

(2002) 01 GAU CK 0031

In the Gauhati High Court

Case No : MA (F) No's. 68 to 77 of 1994

Sreeniwas Basudeo

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-01-2002

Acts Referred:

Contract Act, 1872 — Section 63, 8

Citation : (2002) 01 GAU CK 0031

Hon'ble Judges : B. Biswas, J

Bench : Single Bench

Advocate : G.N. Sahewalla and A.K. Goswami, for the Appellant; B.K. Sarma and D.K. Sarma, for the Respondent

Final Decision : Dismissed

Judgement

D. Biswas, J.—The appellant has preferred these appeals against the decisions of the Learned Railway Claims Tribunal, Guwahati Bench, rejecting a part of claim in each of the different applications. All the appeals, the controversy being circumscribed on common question of law and fact; are proposed to be disposed of by this common judgment. The appeals have been-filed for recovery of the amount as indicated below:

(i) M.A. (F) No. 68 of 1994 Rs. 11.592;

(ii) M.A. (F) No. 69 of 1994 Rs. 22,931

(iii) M.A. (F) No. 70 of 1994 Rs. 34.182

(iv) M.A. (F) No. 71 of 1994 Rs. 12.338

(v) M.A. (F) No.72 of 1994 Rs. 24.267

(vi) M.A. (F) No. 73 of 1994 Rs. 40.544

(vii) M.A. (F) No. 74 of 1994 Rs. 17.096

(viii) M.A. (F) No. 75 of 1994 Rs. 15,091

(ix) M.A. (F) No. 76 of 1994 Rs. 11,577 and

(x) M.A. (F) No. 77 of 1994 Rs. 7, 198

2. The above claims in different applications have been rejected on the ground that the rice booked at the booking station was not weighed by the Railway Staff and the weight indicated by the sender was accepted only for the purpose of calculation of freight. The Learned Tribunal allowed only the cost of rice found short between the transshipment point and destination. The reasons given by the Tribunal are quoted herein below :

"The Applicant had rested its claim upon short and damaged delivery of consignment in question. Quoad hoc, the shortage and damage has already been conceded by the Respondent No. 1 vide Paras 2-5 of the reply. As is evident from the Forwarding Note on record as also from Railway Receipt that the entire consignment was booked with "Said to contain" remarks which gives out that it was not weighed at the booking point and Senders weight was accepted by the Railway Administration which also finds place on the body of the Railway Receipt. With such factual position on record, the Railway Administration was held to have not incurred an additional liability of delivering back the same quantity of the consignment in weight as was held in *Harisao and another v. The State of Bihar* reported In AIR 1970 SC 843. It is the case of Railway Administration that the entire consignment was loaded by the Consignor from truck to wagon and the loading was not supervised by the Railway staff which is manifest from the perusal of Railway Receipt. However, the words "Directly loaded from truck to wagon" was denied to have been written by the Consignor but since the Applicant had not objected to such remarks over Railway Receipt, the pendulum swings in favour of the Respondent - Railway and a denial simpliciter would not be tenable to serve for the Applicant. However, the weighing of consignment by Respondent No. 1 at transshipment point has to be taken as actual weight to which the Respondent No. 1 bore accountability although there has been absence of weighment at the booking station and Sender's weight having been accepted which obviously is resorted to for the calculation of freight, the Railway Administration can not be burdened with the additional liability of accounting for shortage of weight found at the transshipment point."

3. It would appear from the above that the Railway Authorities never accepted the weight indicated by the sender in the R.R. The forwarding note and the railway receipt indicate that the consignments were booked with the remark "said to contain". According to Learned Tribunal, this remark is sufficient enough to conclude that the bags of rice were not weighed at the booking point. Therefore, the Learned Tribunal relied upon the shortage found between the weighment done at the transshipment point and the destination point. In view of the above remark in the R.R., the Tribunal appears to have rightly rejected the claim of the appellant.

