
(2018) 03 GAU CK 0108
In the Gauhati High Court
Case No : MFA 272 of 2010

THE UNION OF INDIA

APPELLANT

Vs

M/S P.P.ENTERPRISES

RESPONDENT

Date of Decision : 21-03-2018

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 16, 18(3)(b), 23, 62, 65, 73, 74, 81, 93, 93(g)(h), 106
Indian Evidence Act, 1872 — Section 3, 114
Indian Penal Code, 1860 — Section 415, 420
Railway Claims Tribunal (Procedure) Rules, 1989 — Rule 14, 16, 20(b), 21, 21(3)

Citation : (2018) 03 GAU CK 0108

Hon'ble Judges : KALYAN RAI SURANA

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Heard Mr. B. Sarma, the learned Standing Counsel appearing for the Railways, the appellant herein. Also heard Ms. M. Sharma, the learned Counsel appearing for the respondent.

2) This appeal under Section 23 of the Railway Claims Tribunal Act, 1987 is directed against the judgment and order dated 05.07.2010 passed by the learned Railway Claims Tribunal, Guwahati Bench, Guwahati in Application No. 174/2002 (Old)/ OA I/GHY/2002/0174 (New).

3) The case of the respondent, who was the applicant in the claim application is that they had booked a consignment of sugar on 29.10.1999 from station GIMB to station NGC under RR No. 974184. It was projected that the respondent was the owner of goods, holding legal title in terms of Section 74 of the Railways Act, 1989 and that the consignment was booked in safe, sound and secured condition under the "Railway Risk" rate.

It was projected that the consignment had reached the destination station with undue delay in transit. It was projected that at the time of unloading, the wagon seals and card labels were absent and that the doors were having big gaps and the stacks were in disturbed condition and the wagon was found in a broken and damaged condition with cut holes. On unloading there was a shortage, which was stated to be recorded in the unloading tally book and Chief Goods Supervisor at New Guwahati Station was informed about such shortage by letter dated 14.11.1999, with a request to issue short delivery certificate. However, such certificate was not issued because the goods were booked under 'said to contain' basis. By stating that 2467 Kg (i.e. 1417 Kg short in 46 katta torn loose in wagon 53113 and 1050 Kg = 21 kattas short in wagon 15209) was found short, prayer for compensation for short delivery was made at the rate of Rs.18/- per kg. amounting to Rs.44,406/-, which was claimed with interest at the rate of 18% together with the application fees, advocate fees and proportionate cost. The said application under Section 16 of the Railway Claims Tribunal Act, 1987 was filed on 01.07.2002. The appellant had entered appearance as the opposite party in the claim petition and submitted their written statement on 21.06.2007. On 11.06.2010, the respondent's witness submitted his evidence-on-affidavit sworn on 06.07.2005 along with a separate prayer under Section 18(3)(b) of the Railway Claims Tribunal Act, 1987 read with Rule 20(b) of Railway Claims Tribunal (Procedure) Rules, 1989 by which the following documents were sought to be produced by the Railway:

- i. Original Forwarding Notes which our consignor executed in terms of IRCM-Voll-II of 1991 Rule No. 1402 read with Section 64 of Railway Act, 1989.
- ii. Loading Tally book of booking station meeting compliance of IRCM-Voll-II of 1991 Rule No. 1512 & 1513.
- iii. Original Railway receipt submitted by us at the time of delivery at the destination station.
- iv. Seal and card labels of destination point meeting compliance of IRCM-Voll-II of 1991 rule No. 1570, 1578 (a) 1713 and 1714 read with Railway Circular bearing No. C/65/O/69/ID dated 22.04.1975.
- v. Copy of unloading tally and Delivery deficiency message of destination point meeting compliances of IRCM-Voll-II of 1991 rule No. 1715, 1716,

1718, 1720 and 1721.

vi. All records about the movements of the wagons during Railways transit meeting compliance under section 95 and 97 of Railway act 1989 read

with IRCM-Vol-II of 1991 rule no. 2124

4) The learned Tribunal by the judgement and order dated 05.07.2010 has framed as many as five issues for trial:

i. Whether notice u/s 106 of The Railways Act, 1989 was served by the applicant to the respondent?

ii. Whether the applicant holds title for the claim?

iii. Whether the wagons in which the consignment was loaded arrived sealed intact at the destination?

iv. Whether the respondent has delivered the entire consignment to the applicant at the destination as per RR?

v. Whether the applicant proves that he did not receive the consignment in full?

