
(2002) 04 GAU CK 0034
In the Gauhati High Court
Case No : MA (F) No. 145 of 1998

Mrinal Kanti Bose

APPELLANT

Vs

General Manager (Claims), N.F. Railways

RESPONDENT

Date of Decision : 24-04-2002

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 13, 18, 23
Railways Act, 1989 — Section 107, 2(32)

Citation : (2003) 2 ACC 378 : (2003) 1 GLR 556 : (2002) 2 GLT 440

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : K.K. Nandi, for the Appellant; J. Singh, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—This is an appeal preferred u/s 23 of the Railways Claims Tribunal Act, 1987, against the judgment and order; dated 31.7.1998, passed, in application No. 329/96, by learned Railway Claims Tribunal, Guwahati Bench, Guwahati, dismissing the claim application of the appellant.

2. The case of the appellant may, in brief, be stated thus: One Shri Kushal Bose booked, on 2.12.1994, at Tinsukia railway station, four boxes of tea seeds weighing 80 kgs for being delivered to the appellant at Siliguri Junction. The appellant made repeated enquiries from the concerned parcel clerk, at Siliguri, about the said consignment, the last such enquiry having been made on 31.12.1994, but even on this day, i.e., on 31.12.1994, the petitioner was informed that his consignment had not reached Siliguri Junction. As the items booked were perishable in nature, the claimant issued a notice, dated 17.3.1995, u/s 78B of the Indian Railways Act, read with Section 80, CPC, claiming an amount of Rs. 25,473.00 as compensation for the loss incurred by him. The consignment, however, reached Siliguri Junction on 17.4.1995 and, on being informed, on 21.8.1995, on the basis of the letter, dated 26.7.1995, issued by the General Manager, NF Railways, Maligoan, Guwahati, about the arrival of the

said consignment, the appellant refused to take delivery of his said consignment on the ground that the same stood damaged and conveyed his refusal vide his letter, dated 9.12.1995. The petitioner, then, instituted a claim case, on 27.5.1996, seeking payment of the said sum of Rs. 25,473.00 as damages on the ground that due to act of negligence on the part of the respondents, the petitioner had suffered loss to the tune of the amount claimed. The appellant's claim case was registered as Application No. 329/96 aforementioned.

3. Resisting the above claim, the respondent filed its written objection, wherein it was contended, inter alia, that there was no cause of action for instituting the claim, the case of the respondent being, briefly stated, thus : The respondent served a notice on the appellant requesting him to take delivery of the goods from the destination, but the appellant did not turn up to take delivery of the goods. As a result thereof, the consignment is still lying undelivered at Siliguri Junction. The claimant is, thus, liable to pay for wharfage charge incurred for the consignment lying undelivered. The tea seeds were not perishable goods, the consignment was booked at owner's risk and the respondent is not responsible for any loss, destruction, damage and deterioration of undelivered goods, because there was no negligence or misconduct on the part of the respondent as a carrier.

4. The learned Tribunal framed the following issues for determination :-

(I) Whether the applicant refused to take delivery of the consignment, though offered by respondent after transit delay ?

(II) Whether the respondent was negligent and misconducted and is liable for the damage as claimed ?

(III) Whether the application is liable to be dismissed as alleged by the respondent ?

(IV) Relief?

5. After hearing learned counsel for the parties, learned Tribunal, vide its impugned judgment and order, discussed all the issues together and disposed of the same by dismissing the claim application without cost. Hence, this appeal.

6. I have perused the relevant records including the impugned judgment and order. I have heard Mr. K.K. Nandi, learned counsel for the appellant, and Mr. J. Singh, learned Senior Advocate, who has appeared on behalf of the respondent.

7. Assailing the impugned order, Mr. Nandi has submitted that tea seeds are perishable in nature and since the respondent, with whom the tea seeds stood booked for delivery, on 2.12.1994, failed to deliver the same till 31.12.1994, the claimant had no option, but to serve on the respondent a notice, on 17.3.1995, as required under the law contained in that behalf and that having received the consignment on 17.4.1995, when the respondent informed the claimant, on 21.8.95, vide letter, dated 26.7.1995, about arrival of the said consignment at its

destination, the appellant had no option but to decline to receive delivery of the said consignment, vide his letter, dated 9.12.1995, on the ground that the consignment containing items, which were perishable in nature, stood damaged.

