

(2015) 04 GAU CK 0075
In the Gauhati High Court
Case No : MFA No. 49 of 2005

Union of India

APPELLANT

Vs

B.B. Enterprise

RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23

Citation : (2015) 4 GLT 1098

Hon'ble Judges : Nishitendu Chaudhury, J.

Bench : Single Bench

Advocate : B. Devi, Advocate, for the Appellant; A. Goyal, Advocate, for the Respondent

Judgement

Nishitendu Chaudhury, J.—This is an appeal under section 23 of the Railway Claims Tribunal Act, 1987 challenging the judgment and award dated 3.1.2005 passed by Railway Claims Tribunal, Guwahati Bench in application No. 510/2001. By that judgment the Tribunal directed the Railway Authority to pay a sum of Rs. 50854 being the balance damage compensation along with interest at the rate of 6% per annum on the said amount. The case of the claimant before the Tribunal was that as many as 9352 bags of Cement were booked under the railway invoice No. RR No. 1/996968 dated 27.6.2000 from New Bongaigaon to North Lakhimpur. Out of the aforesaid 9352 bags as many as 1275 were reportedly found to be in damaged condition accounting for 10% salvaged value. The learned Tribunal assessed the compensation at Rs. 1,23,520/- and deducted a sum of Rs. 72,666/- from it which was paid by the Railway Authority during the pendency of this claim proceeding to the claimant Accordingly, the Railway Authority was directed to make the payment of the balance amount.

2. Preferring an appeal against this judgment, it is the case of the Railway Authority that during pendency of the claim proceeding before the Tribunal, the Railway Authority made an offer to the claimant that if the amount was not acceptable to the claimant, it should return the cheque and should encash the

same. According to the Railway Authority, the claimant accepted the amount, encashed the same and got the money but even thereafter proceeded to claim before the Tribunal.

3. Per contra, Mr. A. Goyal, learned counsel for the sole respondent would argue that the claimant never accepted the amount without protest. It first protested about the sufficiency of the amount vide letter dated 1.7.2002 and thereafter encashed the cheque. Both the learned counsel for the parties agree that similar disputes came before this court in a series of cases and by judgment, passed on 02.06.2008 in the case of Union of India (UOI) and Others Vs. Jain Enterprises and Others, , this court permitted the claimant to establish its plea of raising protest before encashment of the cheque. The learned counsel for the parties agree that the burden was on the claimant to prove that he did not agree to the amount to be full and final settlement of his claim and so he lodged protest with the Railway Authority before the cheque was encashed. However, from perusal of the impugned judgment and award it does not transpire that such consideration was in the mind of Tribunal at the time of passing of the judgment and award. Be that as it may, the judgment in Union of India (supra) was delivered on 02.06.2008 and the impugned judgment and award was passed on 03.01.2005. That being the position, for the ends of justice, it would be proper to remand the matter to the Tribunal to re-decide the case in terms of the law laid down by this court in the case of Union of India (supra). The claimant shall be at liberty to discharge its burden in regard to prior protest before encashment of the cheque. The impugned judgment and award stands set aside. The matter is remanded to the Tribunal with a direction to adjudicate the case in terms of the law laid down by this court in the case of Union of India vs. Jain Enterprises (supra). Since it is a case of 2001, the Tribunal shall endeavour to dispose of the matter within a period of 2 (two) months from the date of receipt of copy of this order. No order as to costs.