5) In respect of issue No. 1, the learned Tribunal had held that the notice under Section 106 of the Railways Act was served on time. In respect of

issue No. 2, it was held that the respondent was holding legal title in terms of Section 74 of the Railways Act, 1989. In respect of issues No. 3 and 4,

which was taken up together, it was held that the appellant had not submitted any of the documents which was called for petition dated 11.06.2010

and that the appellant was not issued the short delivery certificate which proved that the appellant had not delivered the entire consignment to the

respondent and issues No. 3 and 4 were decided against the appellant. In respect of issue No. 5, it was held that the respondent did not receive 2467

Kg of sugar, which was short at the destination and the same fact was brought to the notice of the appellant but the short delivery certificate was

denied and, as such, it was held that the respondent had proved that they did not received the consignment. Accepting the computation as provided by

the respondent, the appellant was directed to pay an amount of Rs.44,406/- along with the interest at the rate of 6% from the date of the filing of the

claim application. The appellant was directed to make payment within 90 days from the date of the order, failing which, the amount would carry

interest at the rate of 7%. In addition, the appellant was directed to pay proportionate cost of application fee of Rs.1709/-and Legal Practitioner's

fee of Rs.1445/-.

6) Challenging the said order, the learned counsel for the appellant has submitted that the railway receipt issued in this case showed that the

consignment was booked on the condition of 'said to contain' basis. It is submitted that the consignment booked under 'said to contain' basis

cannot be construed as if the goods booked 'contained' the quantity as mentioned in the railway receipt because in this case, the loading of goods

and the wagon was not supervised by the Railway's staff and it was booked directly from the truck to the wagon. It is submitted that when a

goods/consignment is booked under 'said to contain' basis, even if there was a shortage of goods at the time of delivery, the Railway shall not

compensate the loss because it was the duty of the owner of the goods to prove whether the quantity mentioned under the railway receipt was

actually loaded. It is further submitted that in the present case in hand, the Railway receipt contained the necessary particulars which are recorded in

the 'forwarding note', so the non-production of 'forwarding note' cannot be said to be fatal because all the necessary particulars of the

same are contained in Railway receipt. By relying on the Indian Railway Commercial Manual (Vol-II), (IRCM-Vol-II) issued by the Ministry of

Railway (Railway Board), the learned counsel for the appellant has referred to the various Rules of the said manual to project that the provisions of

the manual did not supersede, alter or substitute the Rules and instructions contained in the Acts, Codes, Conference Rules and Tariff etc.

7) It is further submitted that there was no initial complaint that the goods contained in wagon was not received at the destination station under

'rivet intact condition' and therefore, there was no requirement for the Railway Administration to preserve the rivet intact condition report, which

according to the procedure prescribed is maintained only for a maximum period of six months after which it is destroyed. It is submitted that it is only a

report which is maintained for 'rivet intact condition' and it is not possible to preserve the rivet because it has to be broken to open the concerned

wagon and therefore, when there was no damage to the rivet or the wagon and no complaint was lodged to that effect, the Railway Administration

would not accept the shortage of consignment as the loading of goods was not supervised by the Railway Administration.

8) In support of his submission, the learned standing counsel for the Railway has placed reliance on the case of Hari Saw and another Vs. The State

of Bihar, AIR 1970 SC 843. It is further submitted that the ratio of the judgment passed by this Court in the case of Union of India Vs. M/s. Ajmera

Brothers, MFA 297/2010 (order dated 31.08.2017) cannot be applied in the present case in hand. It is also submitted that adverse presumption cannot

be drawn against the Railways for not been able to produce the evidence regarding rivets seals, labels etc. and such prayer was made beyond the time

prescribed for their preservation. Lastly, it is submitted that the Railways are required to place huge numbers of wagons and Rakes for loading and

unloading and it is not possible to supervise the loading of each wagon and rakes and therefore, the burden of proof of having loading loaded on

particular quantity is on the title holder of goods seeking compensation and therefore, the burden of proof cannot be put on the Railway Administration.