8. Mr. Nandi has also submitted that since the consignment contained perishable items, i.e., tea seeds, the appellant was not bound to take delivery of the damaged items and in this view of the matter, learned Tribunal was incorrect in holding that by refusing to accept delivery of the said consignment on the ground that tea seeds stood damaged, the appellant had forfeited his right, if any, to receive compensation for damage, if any, caused to the said consignment.

9. Controverting the above submissions, made on behalf of the appellant, Mr. J. Singh has submitted that the appellant's claim application is not maintainable in law inasmuch as the Union of India, which owns the railway, is a necessary party in such a suit, but the Union of India was not made a party in the claim case and it was General Manager (Claims), NF Railways, Maligaon, alone against whom the claim was instituted. It is also submitted by Mr. Singh that even the notice served on the General Manager (Claims), NF Railways, Maligaon, was defective inasmuch as the notice was issued u/s 78 B of the Indian Railways Act, which stands repealed and replaced by Section 106 of the Railways Act, 1989. The claim application thus, contends Mr. Singh, had no valid foundation and was liable to be dismissed. Continuing with this illegality, the appellant, submits Mr. Singh, preferred even the present appeal without impleading the Union of India as party to this appeal.

10. It is further submitted by Mr. Singh that the present case is not a case of non-delivery of consignment, but that it is a case in which the appellant, by his conduct, refused to receive delivery of the goods on the ground that the tea seeds were perishable in nature, though there is no evidence on record to show that on the date, the consignment reached its destination or was offered for delivery to the appellant, the tea seeds stood damaged.

11. Confronted with the above submissions, Mr. Nandi has candidly conceded that not making Union of India as a party to the claim application has made the claim not maintainable. Mr. Nandi has, however, insisted that since the tea seeds were perishable in nature, the appellant was justified in not accepting delivery of the goods, when the respondent made the offer for delivery of the same.

12. Having heard both sides and upon perusal of records, I find that notwithstanding the fact that Mr. Nandi has conceded that Union of India was a necessary party in the claim petition, the Railways Act, 1989, coupled with the Railways Claims Tribunal Act, 1987, have brought substantial and radical changes in the whole scheme of the Indian Railways, 1890, the most striking change being that in the past, i.e., before the Railways Claims Tribunal Act, 1987, was introduced, a consigner or consignee could seek compensation for loss, damage or deterioration of the goods, booked with the railways for carriage, by instituting suits claiming damages, but the Railways Claims Tribunal Act has, now, done

away with such suits and has simplified the whole procedure by making, u/s 107 thereof, provision for filing of applications in the Railways Claims Tribunal seeking damages for the loss, deterioration and/or damage caused to the consignment. Thus, instead of institution of suit for compensation for loss, deterioration and/or damage caused to the consignment, the Railways Claims Tribunal Act vests in the aggrieved persons the right to file an application, as provided under the Act, seeking compensation. This apart, Section 18 of the Railways Claims Tribunal Act clearly lays down that the procedure laid down by the CPC (hereinafter referred to as "the Code") is not binding on the Tribunal and that the Tribunal may dispose of all the cases following the principles of natural justice and it shall have the powers to regulate its own procedure.

13. In view of the fact that Section 107 of the Railways Act, 1989, read with Section 13 of the Railways Claims Tribunal Act, 1987, dispense with institution of suit for damages and in view also of the fact that the Code has been made inapplicable to the proceeding of the Railway Claims Tribunal, it logically follows that the provisions of Sections 79 and 80 of the Code too have become inapplicable to such cases.

14. It needs to be borne in mind that the trend of the judicial decisions, before the enactment of the Railways Claims Tribunal Act, 1987, and the Railways Act, 1989, has largely been in favour of interpretation that since a suit for damages against railway administration, in relation to a Government owned railways, is, in substance and in reality, a suit against the Government, Union of India, which represents such railway administration must be made a party to the suit. In other words, a suit against railway administration owned by the Union of India must be instituted against the Union of India and not merely against the Manager of the particular railway administration.

