
(2021) 04 GAU CK 0029

In the Gauhati High Court

Case No : Miscellaneous First Appeal No. 20 Of 2014

M/S O.D. Enterprises

APPELLANT

Vs

Union Of India And Anr

RESPONDENT

Date of Decision : 09-04-2021

Acts Referred:

Railways Act, 1989 — Section 65(2)

Citation : (2021) 04 GAU CK 0029

Hon'ble Judges : Parthivjyoti Saikia, J

Bench : Single Bench

Advocate : A Goyal

Final Decision : Dismissed

Judgement

1. Heard the learned counsel Ms. M. Sharma appearing for the appellant. Also heard Mr. G. Goswami, the learned Standing Counsel appearing for

N.F. Railways.

2. Challenge in this appeal is to the Judgment and Order dated 23.08.2013 passed by the learned Railway Claims Tribunal (RCT), Guwahati Bench in

Claim Application No. 209 of 2004.

3. The facts of the case, in a nutshell, is that a consignment of cement in 40 BCN/ BCLA wagons was entrusted to the Railways at Manikgarh

Cement Siding (MGCG) under Invoice No. 1 to 20 under Railway Receipt Nos. 063202 to 063221 on 01.06.2003. The consignment was transhipped

from broad gauge to meter gauge at New Bongaigaon good shed (MBQ) for MG destinations. After transhipment from BG to MG, 25 M Wagons

were transhipped to North Lakhimpur and 15 MG Wagons was transhipped to Tezpur.

4. The case of the appellant is that the Railways charged freight upon the appellant without giving the benefit of train load consignment. Therefore, the appellant approached the RCT for a refund of Rs. 64,268/-.

5. Ms. M. Sharma has submitted that the learned Tribunal dismissed the claim of the appellant for want of proper title and also held that the appellant

is not entitled to the benefit of train load. According to Ms. Sharma, the learned Tribunal has failed to observe that the Railway receipt can be

construed as a "Negotiable Instrument" not only in the light of certain judicial pronouncements but also upon the fact that the Railways Act of

1989 provide for a statutory reorganisation to the railway receipt as a "Negotiable Instrument".

6. Opposing the aforesaid arguments, Mr. Goswami, the learned Standing Counsel for N.F. Railways has submitted that there is a Circular of N.F.

Railways dated 11.09.1998 which indicates the type of wagons, standing rake size and minimum number of wagons to be loaded for trainload rate

which is a cheaper rate than the wagonload rate. Mr. Goswami further submitted that the appellant booked 40 BCN/BCMA wagons and therefore

they are entitled for train load benefit. Mr. Goswami submitted that as per the demands of the appellant there were only 20 wagons booked by them

and as per the Circular dated 11.09.1998 the standard rake service for BCN/BCMA wagons is 41 and minimum number of wagons required to be

loaded for trainload benefit is 38 wagons. According to Mr. Goswami by their own admission the appellant has only 20 receipts with them which

shows that they had booked only 20 wagons. Mr. Goswami pointed out that for availing train load benefit 38 wagons are to be booked and since the

appellant had booked only 20 wagons they are not entitled to trainload benefit.

7. I have given my anxious consideration to the submissions made by the learned counsels for the parties. The only dispute in the present appeal

pertains to rejection of the claim of the appellant for trainload rate. On the issue whether the appellant is entitled to wagonload or trainload, the learned

Tribunal has held as under:

"The applicant states that 40 wagons were loaded from MGCG via New Bongaigaon (NBQ) and out of this, 25 wagons were booked for NLP and

the remaining 15 wagons for TZTB. The learned counsel for the applicant, citing Railways circular dated 11.09.1998 (annex.) stated during the course

of his argument that trainload benefit of freight is extended to the party, when a minimum of 38 BCN wagons are loaded for two or three MG

destinations. In terms of Section 65(2) of the Railways Act, 1989, railway receipt is the prima facie evidence in regard to the quantity of loading. So,

the applicant has enclosed the photocopies of the railway receipts, issued by the loading station, as a proof of loading. Perusal of the photocopies of

the railway receipts reveal that only 21 wagons were booked by Manikgarh Cement Gadchandur, District Chandrapur-442908 from MGCG to NLP

and consigned to Rikhabchand Sohanlal Ltd., Tezpore. Subsequently, it was endorsed by the consignee to M/s. O.D. Enterprise, Main Road, P.O.

Banderdewa, Arunachal Pradesh. So, there is nothing on record to prove that 40 BCN wagons were loaded from MGCG. In fact, the applicant

himself is not sure about the quantity of cement loaded by the cement factory at Manikgarh on 01.06.2003, for destination like NLP/TZTB. In para (i)

Fact of the case (c) he claims that 25 wagons were loaded for NLP. However, in the last para he contradicts himself by giving the calculation of

freight for 20 wagons. The railway receipts enclosed to the application accounts for 21 wagons. The fact remains that nowhere it has been proved

that 40 wagons were loaded and consigned/endorsed in his favour from MGCG on 01.06.2003. Thus, it stands to prove that a minimum of 38 BCN

wagons were not loaded, as claimed and therefore, he was not entitled to receive the benefit of trainload class rate. In other words, he was correctly

charged at wagonload class rate.â??

8. The N.F. Railway Circular dated 11.09.1998 pertaining to the chart indicating the type of wagon, standard rake size and minimum number of

wagons to be loaded for trainload rate is like this:

Sl. No. Type of Wagon Standard rake size: Minimum number of Wagons

required to be loaded for T/L

1 2 3 4

1. BOX 50 56

2. BOX 35 30

3. BCN/BCNA 41 38

4. BBBR 52 50

5. BBBR INI 58 56

6. BRN 35 32
7. BTPN 48 46
8. BRH 35 30
9. BFR 30 28
10. BCX 35 30
11. Covered (4 Wheeler) 70 65
12. CRT 68 64
13. T a n k Wagon (470 65
Wheeler)
14. Mixed Rakes (BC)30 30
BOX/OFR /ORH
15. Metro Gauge MG to 34 (in terms of four wheeler)
MG
16. MG top BG 90 (in terms of four wheeler)

9. It is admitted case of the appellant that they had booked 20 wagons and according to the Circular dated 11.09.1998 in order to avail trainload benefit, the appellant were to book 38 wagons. Therefore, this Court finds that the RCT arrived at a correct finding while denying the claim of the appellant.

10. Therefore, this appeal fails and stands dismissed accordingly.