9) Per-contra, the learned counsel for the respondent has referred to the various provisions of the Railways Act, 1989 including section 62 to 65 as

well as the following Rules of the IRCM-Voll-II, Rule Nos. 1402, 1415, 1418, 1419, 1442, 1512, 1513, 1578, 1580, 1713, 1714, 1715, 1720, 1721 and

2106 to project that the Railways were required to adhere those rules and that it was their duty to permit the consignee of the goods to make remarks

on the unloading tally books. Therefore, when the respondent found that the wagon was in a damaged condition and therefore, there was shortage of

goods, the same was recorded in the "unloading tally book" for which, a prayer was made before the learned Railway Claims Tribunal for a

direction to the appellant to produce such books. However, as those relevant documents were not produced, adverse presumption was required to be

drawn against the appellant. Relying on the judgment of this Court in the case of Union of India Vs. M/s. Ajmera Brothers, MFA 297/2010, decided

on 31.08.2017, it is submitted that under similar circumstances, this Court had dismissed the appeal. It is submitted that on a perusal of the judgment

passed by this Court would show that in the said case also, booking was done at Railway risk under "said to contain" basis applying the said ratio,

the present appeal also deserve to be dismissed.

10) The learned Counsel for the respondent has placed his reliance on the cases of the Union of India Vs. M/s P.P. Enterprises and other connected

cases which was disposed of by this court by a common judgment and order dated 01.04.2014, as well as the case of Union of India Vs. M/s

Gapanpati Enterprise, MFA 18 of 2009 decided on 02.03.2017 to project that as the seal and card labels were not produced, the matter be remanded

back to the learned Tribunal so that the relevant records be called for.

11) The learned counsel for the respondent had also relied on the cases of M/s. Jyoti Four Mills Vs. Union of India, (1984) 1 GLR 276, the judgment

dated 02.03.2017 passed by this Court in MFA 18/2009 (Union of India Vs. Ganpati Enterprise), and the case of Union of India Vs. Sunrise Traders,

2016 (1) GLT 447.

12) Having heard the rival submissions made by the learned counsel for both the sides, the following points of determination arise for decision in this

case:

i. Whether the impugned judgment is sustainable in facts and in law?

ii. Whether there was any requirement of the Railway Administration to produce rivets, seals/labels etc. and unloading tally book in respect of

consignments are booked at Railway risk under "said to contain" basis?

13) Before proceeding to answer the points of determination, on a pointed query by this Court, the learned counsel for both the sides have submitted

that the Railway Claims Tribunal, Guwahati Bench, Guwahati follows a procedure by virtue of which in dispute relating to claims arising out of

transportation of goods, the cases are decided summarily without recording any evidence and that evidence is recorded either on the request of the

parties or if otherwise permitted by the learned Presiding Officer concerned. However, in claim cases arising out of injury or death to a passenger, the

evidence of the parties are recorded and thereafter, the claim petitions are decided. Therefore, in light of the aforesaid procedure which is being

followed by the learned Railway Claims Tribunal, Guwahati Bench, Guwahati, this Court is now proceed to gives its decision on the point of

determination as formulated above.

14) At this stage, the learned counsel for the respondent by referring to the provisions of Rule 14 of the Railway Claims Tribunal (Procedure) Rules,

1989 has submitted that in the claim proceedings, the respondent had filed an affidavit, which constitutes evidence on behalf of the respondent, and the

statements made therein was not controverted by the respondent. Therefore, it is submitted that the statements made in the said affidavit remain

untraversed, which amounts to admission of their claim by the appellant. The said submission made by the learned counsel for the respondent cannot

be sustained because as per the provisions of Section 3 of the Evidence Act, 1872 the word "evidence" means and includes (i) a statement which

the court permits or are required to be made before it by witnesses in relation to matters of fact under inquiry, such statements are called oral

evidence, (ii) all the documents including electronic records produce for the inspection of the Court, such documents are called documentary evidence.