15. The above position becomes clear from the observations of the Apex Court in the *The State of Kerala Vs. The General Manager, Southern Railway, Madras*, I am tempted to quote the observations, laying down the law on the subject, which run as follows :

"The Act no doubt makes provision for the liability of the railway administration, but from that it does not follow that the railway administration is a separate legal entity having a juristic personality capable of being sued as such. The definition of "railway administration" in Section 3(6) of the Act that it would mean the Manager of the railway does not warrant the inference that a suit against the railway administration can be brought against the Manager of that railway. We have to bear in mind the distinction between the owner of the railway, namely, the Union of India, and the authority, which actually runs the railway, and to whom duties have been assigned for this purpose by the Act. The manager of the Railway under the Act is such authority. When, however, liability is sought to be fastened on the railway administration and a suit is brought against it on that account, the suit, in our opinion would have to be brought against the Union of India, because it is the Union, who owns the railway and who would have the

funds to satisfy the claim in case decree is awarded in such suit. The Scheme of the Act, even though there are now hardly any company owned railways in India, is to treat different railways administrations as different units, although all of them may be owned by the Union of India, Neither the definition of the "railways administration" in Section 3(6) of the Act nor the language of Sections 72 to 80 of the Act lends support for the view that the railway administrations are to be treated as separate juridical personalities, entities or separate juridical persons as seems to have been observed in the case of *Dominion of India v. Firm Museram Kishunprasad* AIR 1950 Nag 85. Yet the treatment of the different railway administrations as different Units for the purpose of fastening liability on the Union of India has got significance and relevance. Viewed in that light, it would follow that the definition of the railway administration given in Section 3(6) of the Act does not make the railway administration or its General Manager as a legal entity or a corporate body or a juridical person to represent the railway administration, as such, in suits. The claim in a suit for recovery of money under the Act against the different railway administrations owned by the Central Government in accordance with the general principles of law contained in Order 1 Rules 3 of the CPC has got to be made against the person against whom the right to relief is alleged to exist."

16. Reference may also be made to a Full Bench decision of this Court in *Chandra Mohan Saha v. Union of India and Anr.* (AIR 1953 Gua, wherein it has been laid down that a suit against the railways, owned by the government, is basically a suit against the Union of India and, thus, the Union of India is a necessary party for such suits. However, it is worth mentioning here that the Apex Court's decision cited above as well as this Court's decision referred to above relate to a position, which existed before introduction of the Railways Claims Tribunal Act, 1987, and also the Railways Act, 1989.

17. A close reading of the above observations of the Apex Court shows that the conclusion by the Apex Court that Union of India is a necessary party in a suit against railways administration was based on a reading of the provisions of Section 3(6) of the Railways Act, 1890, "(which defines railway administration) read with not only Sections 79 and 80 of the Code (which lay down the law that before institution of the suit, a plaintiff must serve the Union of India with a notice conveying information of its intention to institute the suit and reasons therefore and that if a suit has to be instituted against the railways, then, Union of India shall be made a party thereto), but also on a reading of Order 1 Rule 3 of the Code, which lays down as to who all need to be made parties in a civil suit. However, after the establishment of different Railways Claims Tribunals, the Apex Court, by another decision reported in *Birla Cement Works Vs. G.M., Western Railways*, and another, has clarified that these tribunals are only creature of the statute and, therefore, these Tribunals are not to be treated as Civil Courts.

18. It is of immense importance to note that in the past, Section 3(6) of the Indian Railways Act, 1890, defined "railway administration" as follows:

"Railway administration" or "administration", in the case of a railway administered by the Government, means the Manager of the Railway and includes the Government and, in the case of a railway, administered by a railway company, means the railway company."

19. From the above definition, it is clear that in the past, in case of a railway owned by the Government, railway administration included besides the Manager of the Railway concerned, the Government too. Since it was the Central Government, which owned railways. Union of India was a necessary party in a suit for damages instituted against the railways for loss, damage or deterioration caused to the goods booked with the railways.

