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**(2019) 05 JH CK 0001**

**In the Jharkhand High Court**

**Case No :** Miscellaneous Application No. 65 Of 2017

Rajinder Kumar Mohal

APPELLANT

Vs

Union Of India

RESPONDENT

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**Date of Decision :** 02-05-2019

**Acts Referred:**

Railways Act, 1989 — Section 81, 93, 94, 94(2), 95, 96, 99, 99(1), 106  
Indian Contract Act, 1872 — Section 151, 152, 161

**Citation :** (2019) 05 JH CK 0001

**Hon'ble Judges :** Sanjay Kumar Dwivedi, J

**Bench :** Single Bench

**Advocate :** Rajendra Kumar Mittal, Manish Kumar, Sudhir Kumar, Gautam Rakesh

**Final Decision :** Allowed

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## **Judgement**

1. Heard the learned counsel for the appellant, learned counsel for respondent-Railway.
2. The appellant, who is applicant in case No. OA-I/RNC/2015/0001, Check list No. 2912150015 is aggrieved by the Judgment dated 5.10.2016 passed by the learned Member (Judicial) and Member (Technical) of the Railway Claims Tribunal (hereinafter referred to as 'the Tribunal') by which the Tribunal dismissed the application of the applicant.
3. The facts of the case are that the consignment of HSD Oil was booked vide Invoice 4, RR No.262001246 dated 17.12.2012 from Visakh to Ranchi Road in Tank Wagon No. WR 916553. The product was transshipped to Tank Wagon No. NFR 40040810122 and this wagon arrived at the destination station on 26.6.2013 after more than six months with seal in broken condition. The actual dip measurement was found to be 233.5 cm against 245.2 cm. The Joint dip measurement was taken by the applicant's staff along with Railway's commercial staff as RPF personnel were not there at the destination station.
4. The appellant filed the aforesaid case for an award of compensation of Rs

1,11,549/- with interest and cost for the loss of HSD oil due to criminal interference in transit.

5. After notice respondent-Railway appeared and contested the claim on various grounds including that no joint dip measurement was conducted with any Railway representative. There was no remark of any seal breakage on OPT 18 memo and no short certificate was issued and the consignment was delivered under clear signature as per the report of CS/Ranchi Road dated 24.10.2013. Therefore, the question of issue of missing goods report does not arise.

6. The applicant relied on certain documents which were marked exhibits by the Tribunal by order dated 29.4.2016. The documents are:-

- a) Notice under section 106 of Railways Act, 1989, Ext. A1,
- b) Amendment of claim CCM (claims)ECR/Patna dated 23.8.2013 with calculation sheet- Ext. A2,
- c) Photocopy of Railway receipt-Ext.A3,
- d) Stock Transfer paper no. 0306888 dated 16.12.2012 Ext. A4,
- e) Non-receipt certificate dated 24.3.2013 Ext. A5,
- f) Original Rate Certificate, Ext. A6.

7. The respondent-Railway also filed certain documents, which were marked as Exhibits by the Tribunal. The documents are:-

- a) Forwarding note for General merchandise- Ext. R1,
- b) List annexure of wagons no.-Ext. R2,
- c) Joint inspection Report Ext. R3,
- d) Annexure B dated 18.12.2013 Ext. R4,
- e) OPT-18 dated 26.6.2013 Ext. R5,
- f) Letter of CS/PRME dated 24.10.2013 Ext. R6,
- g) Org.RR No.262001246 Ext. R7,
- h) Photo copy of certificate dated 20.8.2016 Ext. R8.

8. The Tribunal came to the finding that respondent railway is therefore not liable to pay compensation in terms of the provision of Section 94(2) of the Act and dismissed the claim application.

9. Mr. Rajendra Kumar Mittal, learned counsel appearing for the appellant assailed the Judgment submitting that in view of Section 106 of the Railways Act, 1989 (hereinafter referred as 'the Act') notice was served within the prescribed limit of six months. In view of Section 93 of the Act, the Railway is responsible for the loss, destruction, damage or deterioration in transit, or non-delivery of

any consignment. Section 95 of the Act provides that Railway Administration shall not be responsible if the railway proves that the delay or detention arose for reasons beyond its control or without negligence or misconduct on its part or on the part of any of its servants. He further draws the attention of this Court to Section 96 of the Act and submitted that if it is proved by the owner of the goods that such loss, destruction, damage or deterioration arose over the Railway of the Railway administration, the Railway will be responsible. Mr Mittal draws the attention of the Court to Section 99 of the Act.