Rule 14 of the above referred 1989 Rules provides that the learned Tribunal may direct the party to give evidence, if any, by affidavit. Hence, in the

absence of any direction by the learned Tribunal to direct the parties to file evidence by way of affidavit, such affidavit cannot be considered to be

evidence, firstly, because the learned Tribunal did not require the filing of such affidavit, and secondly, the presence of the deponent was not ordered

for his cross-examination by way of a judicial order. Therefore, when the learned Railway Claims Tribunal, Guwahati Bench, Guwahati follows the

practice of trying certain claim petitions summarily, the affidavit submitted by the respondent cannot be considered to be a valid piece of evidence. In

the opinion of this Court, as per the scheme of the Railway Claims Tribunal (Procedure) Rules, 1989, the learned Tribunal has a power to summarily

dismiss the application under Rule 16. The provisions of Rule 21 require framing and determination of issues, wherein it is further provided under Rule

21(3) that after framing the issues, the Tribunal shall proceed to record evidence thereon, which a party may desire to produce thereafter. Under Rule

21, the procedure for summoning witness and procedure for method of recording evidence is prescribed. Therefore, under such scheme, the learned

Tribunal did not pass any direction either for framing of the issues or for summoning witness and recording of the evidence, thus, the affidavit filed by

the respondent in the claim petition cannot be treated as an evidence. However, in view of the submission by the both sides, it appears that the

Railways as well as the respondent had subjected themselves to the hearing by the learned Tribunal without recording of evidence, this Court does not

find any fault in the manner in which the claim petition was heard. The said procedure is not assailed by the appellant in the present appeal.

15) For the purpose of decision in the point of determination No. 1, the issue No. 1 as decided by the learned Tribunal is revisited. From the LCR it is

seen that notice under Section 106 of the Railways Act was issued on 05.01.2000, and was served on 06.01.2000 under an illegible signature but with the rubber stamp of the office of the Area General Manager, N.F. Railway, Guwahati. Hence, it appears that the learned Tribunal had rightly decided

the issue No. 1 by holding that the notice under Section 106 of the Railways Act was sent to the appellant.

16) As regards issue No. 2 as decided by the learned Tribunal, it is not in dispute that the goods transported by the Railway was delivered to the

respondent. The provisions of Section 74 of the Railways Act envisage that the goods will be delivered only if the holder of the legal title and

therefore, unless the respondent had a valid title for the transported goods under the relevant Railway receipt, delivery of such consignment would not

have been made by the Railway Administration to the respondent. Hence, there is no infirmity in the finding of the Railway Claims Tribunal by holding

that the respondent had the legal title.

17) In respect of issues No. 3 and 4, which was taken up by the learned Tribunal together, the learned Tribunal has held that the respondent had filed

an application on 11.06.2010, praying for discovery of documents which were in possession of the appellant herein like Original Forwarding Notes,

Loading Tally Book, Original Railway Receipt, Seal and Card Labels, Unloading Tally Book and Transit Records, but the appellant had not submitted

any of these documents. Hence, in the absence of those documents, it was held that it could not be conclusively proved by the appellant that the

wagons are received in SRI (Seal Rivet Intact) condition. Therefore, on finding that there was only a general denial without any supporting document,

the learned Tribunal held that the respondent had not delivered the entire consignment to the respondent, as such, issues No. 3 and 4 were decided

against the respondent. In this connection, a perusal of the LCR shows that the said petition was presented on 11.06.2010, and the next date was

posted on 05.07.2010. The following orders were passed by the learned Tribunal on 11.06.2010 and 05.07.2010: 11.06.2010.

â??Both the parties are present.

P.O. file one documents.

Applicant counsel file affidavit and prayer for discovery of documents.

Heard.

Order reserved.

05.07.2010.

Order pronounced in the open Court.

Order is on separate sheet??.

