

(2020) 05 GAU CK 0025
In the Gauhati High Court

Case No : Miscellaneous First Appeal No. 71, 70, 88, 89, 92, 106 Of 2016

Union Of India

APPELLANT

Vs

M/S Indian Oil Corporation Ltd

RESPONDENT

Date of Decision : 21-05-2020

Acts Referred:

Railway Act 1989 — Section 65(2), 74
Evidence Act, 1872 — Section 114
Code Of Civil Procedure, 1908 — Order 41 Rule 24

Citation : (2020) 05 GAU CK 0025

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : M Das, M Sharma, K C Sarma, K P Maheswari, U K Goswami,

Final Decision : Allowed

Judgement

1. Heard Mr. G Goswami, learned counsel for the appellant Railway Authorities. Also heard Mr. KP Maheswari, learned counsel for the respondent, Indian Oil Corporation (for short, the IOC).

2. The respondent IOC for the purpose of transportation of their petroleum products used the services provided by the railway authorities and in the process petroleum products carrying wagons are being placed before the IOC authorities. The products are loaded, transported to the required destinations and thereafter delivery is taken by the IOC authorities. The claim involved in these appeals is that on several occasions the IOC authorities had loaded their petroleum products in the above manner, but at the time of delivery they found that there were certain shortages and therefore, the different claims involved in this batch of appeals were made by the IOC.

3. Without going into the detailed facts of the respective claims and based upon the grounds urged by the appellant railways, we are basically concerned as to whether the provisions of the proviso to Section 65(2) of the Railway Act 1989 (for short, Act of 1989) was followed by the Railway Claims Tribunal (for short,

Tribunal) in arriving at the impugned orders by which various compensations were awarded in favour of the respondent IOC. In the different claims, amongst others, the issues framed were whether the applicants are entitled for compensation, if so, to what extent and the reliefs that can be granted and both the issues were taken up together for its adjudication in the impugned orders of the Tribunal. The Tribunal takes note of that the appellant railway had taken the specific plea that they are entitled to the benefit of the proviso to Section 65(2) of the Act of 1989 inasmuch as, as the railway receipts issued and relied upon do not contain the statement of the railway servant that he had checked and verified the weight/volume of the goods at the time of loading, therefore, the burden to prove would shift to the respondent IOC. In paragraph 16 of the impugned judgment, the Tribunal had duly taken note of the defence taken by the appellant railways claiming the benefit under the proviso to Section 65(2) of the Act of 1989 meaning thereby that as the railway receipts do not contain the statement of the railway servant that the weight/volume of the goods that were booked were verified, therefore, the burden to prove the weight/volume of the goods would now shift on the respondent IOC.

4. The impugned judgment of the Tribunal firstly took note of that there was an application by the respondent IOC requiring the appellant railways to produce certain documents, namely, the original forwarding notes, original railway receipts, copy of loading tally of booking station, seal and card labels and unloading tally of destination point in all the claim applications. But as the appellant railways had failed to provide with such documents as claimed by the respondent IOC, therefore, an adverse inference is required to be drawn against the railways. By drawing adverse inference, the Tribunal understood it to be that the respondent IOC had discharged their burden to prove as regards the weight or volume of the consigned goods. For the purpose, the Tribunal also relied upon the provisions of Rule 1714 of the Indian Railways Commercial Manual Volume II 1991 which requires that the seals and labels should be carefully preserved for six months and then destroyed and accordingly a conclusion was arrived that as the seal and labels were not produced by the appellant railways, therefore, also a presumption be drawn against the railways.

5. Further reliance was placed on the judgment dated 26.04.2013 of this Court in MFA No.22/2013 in M/s. PP Enterprise Vs. Union of India. In the said judgment, it was held in paragraph 5 thereof that the authorities in the railways did not produce the seal and card label which was supposed to have been preserved for atleast for 6(six) months by the railway authorities and, once it was found that the SRI condition of the wagon was not in order, therefore, adverse presumption under Section 114 of the Indian Evidence Act can be taken against the railways.

6. In the said judgment of this Court in PP Enterprise (supra), reliance was also made in the judgment in M/s. Shree Gopal Enterprises Vs. Union of India which was an unreported judgment of this court dated 23.03.2012. In the said judgment, a conclusion was arrived that issuance of short certificate by the

railway authorities would mean that railways had accepted the short delivery of the consignment. Based upon the aforesaid and without giving any reason, the Tribunal directed the payment of different compensations in the claim petitions of varying amounts.

7. Being aggrieved, the appeals have been instituted by the railway authorities against the impugned judgment of the Tribunal. The facts of the case being similar and the questions of law involved being the same we have taken up the six appeals for a consideration and propose to dispose of all the appeals by this common judgment.