Section 99 of the Act stipulates as under:-

"99. Responsibility of a railway administration after termination of transit:- (1) A railway administration shall be responsible as a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872 (9 of 1872), for the loss, destruction, damage, deterioration or non-delivery of any consignment up to a period of seven days after the termination of transit:

Provided that where the consignment is at owner's risk rate, the railway administration shall not be responsible as a bailee for such loss, destruction, damage, deterioration or non-delivery except on proof of negligence or misconduct on the part of the railway administration or of any of its servants."

Mr. Mittal submitted that the consignment was delivered after six months and there was laches on the part of the Railway and the Railway is responsible for that and the Tribunal committed an error by dismissing the claim of the appellant.

10. Mr. Sudhir Kumar, learned counsel appearing for respondent-Railway submitted that there is no illegality in the Judgment of the Tribunal. The Tribunal after discussing the materials on record came to that finding. Mr Kumar draws the attention of this Court to Section 94 of the Act and submitted that if the goods loaded or delivered at a siding not belonging to a railway then Railway shall not be responsible for any loss. He submitted that Goods was loaded at appellant's siding.

11. Mr. Mittal in replying the submissions of learned counsel of respondent-Railway submitted that the provision of Section 81 of the Act provides that where the consignment arrives in a damaged condition or shows signs of having been tampered with and the consignee or the endorsee demands open delivery, the railway administration shall give open delivery in such a manner as may be prescribed. Mr. Mittal submitted that for compliance of Section 94 of the Act there is condition precedent to inform in writing and there is no such communication to the appellant by the railway and thus, Section 94 of the Act is not attracted in this case.

12. Having heard learned counsel of the appellant and learned counsel of respondent-Railway and on appreciation of the rival submissions and on examining the records of the case i.e. Ext. R7 which is RR no. 262001246 dated 17.12.2012, this Court finds that the above consignment had moved under

Railway's Risk as depicted in column 6 of Exhibit R7. The appellant by its letter dated 26.6.2013 addressed to Station Manager, Ranchi Road pointed out that they have received one old tank wagon on 26.6.2013 and it is found that seal is broken and actual dip reading is 233.5 cm against 245.2 cm. By this letter it was also requested for arranging of joint inspection immediately.

13. Further, Section 99 (1) of the Act shows that the Railway has to deal with the goods put in its care as a bailee and has to take the same amount of care for the goods as a man of ordinary prudence not only during period of transit of goods from the station of origin to the station of destination but for a period of 7 days after the termination of transit. The liability of the Railway is, therefore, that of a bailee as mentioned in Sections 151, 152 and 161 of Contract Act and is not that of a common carrier as regards goods which it proposes to carry or actually carries for persons.

14. Counsel for the respondent-Railway submitted that the Railways are protected under Sections 93 and 94 of the Act inasmuch as it was the duty of the appellant to ensure that the consignment entrusted to the Railways was properly secured and to prove that damage was caused during transit. The question whether the consignment was properly secured at the time of placement with the Railways is one of fact. There is positive evidence on record to show that the seals were checked when the container moved into yard. In that view of the matter, the Railways can hardly claim protection under Sections 93 and 94 of the Act.

15. That nobody had prevented the Railway staff either from supervising or checking the loading. The Railway had accepted the weight as declared by the appellant and it could not apply double standard, one for charging the fare and the other for imposition of liability. It is found that seal is broken and actual dip reading is 233.5 cm against 245.2 cm.

16. The consignment had been booked at the Railway's risk as evidenced by Exhibit R7. Moreover, the appellant paid Freight for the consignment at higher rate tariff to cover such eventualities en-route. The Railway has not provided any cogent reason of delay of six months in delivering the consignment.

17. In light of the above discussions, this Court finds that Tribunal, therefore, was wrong in not allowing the claim petition of the appellant for a sum of Rs 1,11,549/- along with interest, therefore, the Judgment passed by the Tribunal is, hereby, set aside. The appeal is allowed and respondent-Railway is directed to pay Rs 1,11,549/- with interest @ rate of 9% from the date of application filed in the Tribunal till its realization.

18. Let the lower court records be sent back to the concerned Tribunal along with the order of this Court passed in this appeal forthwith.

19. No order as to costs.