18) As per the order sheet available in LCR, the next date of the case was on 05.07.2010 and on the said date the order was pronounced in the open

court. Therefore, two circumstances are clear from the said order. Firstly, the affidavit filed by the respondent was accepted by the learned Tribunal

along with the prayer for discovery of the documents. Secondly, the learned Tribunal proceeded to hear the matter and reserved the case for passing

of order, therefore, the appellant was not put to notice to produce the relevant documents and, as such, the finding recorded by the learned Tribunal on

issues No. 3 and 4 that the appellant had not produced the documents is not sustainable. Without granting reasonable opportunity to the appellant to

produce the documents it is not open to the learned Tribunal to keep such petition in the record and pass adverse remarks against the appellant for

having not produced the record, because at no point of time, the learned Tribunal had required the Appellant-Railways to produce such documents.

19) However, a perusal of the record shows that on 14.11.1999, a request was made by the respondent for issuance of short/delivery certificate

stating therein that at the time of releasing the above wagon they had found 46 kattas of sugar in loose/torn condition RFY which has 88.3 Kgs i.e.

1417 Kg sugar and that the Railways was requested to issue the short/delivery certificate. The concerned Railways staff under seal and signature

dated 18.11.1999 had made an endorsement, the legible portion read as follows-
â??D/certificate for the above consignment not issued as the

consignment (illegible)â?. Thereafter, on 05.01.2000, a notice under Section 106 of the Railways Act, 1989 was issued wherein it was stated that

although the respondent applied for short/delivery certificate but no such certificate was received by the AGM and a request was made for early

issuance of short/delivery certificate and to settle the claim.

20) However, in the claim petition, the respondent had mentioned that at the time of unloading, they found the wagon seals and card labels were

absent and that the doors having big gaps and the stacks were in disturbed condition and the wagon was found in a broken and damaged condition

with cut holes which suggested criminal interference enroute and that the shortage of the consignment was recorded in the unloading tally book. While the learned counsel for the respondent has stated that under the provisions of Rule 1714 of IRCM-Voll-II requiring that the seals and labels should be carefully preserved for six month and then destroyed, but in the case of shortage from wagon any dispute of claim they should be submitted with means and damage goods report. In the present case in hand, the goods was booked on 29.10.1999. The date of delivery was not mentioned in the claim petition and the request for issuance of short/delivery was made on 14.11.1999, followed by notice under Section 106 of the Railways Act which was served on the N.F. Railway on 06.01.2000. The present claim petition was filed on 01.07.2002 and the prayer for calling of the record was made on 11.06.2010. Therefore, unless within the prescribed time of six months, the Railway Administration is requested to preserve the seals and labels and unless an order is passed by the learned Tribunal to know whether such seals and labels have been preserved or not, the Railway Administration was under no obligation to produce such seals and labels for examination by the learned Railway Claims Tribunal. It is one thing to follow Rule 1714 of the IRCM-Voll-II and it is altogether different matter to produce such records before the learned Railway Claims Tribunal. Merely because the Railways had no notice to produce card and seal labels, it is not open to the learned Tribunal to jump to a conclusion that Railways did not follow Rule 1714 of the IRCM-Voll-II, and to draw and adverse inference against the Railways. Hence, in the present case, although a petition was filed on 11.06.2010 before the learned Tribunal, praying for discovery of the documents, as no order was passed thereon, an adverse inference against the appellant cannot be drawn by the learned Tribunal without granting them a reasonable opportunity to produce such record or to explain the reason for its non-production. Under the circumstances, notwithstanding that the goods were transported at "Railway Risk" which, as stated in the bar entails 20% excess charge to cover for the Railway risk, as the goods were booked under "said to contain" basis, the Railway Administration shall not be responsible for the loss. As stated earlier, there was no initial complaint that the wagons seals and card labels were absent and the door was in the open condition at the time of unloading and that stacks of goods were in disturbed condition with wagon body found broken, damage and

having cut holes, as such, this Court is constrained to hold that the said condition of the wagons having not been brought to the notice of the appellant,

it cannot be concluded that the Railways were at fault for the short delivery of goods.

