
(2001) 11 MP CK 0056

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 2509 of 2001

Union of India

APPELLANT

Vs

Bharat Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 07-11-2001

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 18(2)
Railways Act, 1989 — Section 65

Citation : (2002) 2 ACC 411 : (2001) 4 MPHT 490

Hon'ble Judges : P.C. Agrawal, J

Bench : Single Bench

Advocate : S.K. Mukherji, for the Appellant; S.K. Rao, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Agrawal, J.—Railway Claims Tribunal, Bhopal on 29-9-99 decided eight claims by a common judgment. O.A. No. 551/94 was one of them. A claim for Rs. 12199/-with interest @ 12% P. A. from the date of registration of the claim and with proportionate costs was also allowed.

2. It is not disputed that the respondent is a Government Company. On 29-8-1991 high speed diesel was loaded and booked from Bajuwa to Gwalior. The railway receipt No. 190952 was issued when consignment was to be carried on railway risk. When the tank wagon was received at Gwalior, both top and bottom seals were missing. In all 21186 litres of HSD was delivered to the respondent. A shortage/loss certificate was issued by the Chief Goods Supervisor, Central Railway. A claim for value of lost of 2654 litres of HSD was preferred for amount of Rs. 12181,00. Such a claim was repudiated by the railway on the ground that the RR was issued with an endorsement "said to contain" and loading was not supervised by the railway staff. There was no sign of leakage or tampering with the tank wagon. No negligence or mis-conduct on the part of the railway administration or its staff was established. It was claimed that the respondent was bound to prove that actually 23840 litres of HSD was loaded in the tank

wagon at the siding of the respondent.

3. As seen above, the learned Tribunal agreed with the respondent and allowed its claim. Advocate for appellant has relied upon the decision in the case of Union of India (UOI) Vs. Aluminium Industries Limited, and also in Union of India (UOI) and Another Vs. Aluminium Industries Ltd., wherein several authorities of difference High Courts have been reviewed. He has also placed reliance in the case of Hari Sao and Anr. v. The State of Bihar (AIR 1970 SC 843). Decisions have been considered in above two Orissa cases in Radheshyam Agarwal Vs. Union of India (UOI) and Others, and in Dominion of India v. Firm Museram Kishun Prasad AIR 1950 Nag. 85 also. It is held therein that where consignment was booked at consignors siding without being supervised by the railway staff, the railway was not liable until plaintiff proved the actual quantity of goods despatched. Shortage certificate and railway receipt are of no help in this regard. The effect of issue of railway receipt and shortage certificate has clearly been laid down in the same.

4. Thus, obviously the respondent had to prove what was actually loaded at their siding when the consignment was booked. u/s 65 of the Railways Act, 1989 also the burden of proving the weight etc. of the consignment lies on the consignor or owner of the goods. However, it is note-worthy that u/s 18(2) of the Railways Claims Tribunal Act, 1987 the Claims Tribunal has to decide every application "on a persual of document written, representations, affidavits and after hearing such oral arguments as may be advanced". Of course a Tribunal is not a Civil Court. All the trappings of the Civil Court are not there. Only a part of CPC is applied to such a Tribunal. Tribunal has to devise its own procedure. Evidence Act does not apply to the Tribunal and only principles of natural justice are applicable to such a Tribunal. It has to decide the matter as expeditiously as possible. The learned Tribunal has taken note of the situation that no body had prevented the railway staff either from supervising or checking the loading. According to it the appellant had accepted the weight as declared by the respondent and it could not apply a double standard, one for charging the fare and the other for imposition of liability. As per Tribunal, both top and bottom seals were found broken. The railway had taken four months in transit and thus there was inordinate delay. The learned Claims Tribunal has relied upon the stand of respondent that a dip was taken at the time of despatch, the same being 184.9 cm while at the time of delivery, the same was only 165.4 cm.

5. In my considered opinion, the view of the Tribunal which is based on record and documents filed by the parties has not been either erroneous or perverse. The respondent was able to establish the amount of HSD loaded at the time of despatch. Thus, there has been no error in the award. No interference is called for.

6. The appeal is dismissed with costs. Advocate's fee as per schedule.

7. Misc. Appeal dismissed.