
(2022) 06 OHC CK 0005
In the Orissa High Court
Case No : FAO No.453 Of 2020

Union of India

APPELLANT

Vs

GM, Klambodi Yard Mumbai Divn. Central Railway

RESPONDENT

Date of Decision : 02-06-2022

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23
Railway Act, 1989 — Section 79

Citation : (2022) 06 OHC CK 0005

Hon'ble Judges : M.S. Sahoo, J

Bench : Single Bench

Advocate : P.K.Parhi, Devasish Satapathy

Final Decision : Disposed Of

Judgement

M.S.Sahoo, J

I.A. No.222 of 2022.

1. This matter is taken up through hybrid mode.
2. Heard.
3. Learned Assistant Solicitor General for the petitioner-appellant submits that in view of the filing of free copy of the order passed by the Railways claims Tribunal in O.A-II/38/2013. The same be accepted.
4. Considering the averments made in the I.A. and submissions of the learned ASG appearing for the petitioner/appellant, opposite party no.1-General Manager, Kalamboli Yard Mumbai Division, Central Railway, Mumbai be impleaded as proforma respondent no.3, the said authority shall be impleaded as proforma respondent no.3; present respondent no.2-Container Corporation of India, a Government of India shall be impleaded as opposite party no.2 and the present opposite party no.3- Western Carriers a proprietary concern owned by Mr. Rajendra Sethia shall be impleaded as opposite party no.1.

5. Corrected cause title of the FAO be filed within seven working days.

FAO NO.453 OF 2020

1. Learned ASGI undertakes to deposit the Advocates' Welfare Fund fees of Rs.15/- and High Court Bar Association Members Welfare Fund fees of Rs.20/- within two working days.

2. The appellant-Union of India represented through the General Manager, East Coast Railway has filed the present appeal under Section 23 of the Railway Claims Tribunal Act,1987, challenging the order dated 07.01.2020 passed by the learned Railway Claims Tribunal, Bhubaneswar Bench, Bhubaneswar in O.A. No.III/38/2013 wherein while allowing the claim application the learned Tribunal has directed to refund a sum of Rs.10,19,850/- along with 6% interest per annum from the date of application till the realization of the decretal amount.

3. Learned ASG appearing for the appellant submits that the learned Tribunal has committed error which is apparent on the face of the record, inasmuch as, it did not take into consideration the Rates Circular no.49 of 2006 issued by Railway Board vide letter no.TC/-1/2004/108/6 dated 01.06.2006, which provides that if the weight of 2nd weighment is less than the weight of 1st weighment, the weight of 1st weighment will be chargeable weight. It is also submitted that the claimant has also to pay reweighment charge as per Section 79 of the Railway Act,1989.

4. To substantiate the contention of the appellant, it is further submitted that 1st weighment was taken at weighbridge installed in the consignors premises, i.e., M/s. VAL and the same was certified by Railway and Metrological Department, so the 1st weighment is the final and the same is the chargeable weight and this fact has been lost sight of while the matter was decided by the learned Tribunal.

5. Having heard the learned ASGI for the appellant, issue notice to opposite party nos.1 and 2 as per the amended cause title as per the order in I.A. No.222/2022 passed today, by registered post with A.D. fixing a short returnable date. Requisites shall be filed within ten working days. Postal tracking report be placed on record.

List this matter on 14.07.2022.

I.A. NO.325 OF 2020

1. Heard.

2. Learned ASGI reiterates the submissions as noted above in the FAO and further submits that the appellant shall suffer irreparable loss and injury if the order impugned is not stayed during adjudication of the present appeal.

3. In the interim, it is directed that there shall be stay of operation of the order dated 07.01.2020 passed by the learned Railway Claims Tribunal, Circuit Bench, Bhubaneswar in O.A. No.III/38/2013 till next date.

I.A. NO.326 OF 2022.

Heard.

In view of the order of stay granted in I.A. No.325 of 2020 directing stay of operation of the order dated 07.01.2020 passed by the learned Railway Claims Tribunal, Circuit Bench, Bhubaneswar in O.A. No.III/38/2013, the further proceeding in Execution Petition no.26 of 2021 pending before the learned Railway Claims Tribunal, Bhubaneswar shall remain stayed.

The I.A. is accordingly disposed of.

Urgent certified copy of the order be granted on proper application.

The copy of the order be uploaded in the official website..

.....