8. The core grounds taken by the appellant railways is that by virtue of the provisions of proviso of Section 65(2) of the Act of 1989, the burden to prove shifted to the respondent IOC to show that there was short delivery by the railways as regards the petroleum products that were transported by using the railway facilities. Prima facie, the discharge of burden to show that there was a short delivery would be as to what was the weight/volume of the goods at the time when it was loaded in the railway wagons and again what was the weight/volume when the goods was delivered back to the IOC at the place of destination. Mr. KP Maheswari, learned counsel for the respondent IOC reiterates the stand taken before the Tribunal that the railway authorities having issued a short delivery certificate it is an admitted position that there was short delivery and, therefore, the payment of compensation is justified. For the purpose, reliance is placed on a judgment dated 27.11.2015 of this Court in MFA No.20/2008 in General Manager, NF Railway Vs. M/s. Sunrise Trading. In the said judgment of this Court relied upon by the respondent IOC there was a short delivery and damage of about 400 bags of onion that were transported. The allegation made by the claimant was that the wagons were found in open condition. The railways took the stand that the consignor themselves had loaded damaged onions and it was not the liability of the railways, but, however the delivery note given by the railway authorities stated that the quantified onions were found in a damaged condition. In the said case, the issue before the Court was whether the onions were delivered in a damaged condition by the railways to the consignor and for the purpose a delivery certificate where it was certified by the railways that they were delivered in a damaged condition were relied upon. The issue accordingly was decided in favour of the consignor. In that judgment, reliance was again made on the pronouncement of this Court in M/s. Shree Gopal Enterprises (supra) which was an unreported judgment of this court dated 23.03.2012. In the said judgment, as indicated earlier, this Court had arrived at a conclusion that issuance of short delivery certificate by the railways would mean that the railway authorities had accepted the short delivery of the consignment. For the purpose, reliance has been placed on Section 74 of the Act of 1989 which provides that the property in the consignment covered by a railway receipt has to be passed to the consignee or the endorse as the case may be, and on the delivery of such receipt to them, they shall have all rights and liabilities of consignor.

9. Be that as it may, the said conclusion arrived at by this Court in the referred judgment placing reliance on the short delivery certificate also does not answer the question involved in this batch of appeals for the simple reason that the short delivery certificate merely provides for the quantity of the goods that was delivered to the consignor at the destination place in a circumstance when the weight/volume of the goods at the time of its booking at the place of origin is an admitted position. The said certificate by itself is not a conclusive proof as to what was the quantity i.e. either weight or volume of the goods that was booked by the consignor at the time of booking. In the instant case, we take note of the short delivery certificate for the purpose of arriving at a conclusion as to what was the quantity of the goods that was delivered to the respondent IOC at the destination place, but that by itself would not be sufficient to also arrive at a conclusion as to what was the weight or volume of the goods when it was booked at the place of origin.

10. The question as to what would be the weight/volume of the goods at the place of origin is ordinarily covered by the railway receipt issued by the railway authorities. But again in case of wagon load or train load consignments, if the weight or the number of packages is not checked by a railway servant authorized on his behalf, and a statement to that effect is not recorded in such railway receipt, the burden of proving the weight or, as the case may be, the number of packages stated therein, which would be the volume of the goods transported in the instant case, shall lie on the consignor, the consignee or the endorsee. A reading of the proviso to Section 65(2) of the Act of 1989 clearly shows that in case of wagon load or train load consignments if a specific statement by the railway authorities is not found in the railway receipt that he had checked and verified the weight or volume of the goods at the place of origin, the burden of proof to prove as to what was the weight would be on the consignor.

11. In the instant case, we have verified the records produced before the Tribunal and also the railway receipts that had been exhibited and relied upon. Although the railway receipts available are photocopies but all the endorsements made therein are clear and readable. But in the railway receipts that are so exhibited we do not find any statement being made by any railway servant that he had checked the weight or volume of the goods at the place of origin and had found it to be what is stated in such railway receipts.

12. Mr. KP Maheswari, learned counsel for the respondent IOC goes through exhibited railway receipts and underlined a portion therein to indicate that the weight was recorded. We understand that the weight was recorded, but mere recording of the weight is insufficient for the purpose of the provisions under the proviso to Section 65(2) of the Act of 1989. The statutory requirement is that there must be a clear statement by the railway servant that he had checked the weight or volume of the goods at the place of origin. An examination of the exhibited railway receipt does not show any such statement. As no specific statement is available in the railway receipts that the railway servant had

checked and verified the weight or volume of the goods at the place of origin, we are of the view that the provisions of the proviso to Section 65(2) of the Act of 1989 would be applicable in this case and the burden to prove as regards the weight or volume of the goods at the place of origin would be on the respondent IOC.