4. Mr. Sahewalla, Learned senior counsel sought to impress upon the Court that the findings of the Learned Tribunal is not supported by evidence on record and the weighment done by the Railway at the transshipment point ought not to have been accepted and acted upon in rejecting the claim of the appellant. Mr. Sahewalla further pointed out that the burden of proof that the loss, destruction or damage did not occur due to negligence and misconduct of the Railway authorities is on the Railways and the respondents having failed to discharge their burden can not be absolved of their accountability for making good the loss sustained by the appellant. Shri Sahewalla further pointed out the there was no occasion for transshipment since the goods were booked at the E.G. station for carriage to another B.C. station.

5. The above contentions can not be accepted. The forwarding note - and the railway receipt clearly indicate that the Railway authorities never accepted the weight of the bags declared by the sender at the time of booking. The weight "said to contain" was acted upon only for the purpose of calculation of freight. However, the situation would have been reverse had there been evidence of weighment at the time of booking. Under no circumstances, the remark "said to contain" can be interpreted as "contained".

6. According to the Railway Authorities, as is evident from their affidavit, transshipment enroute had to be made because of operational exigencies and this cannot be a ground to make the Railways accountable. It is needless to say that the Railway Administration may be held liable to make good the loss, destruction or for nondelivery of goods if it fails to use foresight and care in the carriage of goods. Transshipment enroute indispensable for operational exigencies can not constitute one of such grounds. There is nothing else on record to indicate such negligence and misconduct in any form.

7. The other imported feature of the case is that the Railway Administration issued cheques to the appellant admitting part of the claim in all the cases in full and final satisfaction. The applicant encashed the cheques after its counter proposal for further payment was not responded to by the Railway administration within the given time. The Learned Tribunal disposed of the objection raised by the Railway Administration holding that the appellant by encashing the cheques after issuing letters of protest was not bound by the conditional offer made by the Railways. The Tribunal relied upon the Judgment in Union of India v. Rameshwarlall Bhagchand AIR 1973 Gau 111 and allowed the claim of the appellant to compensate the shortage found at the transshipment point and destination point. The aforesaid Judgment relied upon by the Tribunal was in conflict with the decision in an unreported Judgment of this Court in Second Appeal No. 77 of 1982 decided on 11.3.1991 (Assam Bengal Cereals Ltd. v. Union of India). The matter was referred to a Division Bench of the Court in Bhagwati Prasad Pawan Kumar Vs. Union of India (UOI), . The Division Bench after consideration of the matter held as follows:

"Therefore, the cases as decided in context with or by application of Section 63

of the Contract Act would be In applicable to the cases in which Section 8 of the Contract Act would be applicable, as in the present case/The view taken by the Learned Single Judge in the case of Bhagchand (supra) is the correct view. The case of Amrit Banaspati (supra) has been rightly followed and other cases have been rightly distinguished. It is not open to take an attitude "I shall accept the benefit, but reject the condition". Offer is either to be accepted or rejected in terms of the condition of the offer. Where acceptance or rejection of the condition is dependent upon conduct of the party which is decisive of exercising acceptance or rejection, Section 8 of the Contract Act would come into play. Cheque having not been returned, rather encashed, would lead to the only conclusion that the offer made was accepted. The conduct of the appellant demonstrated the same. Merely writing that the cheque was placed under protest is Inconsequential. The notice which was given by the claimant appellant, as indicated earlier, was only in respect of the balance amount. In our view, the distinction which has been drawn, in the unreported decision in Second Appeal No. 77/82 (Assam Bengal Careals Limited v. Union of India) with the decision in that case of Bhagchand (supra) on the ground that there was a protest for encashment of the cheque is not a feature which may make any real distinction in the legal position."

8. The law in this behalf has been crystallized In the above judgment of the Division Bench. Therefore, the view taken by the Learned Tribunal that despite encashment of cheques issued by the Railways in full and final satisfaction of the claim, the appellant is entitled to insist upon payment of balance amount is not correct. However, there being no cross appeal by the Railways the matter rests here.

9. In the results, the appeals are dismissed.