21) It would be pertinent to state here that the shortage is being projected to be a loss of 2467 kg sugar. There is no record of the actual weight of

sugar per bag. In this case, from the material available on record it does not appear that any prayer for open delivery was made. Under the

circumstances, when the Railways Administration did not check each and weigh every bag of sugar before loading, a shortage of 2467 Kg sugar, this

Court finds it very difficult to concur with the finding by the learned Tribunal that the Railways was responsible for the shortage. In view of above, this

Court does not agree with the finding by the learned Railway Claims Tribunal on issues No. 3 and 4. Hence, it is held that such loss falls within the

exception as provided under sub-Section (g) and (h) of the Section 93 of the Railways Act.

22) In view of the decision on issues No. 3 and 4, in respect of issue No. 5, it is held that the shortage, if any, of the 2467 Kg of sugar, fell within the

exception mentioned in Section 93 of the Railways Act. Hence, the Railways cannot be held to be responsible for compensating the loss amounting to

Rs.44,406/- and for reasons indicated above, such computation/assessment is also not found sustainable. The said finding is hereby interfered with, and

is set aside.

23) Therefore, in view of the discussion above, the points of determination No. 1 is decided in the negative and in favour of the appellant by holding

that the impugned judgment passed by the learned Railway Claims Tribunal is not sustainable on fact and in law.

24) In respect of the point of determination No. 2, while discussing the issues No. 3 and 4, this Court has held that although the respondent had made a

prayer for discovery of documents on 11.06.2010, but the learned Tribunal did not pass any order on the Railways for the production of documents

mentioned therein. Hence, in view of facts of this case, the said point of determination No. 2 is also decided in the negative and in favour of the

appellant by holding that as the Railway Administration was not directed by the learned Railway Claims Tribunal to produce Original Forwarding

Notes, (ii) Loading Tally Book, (iii) Original Railway Receipt, (iv) Seal and Card Labels, (v) Unloading Tally Book and (vi) Transit Record in respect

of consignments are booked at Railway risk under "said to contain" basis. Hence, it is held that in this particular case, the Railways were under

no legal obligation to produce the same, having no notice of any order to that effect by the learned Railway Claims Tribunal. Further it is clarified that

this finding is confined to the facts of this case alone.

25) The learned counsel for both the sides have referred to the various cited cases. The case of M/s. Jyoti Four Mills (supra), it was held by this court

that the Railway Administration to be absolved of its liability under Section 73 of the Railways Act, 1890 (equivalent to Section 93 of the Railways

Act, 1989), it was necessary that in the forwarding note, not only there should be a recording of the fact on defective and improper packing of the

goods, it should be further recorded that as a result of such defective or improper packing, the goods are liable to damage deterioration leakage or

wastage. In the opinion of this Court, the said finding is trite law in the subject. Therefore, in the opinion of this Court, the burden lies on the

respondent to show that there was pilferage of the goods enroute. If there was an evidence of pilferage then the Railways Act, 1989 provides for

open delivery under Section 81 of the said Act. In this case, the said provision was not taken recourse to. Therefore, at this stage, it would be

impossible to hold whether there was evidence of pilferage in the 1110 katta rice transported by the appellant. Hence, reference to the aforesaid case

is not found to help the respondent in any manner.

26) In the case of Sunrise Traders (supra), this Court had held that non-production of relevant documents by the Railways called for an adverse

presumption under Section 114 Illustration (g) of the Evidence Act. In the present case in hand, it has been held that the learned Tribunal did not

provide any opportunity to the appellant to produce the documents. On filing of the said petition for discovery on 11.06.2010, the learned Tribunal,

without giving any opportunity to the Railway Administration to produce the documents, heard the claim petition on merit and reserved the case for

orders, and on the next date, the judgment was delivered. Under such circumstances, the adverse inference under Section 114 Illustration (g) of the

Evidence Act cannot be taken recourse to, as no order for discovery or

production was passed, therefore, on facts, the present case is distinguishable with the facts of the case of Sunrise Traders (supra). Hence the said authority does not help the respondent. For the same reason, the facts of the case of the Ganpati Enterprise (supra) is also distinguishable because no opportunity was granted to the Railway Administration to produce the relevant documents. Moreover, in the claim petition, the respondent has not clarified as to whether the overall loss in the consignment was with reference to 2467 Kg of rice or there was a overall shortage and/or pilferage of 46 katta of sugar. Therefore, unless evidence of pilferage was recorded, the claim fell within the exception provided under Section 93 sub-Section (g) and (h) of the Railways Act, 1989. Hence, the said authority is also not found to the any help to the respondent.