13. As regards the stand of the respondent IOC that they had made an application for producing the original railway receipts, copy of loading tally of booking station, seal and card labels and unloading tally of destination point in all the claim applications, but the railway authorities could not produce the same, and, therefore, an adverse inference would have to be drawn, we firstly take note of that amongst the documents/materials sought for by the respondent IOC to be produced was the seal and card label of the wagon concerned. Under Rule 1714 as noted above, the seals and labels are to be carefully preserved by the railway authorities for a period of six months and thereafter they may be destroyed. In this respect, this Court in an earlier pronouncement dated 05.06.2018 in MFA No.269/2010 (Union of India Vs. M/s. Shree Gopal Enterprises) in paragraph 19 had held as follows:

"19. In this connection, it is seen that in this case, no request was made to the NF Railway Administration by the respondent within the prescribed time of six months period to preserve the seal and card labels. In the opinion of this Court, unless either by a letter or by an order by the learned Tribunal, the Railway administration is communicated to preserve the relevant documents like, the original RR, forwarding note, transit report and seal and card labels, loading and unloading tally book, the Railway Administration was under no obligation to preserve and to produce such seals, labels, documents, before the learned Railway Claims Tribunal. In the considered opinion of this Court, merely because at one point of time, an allegation of shortage of consignment is made the Railway administration are not obliged to preserve the necessary documents for unlimited time. Rule 1714 of IRCM-II cannot be invoked if demand for preservation of such documents are not made within the period of 6(six) months from the date of delivery of consignment. The court cannot be oblivious of the fact that Indian Railways transport huge volume of goods through large network of railway stations, sidings, transshipment points by engaging thousands of employees, as such, the competent authority must be informed in writing to preserve the seals, labels, documents, etc., for being called in claim proceedings before the Railway Claims Tribunal."

14. The purport of the proposition laid down by this Court is that where no requisition was made by the claimant to the railway authorities within the prescribed period of six months to preserve the seal and card labels or where there is no letter or order by the Tribunal requiring the railway authorities to preserve the relevant documents like the original RR, forwarding note, transit report and seal and card labels, loading and unloading tally book, the railway administration was under no obligation to produce such seal, labels or documents

before the Claims Tribunal. It was held that merely because at one point of time an allegation of shortage of goods may be made, the railway authorities cannot be held liable for non-production of certain documents beyond the lapse of a considerable period of time and as such Rule 1714 of the IRCM II cannot be invoked if the demand for preservation of such documents was not made within a period of 6(six) months from the delivery of such consignment.

15. In view of the above, we put a query to the respondent IOC as to whether any such requisition was made by them to the railway authorities requiring them to preserve the seal, card label and other documents within a period of 6(six) months from the date of delivery of the goods. The answer stated is that no such requisition was made. In the circumstances, we are of the view that the proposition laid down by this Court in paragraph 19 of the judgment dated 05.06.2018 in MFA No.269/2010 (Union of India Vs. M/s. Shree Gopal Enterprises) would be applicable in this case as regards the claim of the respondent IOC that an adverse inference is required to be drawn against the railway authorities. But, however, we also feel that the proviso to Section 65(2) of the Act of 1989 having shifted the burden of proof of proving the weight or volume at the place of origin upon the consignor, it would also be open for the respondent IOC to prove the weight or volume of the consigned goods at the place of origin through any other evidence that they may have.

16. Mr. G Goswami, learned counsel for the appellant Railways relies upon the judgment of this Court dated 26.04.2019 in MFA 20/2012 passed in Union of India Vs. Bajaj Trading Company to impress upon that the matter may not be remanded back for a fresh decision as it would amount to granting a fresh opportunity to the respondent IOC to claim after a lapse of long period of time and also in view of the failure on the part of the respondent IOC to file an application under Order 41 Rule 24 of the CPC seeking leave to lead evidence at the appellate stage. But we are of the view that in the instant case, the Tribunal misdirected itself in not determining the claim raised by the respondent IOC at all and merely relied upon the principle of drawing adverse inference which in the circumstances of this case appears to have been inapplicable. As the Tribunal had not decided the core question at all i.e. what was the weight or volume of the goods loaded by the respondent IOC at the place of origin, we are of the view that this matter requires a remand to the Railway Claims Tribunal for a proper decision on the said aspect.

17. In view of the above, the judgment dated 01.04.2016 passed by the learned Railway Claims Tribunal in OA No.60/2015, OA No.61/2015, OA No.59/2015, OA No.58/2015, OA No.64/2015 and OA No.57/2015 are set aside.

18. The Tribunal is requested to decide the matter within a period of 3(three) months from today on being remanded back considering that it is a very old pending claim. The respondent IOC would be at liberty to bring on record any evidence that they may desire to bring so as to substantiate as to what was the weight or volume of the petroleum products loaded by them in the place of origin.

19. Appeal stands allowed to the extent as indicated hereinabove.