get compensation of Rs. 100/- per Kg which comes to Rs. 2,600/- only.

4. In order to prove its case, the appellant examined himself and proved 21 exhibits. The Railway examined none but exhibited one document.

Counsel for the appellant submits that the Tribunal has wrongly adjudicated the case u/s 103 of, the Railways Act. The majority Members should have passed the award u/s 93 of the said Act. He further submits that for missing of the articles, a G.R. case was registered, i.e., G.R. Case No. 1859 of 1996, wherein the appellant duly proved the same. He further submits that both the learned Members have delivered the judgment without application of mind and without considering the evidence on record and have wrongly adjudicated the case u/s 103 of the Railways Act without considering the provisions of Section 93 of the Act.

Mr. Pal, learned Counsel for the Railways submits that the majority Members of the Tribunal have rightly passed the award u/s 103 of the Railways Act which works out to Rs. 2,600/-. If an individual wants the Railways to bear the risk for value in excess prescribed under the Rules, he has to declare the value of the goods and pay the percentage charges.

5. If he does not do so, he himself bears the risk for the excess value. Considering the same, the two Members of the Tribunal have awarded Rs. 2,600/-. Since there is compliance of Section 103(2), Railways is not liable to pay the unlimited compensation. According to him, the majority view of the Tribunal is legal.

Perused the awards passed by the three Members, the LCR and the provisions of law. The crux of the case is whether there was compliance of Section 103(2) of the Railways Act and whether the appellant had booked his consignment u/s 110 of the Railways Act.

6. For ready reference, Sections 103(1) and (2) are quoted below:

103. Extent of monetary liability in respect of any consignment.- (1) Where any consignment is entrusted to a railway administration for carriage by railway and the value of such consignment has not been declared as required under Sub-

section (2) by the consignor, the amount of liability of the railway administration for the loss, destruction, damage, deterioration or non-delivery of the consignment shall in no case exceed such amount calculated with reference to the weight of the consignment as may be prescribed, and where such consignment consists of an animal, the liability shall not exceed such amount as may be prescribed.

(2) Notwithstanding anything contained in Sub-section (1), where the consignor declares the value of any consignment at the time of its entrustment to a railway administration for carriage by railway, and pays such percentage charge as may be prescribed on so much of the value of such consignment as is in excess of the liability of the railway administration as calculated or specified as the case may be, under Sub-section (1), the liability of the railway administration for the loss, destruction, damage, deterioration or non-delivery of such consignment shall not exceed the value so declared.

The Railways relied on Ext.R/1, the forwarding note and contended that their liability is limited to Section 103(2) of the Railways Act. The appellant, who was examined as P.W.1, stated that he give a list of articles in original to the Railway authorities at Delhi. It was not suggested to him by the Railways that he was not ready to pay the percentage charges. There was also no pleading that the appellant was not ready to pay the percentage charges. No witness has been produced by the Railway to that effect. The Railway has also not stated anything as to what happened to the missing cartoon during transportation from Delhi to Bhubaneswar. Further, they have not examined any member of the staff who were guarding the luggage.

7. For better appreciation, Section 100 of the Railways Act is quoted hereunder:

100. Responsibility as carrier of luggage.- A railway administration shall not be responsible for the loss, destruction, damage, deterioration or non-delivery of any luggage unless a railway servant has booked the luggage and given a receipt therefore and in the case of luggage which is carried by the passenger in his charge, unless it is also proved that the loss, destruction, damage or deterioration was due to the negligence or misconduct on its part or on the part of any of its servants.

8. From a bare reading of this Section, it is crystal clear that the Railway administration has to take complete responsibility soon after receipt of the luggage. In the instant case, the luggage were handed over to the Railway for safe custody, as there was no space to keep the cartoons inside the passenger compartment. Since the appellant, at the end of his journey, received ten cartoons, obviously there was missing of one cartoon. Therefore, Railway is legally liable for the missing cartoon. In other words, the Railway is liable to pay compensation.

The evidence shows that the appellant wanted to pay any amount as required by the Railway for safe delivery of the goods at Bhubaneswar, but the authorities of

the Railways avoided to receive the percentage charges saying that Rajdhani Express does not have such facility. It appears that the value of the cartoons containing the goods was taken by the Railway Staff. Therefore, the Railway cannot avoid to pay the full compensation.

9. In view of the above, this Court sets aside the majority view and affirms the minority view of the Tribunal. The Railway is directed to satisfy the award as per the minority view of the Tribunal.

In the result, the Misc. Appeal is allowed.