27) As regards the submission made by the learned Counsel by the respondents that the matter be reminded back to the learned Railways Claims

Tribunal for a fresh decision by order production of documents, this court is of the view that as per the provisions of Rule 1714 of the IRCM Vol.II the

seal and labels are to be preserved for maximum period of six (6) months or to produce such seal and card labels and to preserve seal and card labels

when there is dispute. Therefore, this court is of the considered opinion that there is no way to presume that the Railways would be maintaining the

seal and card labels 19 years after the transportation took place. Therefore no purpose would be served had remanding the matter for allowing

respondent for production of seal and card labels which otherwise would not prove shortage of sugar in the bags/kattas of sugar, which was stated to

be found in the torn condition and as there is no allegation of pilferage or misconduct by the Railway employees, no case is made out for remanding

the matter for fresh trial.

28) Admittedly in the present case when the respondent had issued a notice of short certificate dated 29.10.1999, there was no complaint of damage

to the pilferage, but it was stated in the letter dated 14.11.1999 that at the time of releasing the wagons from 46 kattas of sugar in loose and torn

condition RF of which 883 Kg i.e. 1417 Kg short. Under the circumstance, the seal and card labels is not found to be a relevant document which can

prove the shortage of sugar in the wagons because there was no initial complaint that the wagons were found tampered with. Therefore, the ratio of

the case of M/s Ganapati Enterprises (supra) is not found to be applicable.

29) Coming to the judgment of Hari Saw (supra), on which the learned counsel for the appellant has heavily relied to project that the Railway

Administration did not run any additional risk by accepting the weight declared at the time of loading and that the Railways could not be liable for any

negligence of loading or unloading when the Railway Administration had accepted the weight and the Railway receipt was issued with an

endorsement of "said to contain". The said cited case, with all respect to the said authority, does not help the appellant in any manner. In the

opinion of this Court, the facts of the case of Hari Saw (supra) was that the Hon'ble Apex Court was deciding an issue of conviction of the

Railway employee under Section 415 and Section 420 of the Indian Penal Code. In the said case, the consignment was said to contain 251 bags of chillis

and at the time of unloading the bags were found to contain only 197 bags of shaff and therefore, on the charge of cheating, the appellant was convicted

and while deciding the said issue, the Hon'ble Apex Court had referred to various provisions of the Railways Act and held that the Railway was

not responsible for any shortage and proceeded to allow the appeal by setting aside the conviction. Therefore, the Hon'ble Apex Court was not

deciding the civil liability of the parties in the said case but the Hon'ble Apex Court was appreciating the case of conviction to arrive at a finding

that as the Railway was not responsible for the loss, the charge of cheating could not be sustained on the appellant. Moreover, the facts of the case of

Hari Saw (supra) is not similar to the facts of the present case in hand. In this case, the consignment was booked not only with an endorsement of

"said to contain" but in column provided risk rate there is a clear endorsement that the risk was RR which means "Railway Risk". It has

been stated at the bar that for making a booking at the Railway Risk, the Railway Administration charges a tariff which is approximately 20% higher

than the general tariff of loading the goods under "owners' risk". If that be so, then Railway is taking a greater risk and it cannot be equated

with the fact situation of the case of Hari Saw (supra) where there is no mention about the case being carried under "Railway Risk". Hence, the

facts of the case of Hari Saw (supra), are found to be distinguishable from the facts involved in the present case in hand. Therefore, the said authority is

not of any help the appellant in any manner.

30) Under the circumstances and discussion above, the appeal stands allowed. The impugned judgment and order dated 05.07.2010 passed by the

Railway Claims Tribunal, Guwahati Bench, Guwahati in Application No. 191/2002 is interfered with by setting it aside. The claim petition,

consequently, stands dismissed.

31) The Parties are left to bear their own cost.

32) Let the LCR be returned back.