

(1999) 09 MAD CK 0097

In the Madras High Court

Case No : CMA No"s. 408 and 460 of 1993

M.L. Banumathi Proprietrix Jaishree Trading Corporation 443,
Jawahar Bazaar, Karur

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-09-1999

Acts Referred:

Railways Act, 1989 — Section 65

Citation : (1999) 09 MAD CK 0097

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : S. Parthasarthy for Mr. M.S. Krishnan, for the Appellant; V.R. Gopalan, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Sivasubramaniam, J.—C.M.A. No. 408 of 1993 is directed against the award of the Railway Claims Tribunal Madras Bench in O.A. No. 1/1222/91 dated 7.4.1992 and C.M.A. No. 460/93 is directed against the award of the Railway Claims Tribunal Madras Bench in O.A. No. 1/1223/ 91 dated 17.11.1992. In the claim petition being the subject matter of C.M.A. No. 408/93, the claimant contended that he is the consignees purchaser of 552 bags of Sodium Bi-Carbonate covered by the Railway receipt Ex B1/Railway Invoice No. 24, and 554 bags of Sodium Bi-Carbonate tech. Covered by the railway receipt Ex. B.2/ Railway invoice No 25, consigned on 12.1.1991 from TCL siding at Bhimrana to Karur. On the arrival of the consignments at the destination, only 1095 bags were delivered by the destination station to the petitioner as against the total quantity of 1106 bags covered by these two railway receipts. The staff of the railways at Karur refused to give partial delivery certificate for the balance of 11 bags to the petitioner. The petitioner had sent the original of Ex A9 to the respondents, it being the combined notice of claim and notice, of suit to which the first respondent had sent replies under Ex A10 and All to the petitioner. The

claim of the petitioner was repudiated by the respondents. The petitioner later filed application claiming compensation of Rs. 3,637/- from the respondents/railways.

2. In the reply statement, the first respondent pleaded that the consignment was-qualified "said to contain" railway receipts were issued in these two consignments. The consignments were loaded by the sender with their own labour in their private siding and were carried to the destination in a through seals-intact-wagon with due care and foresight. There was no negligence or: misconduct on the part of the railways. The shortage is attributable to the short loading of the bags by the sender in its private siding.

3. In the claim petition being the subject matter of C.M.A. No. 460 of 1993, the claimant contended that 350 bags of soda ash light were consigned on 12-1-1991 from Bhimrana to Karur to the petitioner, the consignee, who had purchased those goods from M/s Tata Chemicals Limited, Mithapur. The consignments arrived at Karur on 6.2.1991 and only 693 bags were delivered to the petitioner as against a total of 698 bags thus resulting in a short delivery of five bags to the petitioner at the destination. The petitioner sent a notice to the respondents under the original of Ex A9 on 8.3.1991 to which the Southern Railway sent a repudiation under Ex A10. Therefore, the petitioner had filed application claiming a compensation of Rs. 2,096.65p.

4. In the written statement, the respondents denied the title of the petitioner to the subject consignments and her right to claim any compensation. While the consignments were admitted, it was pleaded that the consignments were loaded by the consignor with its own labour at their siding and qualified railway receipts were issued. The consignments were carried to the destination in a through seal-intact-wagon with due care and foresight and the alleged shortage was attributable only to the short loading of the consignments by the sender. Therefore, the railways was not responsible for any short loading.

5. Both the above appeals deal with a common issue viz., as regards the responsibility of the railways with reference to the goods loaded in the wagon by the consignees themselves. A perusal of the receipts show that the remarks "said to contain" and "sender"s weight accepted" were noted on the railways receipts. Therefore, in the said circumstances, according to the Tribunal, the burden of proof of the actual quantity of the consignment was on the consignee and that the railways had discharged their burden by producing the receipts.

6. Learned Counsel for the appellant relied on the Judgment of Bellie, J reported in Steel Authority of India Ltd. v. Union of India etc., (1993 -1 L.W., 483) Per contra, Learned Counsel for the respondent relied on the Judgment of the Supreme Court reported in Hari Sao and another v. The State of Bihar (A.I.R.1970 S.C.843). The Supreme Court after taking note of the facts pertaining to the particular case, has held that the endorsement of "Senders weight accepted" would negative the plea, if any, that the weight was accepted

by the railways.,

7. A perusal of Section 65 of the Railways Act 1989 discloses that in such a case the burden of proof was only on the consignee. Section 65 is as follows:-

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.

c) 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 authorised 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".

Therefore in the present case there being no dispute about the fact that the consignments were loaded by the consignee with their own labour and at their own siding, Section 65 squarely applies and the burden of proof is on the consignor. As far as the railways are concerned, they have produced the receipts. Therefore, I am unable to set aside the findings as regards the burden of proof as rendered by the Tribunal.

8. Learned Counsel for the appellant further submits that the claimants have called for a telegram alleged to have been sent by the railways which would have established that the wagon had been interested and seals had been broken. Except for having raised the said plea in the grounds of appeal, no materials have been placed before me to show that any such petition was filed by the claimant before the Tribunal calling for any document from the railways. Therefore it is not possible to entertain the said objection by the appellant. Therefore, I do not find any reason to interfere with the findings of the Railway Claims Tribunal Madras Bench. With the result, these appeals are dismissed. No costs.