20. However, substantial change, now, stands introduced to the definition of the "railway administration". According to Section 2(32) of the Railways Act, 1989, "railway administration", in relation to a Government railways, means the General Manager of a Zonal Railway.

21. A bare reading of Section 2(32) shows that a railway administration, even in the case of a railway owned by the Government, no longer includes Government and it, now, means only the General Manager of Zonal railway concerned. This is a vital change in the concept of railway administration and if this change is to be given its intended meaning, then, Section 2(32), which defines "railway administration", shall, now, be read along with Section 107 of the Railways Act, 1989, and Sections 13 and 18 of the Railways Claims Tribunal Act, 1987, and when so read, it becomes abundantly clear that an application for compensation, under the Railways Claims Tribunal Act, can be made against the General Manager of the Zonal Railway concerned and impleading of Union of India as a necessary party to such application is no longer essential. Viewed from this angle, not making of Union of India a party in the present case is not a fatal defect, which goes to the root of the case, and this cannot, in itself, make appellant's claim, which has given rise to this appeal, not maintainable in law.

22. Coming to the second point in controversy between the parties, it is worth noticing that in the case at hand, the only grievance of the appellant is that on account of delay in bringing the consignment for delivery to its destination, the consignment, on account of its perishable nature, became useless for the appellant. It is rudimentary principle governing claims for damages against railway as carrier that in order to enable a claimant to receive compensation, the damage, loss or deterioration to the consignment must occur due to negligence or misconduct on the part of the railways. In the present case, there is no direct or indirect material on record to show that when the consignment reached its destination, at Siliguri Junction, it had become unfit for use by the consignee, nor is there any material to show that the damage or deterioration, if any, to the consignment had occurred due to negligence or misconduct attributable to the railways administration.

23. Coupled with the above, it is also worth emphasizing that no consignee has

the right to refuse to take delivery on the assumption that the consignment is damaged. The remedy of the consignee lies in taking delivery of the consignment in the condition in which it is offered and, then, claim, if required, compensation from the railway administration for the damage to, or deterioration of, the consignment. This principle of law has been emphasized time and again by various courts. Reference may be made to AIR 1931 29 (Nagpur); AIR 1948 65 (Nagpur) Managing Agents (Martin and Co.) Vs. Seth Deokinandan and Another, and Union of India (UOI) Vs. Ibrahim Gulaba Tobacco Merchant and Others,

24. In short, thus, a consigner or a consignee of goods cannot refuse to take delivery of the consignment from the railways on the ground that the consignment did not reach its destination on time leading to a presumption of damage or deterioration caused to the goods. In the case at hand, there is no material on record to show as to how good was the quality of the tea seeds at the time, when the consignment was booked, nor is there any material on record to show that at the time of booking of the said consignment, the railways were informed that the consignment so booked contained goods, which were perishable in nature.

25. Coupled with the above, it is also worth noticing that there is no material on record to show that the tea seeds did not reach its chosen destination in the condition in which it was booked.

26. Situated thus, there can be no escape from conclusion that even for lack of adequate evidence, no relief, as sought for by the appellant, could have been granted to him. In fact, proper course for the consignee, in a case as the one at hand, is that the consignee should take delivery of the consignment in the condition in which it is offered and after giving due notice to the competent authority about deteriorated condition, if any, in which the consignment has been received, the consignee may sue the railway administration for damages. Looked at from this angle, learned Tribunal is correct in concluding that by refusing to take delivery of the consignment offered by the respondent, the appellant had unwillingly deprived himself of adducing proof that the consignment stood damaged. The applicant has, in fact, if I may emphasise, no material on record to base his claim that the consignment was of no value or of lesser value at the time, when the delivery thereof was offered to the appellant.

27. Because of what have been discussed above, I do not find any error, factual or legal, on the part of the learned Tribunal in refusing to give relief to the appellant.

28. In the result and for the reasons discussed above, this appeal fails and the impugned judgment and order are maintained. No order as to costs.

29. Send back the case record to the learned Tribunal with a copy of this judgment and order.