
(2005) 06 MAD CK 0030
In the Madras High Court
Case No : C.M.A. No. 289 of 1997

Shivashankar Textiles

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 13-06-2005

Acts Referred:

Railways (Extent of Monetary Liability and Prescription of Percentage Charge) Rules, 1990 — Rule 3(1)
Railways Act, 1989 — Section 103, 103(1), 103(2), 106, 64

Citation : (2005) 3 ACC 831 : (2005) 3 CTC 534 : (2006) 1 LW 447

Hon'ble Judges : S. Ashok Kumar, J; R. Balasubramanian, J

Bench : Division Bench

Advocate : N. Kailasam, for the Appellant; V.G. Suresh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

R. Balasubramanian, J.—The appellant in this appeal is the applicant before the Railway Claims Tribunal, Madras Bench. Admittedly, he

entrusted to the Railways at Coimbatore three bundles of handloom clothes for its onward journey to Hazrat Nizamuddin Railway Station at New

Delhi. It is also not in dispute that out of the three bundles entrusted to the Railways, only one bundle was delivered at the place of destination. The

Railways had also given partial delivery certificate (Ex.A.2). The applicant/appellant made a statutory claim by issuing a notice (Ex.A.4) u/s 106 of

the Railways Act, 1989, claiming a sum of Rs. 22,896/-, being the value of short delivered goods. The Railways replied by Ex.A.7 and Ex.A.10

denying the liability to the extent as claimed by the applicant/appellant. Before the Tribunal, the Railways took the defence that as contemplated u/s

103(2) of the Railways Act read with Rule 3(1)(iii) of the Railway (Extent of

Monetary Liability & Prescription of Percentage Charge) Rules,

1990, the Railway is not liable to meet the claim of the applicant as quantified by him but they are liable to pay only at the rate of Rs. 50/- per kg of

the declared weight of goods. This defence was accepted by the Tribunal and in turn, it awarded a sum of Rs. 2,600/- as compensation with

interest. The appellant is challenging that order before this court on the ground that the appellant is entitled to the entire sum of Rs. 22,896/-. Heard

the learned counsel on either side.

2. Learned counsel for the appellant would submit that his client was never put on notice at the time of entrusting the goods with the Railways for

it's onward journey that unless he declares the value of the consignment and pays the percentage charge, as may be prescribed on the value of the

goods, his client would not be entitled to the value of the goods consigned, if in transit either the whole of the consignment or a part of it was lost.

He took us through Ex.A.3, the Railway receipt, given by the Railways accepting entrustment of the consignment and submitted that it is not

provided/indicated any where therein that the consignor must declare the value of the goods and pay percentage charge. Therefore for such failure

on the part of the Railways, the consignor cannot be forced to suffer any loss. In answer to this, Mr.V.G.Suresh Kumar learned counsel appearing

for the respondents would contend that the liability of the respondents in case of total non-delivery or partial delivery is governed by Section 103

of the Railways Act, 1989 read with Rule 3(1)(iii) of the Rules referred to earlier. Since Statutorily the consignor is expected to declare the value

of the goods and pay percentage charges on such value, the consignor cannot complain of absence of any intimation on the consignor asking him to

declare the value of the goods and pay percentage charges. Admittedly in this case, learned counsel for the Railways would submit that the

consignor had not declared the value of the goods and paid the percentage charges. Therefore his submission is that the order under challenge

cannot be interfered with.

3. Having regard to the submissions made by the learned counsel on either side, we applied our mind to the materials available on record. There is

no dispute and in fact the consignor admitted in his pleadings that he had not declared the value of the goods and paid percentage charges as

prescribed on such value. u/s 64(1) of the Railways Act, every person entrusting any goods to the Railway Administration for carriage shall

execute a forwarding note in such form as may be specified by the Central Government. Under Sub-section (2) of Section 64, the consignor is

made responsible for the correctness of the particulars furnished by him in the forwarding note. Furnishing of railway receipt is provided for u/s 65

of the Railways Act, which the Railway furnishes to a consignor at the time of entrustment of the goods for its onward journey. Under Sub-section

(2) of Section 65, a railway receipt shall be prima facie evidence of the weight and the number of packages stated therein. Therefore Ex.A.3 relied

upon by the learned counsel for the consignor would only be the prima facie evidence of the weight and the number of packages stated therein.

The consignor is not disputing the number of packages and its weight as found entered in Ex.A.3. Ex.B.1 is the forwarding note. As already

stated, the consignor is bound statutorily vide Section 64 of the Railways Act to give such a forwarding note giving the particulars. Of course, in

Ex.B.1 there is no column indicating that the consignor must declare the value of the goods and pay percentage charges on it. But none-the-less,

we find that if the consignor wants to make the Railway Administration liable for the value of the goods, he has to necessarily declare the value and

pay percentage charges. The extent of monetary liability of the Railways is governed by Section 103 of the Railways Act. Under Sub-section (1)

of the said Act, the liability of the Railways for non-delivery, etc..... of the consignment, shall in no case exceed such amount calculated with

reference to the weight of the consignment. Therefore the liability of the Railways on a lost consignment or a non-delivered consignment is absolute,

as provided for under Sub-section (1) of Section 103 of the Railways Act. Of course, this is subject to the exception provided under Sub-section

(2) of Section 103 of the Railways Act, under which the Railway Administration is made liable for an amount not exceeding the value declared by

the consignor at the time of entrustment, on he paying such percentage charge as may be prescribed on the value of such consignment. In other

words, the monetary liability of the Railways is normally governed by Sub-section (1) of Section 103 of the Railways Act and in any case if Sub-

section (2) of section 103 had been complied with, then the liability of the Railways is stated to be not exceeding the value so declared. If the value

is not declared at the time of entrustment, then the monetary liability of the Railway Administration is worked out as per Rule 3(1)(iii) of the Rules

referred to earlier namely, Railways (Extent of Monetary Liability and Prescription of Percentage Charge), Rules, 1990. We perused Exs.B.1 and

B.2. There is a clear endorsement on Exs.B.1 and B.2 that unless the consignor declares the value of the goods, the monetary liability of the

Railway Administration is only u/s 103(1) read with Rule 3(1)(iii) of the Rules referred to above. Since admittedly the consignor had not declared

the value of the goods and paid such percentage charge as may be prescribed on such value, the consignor cannot legally claim that he is entitled to

be paid the entire value of that portion of non-delivered goods. When the rights of the consignor and the Railway Administration are governed by

Statutory provision as referred to above, we are not in a position to hold that to make the Railway Administration liable for the entire value of the

goods entrusted to them, the Railway Administration must call upon every consignor to declare the value of the goods and pay such percentage

charges on such value of the goods. In other words, when the provision of the Statute is very clear, it is for the consignor to take advantage of such

provision in his favour; declare the value of the goods; pay percentage charges as may be prescribed on such value and then claim the entire value

of the goods, if he suffers any damage. Absence of any indication in the prescribed format of the forwarding note that unless the consignor declares

the value of the goods, the liability of the Railway Administration is restricted as per section 103(1) of the Railways Act read with Rule 3(1)(iii) of

the Rules referred to above would not give any legal right to the consignor to defeat the Statutory limitation referred to above and claim the entire

value of the goods.

4. For all the reasons stated above, we find that the judgment of the Claims Tribunal do not suffer from any illegality and accordingly it is sustained

and the appeal is dismissed with no order as to costs.