

**(2024) 03 GAU CK 0020**  
**In the Gauhati High Court**  
**Case No : MFA No. 77 Of 2012**

Union Of India

APPELLANT

Vs

M/S P P Enterprise

RESPONDENT

**Date of Decision :** 06-03-2024

**Acts Referred:**

Railways Claims Tribunal Act, 1987 — Section 20, 23  
Railways Act, 1989 — Section 65, 106, 110

**Citation :** (2024) 03 GAU CK 0020

**Hon'ble Judges :** Malasri Nandi, J

**Bench :** Single Bench

**Advocate :** U Chakraborty, B Maheshwari

**Final Decision :** Allowed

## Judgement

1. None appears for the appellant. Heard Ms. M. Kalita, learned counsel for respondent.
2. This appeal has been preferred under Section 23 of the Railways Claims Tribunal Act, 1987 against the judgment and order dated 17.04.2012 passed by the learned Railway Claims Tribunal at Guwahati Bench in Claim Application No. OA-I/GHY/2002/0179 (old No. O.A.179/02) allowing the claim of the respondent/applicant as compensation amounting to Rs.72,720/- only along with interest @ 6% per annum.
3. The case of the applicant/respondent is that the claimant booked the consignment of 172 katta cartoon in wagon No.72510 from GIMB to New Guwahati under invoice No.4, RR No.974186 dated 29.10.1999 in safe, sound and secured condition under Railway Risk Rate after meeting all legal and statutory inspections as per Railway Rules. At the time of unloading at destination New Guwahati, the applicant/respondent found that wagon seal and card labels were absent and door was found in open condition. On unloading, in presence of CGS/ NGC and other Railway officers on duty, it was found that 119

katta cartoon in loose condition and total 4040 kg of sugar found short and all the facts were verified by the railway staff on duty and recorded all those description about shortages in the railway records known as "unloading tally book".

4. It was further alleged that the applicant/respondent was prevented to record the details of the shortage of sugar and deficiencies in the railway delivery book by the CGS/NGC and the delivery Clerk in duty on the excuse of one so called railway order of Chief Claim Officer, NF Railway, Maligaon dated 19.02.1991. On the persuasion and protest made by the applicant/respondent, the goods clerk and CGS/NGC on duty expressed their inability to allow passing any deficiency remarks on the delivery book about shortage of sugar. Accordingly, the applicant/respondent issued a letter dated 14.11.1999 to CGS/NGC informing about short delivery of booked consignment.

5. The further case of the applicant/respondent is that though the applicant wrote a letter dated 14.11.1999 with a request to issue a short delivery certificate but the CGS/NGC expressed his inability to issue short delivery certificate in the prescribed form by stating that as per the instructions from headquarter, no such delivery certificate could be issued where the goods booked under the caption "Said to contain", RR remarks. Subsequently, the applicant/respondent also issued several letters to the railway authority to issue short delivery certificate but the appellant failed to issue the same. Finding no other alternative, the applicant/respondent has preferred the claim application for recovery of compensation before the Railway Claims Tribunal, Guwahati amounting to Rs.72,720/- as per market rate.

6. The railway authority contested the claim by filing written statement. In their defense, the Railway Authorities challenged the very basis of the claims stating that the claim case was based on railway receipts under the category of "Said to contain". This means that the quantity and quality of the goods booked by the claimant/respondent were as per their declaration unilaterally made and the employees of the railway did not verify the correctness or otherwise of such declaration made by the consignors. Referring to the respective railway receipts, it was claimed that the goods were directly loaded in the wagon/train by the consignors from their trucks. It was mentioned in the RR itself that the booking was under the category of "Said to contain" and as such the claim petition is not maintainable.

7. The appeal was admitted by this Court and records were called for. I have perused the record of the claim case as well as the judgment of the learned Railway Claims Tribunal, Guwahati.

8. The learned Tribunal by the judgment passed on 17.04.2012 allowed the claim of the respondent/applicant holding that the notice served under Section 106 of the Act was valid and the applicant was entitled to relief as claimed. Such a view was taken on the basis that despite prayers made by the applicant in the

aforesaid claim case, the short certificate was not issued by the Railway Authority and the Railway Authority also failed to submit ORR, F/Note, invoice, Delivery Book Extract, Tally Copy, Transit Reports, Loading and Unloading tally, Delivery Certificate and Seal and card labels. The learned Tribunal held that in absence of those documents, it is not conclusively proved by the respondent that the wagons were received in SRI condition and that there was adequate care from the side of the Railway Authorities. Thus, the judgment was based on the alleged failure on the part of the Railway Authority to produce documents.

9. The case of the applicant/respondent is that the applicant in his application stated that the consignment was received short in destination. The same fact was mentioned in the claim petition. In his application, the applicant has claimed @ Rs.18/- per kg of sugar. In the judgment, it was stated by the learned Tribunal that regarding rate, the applicant has not submitted any document of the market rate during that period. However, in support of the fact, the applicant has cited a judgment passed by the Tribunal in OA No. 93/2002 where sugar consignment was booked in the year 1999 and the accepted rate was Rs.18/- per kg. Therefore, the learned Tribunal has held that in the present case also the same rate was applicable @ Rs.18/-per kg.

10. It reveals from the judgment of the learned Tribunal that as the Railway Authorities has failed to produce the aforesaid documents, the Tribunal has allowed the compensation in favour of the applicant. Having so noticed, it is to be seen as to whether any direction was issued to the Railway Authorities for production of the aforesaid documents. Section 20 of the Railway Claims Tribunal Act, 1987 has vested power and jurisdiction of civil Court on a claims tribunal for the purpose inter alia for summoning and enforcing the attendance of any person and examining him on oath, requiring that discovery and production of documents and also for receiving evidence on affidavits.

11. Section 110 of the Railways Act deals with the burden of proof in a proceeding before the Claims Tribunal. It is expressly provided in the said Section that burden of proving the monitory loss actually sustains shall lie on the person claiming compensation. This being a position, in Section 110 as well as proviso to Section 65 of the Railways Act, undoubtedly, the burden lies on the applicant to prove his case. It was, therefore, the burden of the applicant/respondent to establish by leading evidence that the amount/quantum of goods claimed to have been loaded in the wagon/train was actually so loaded and that there was either short delivery or damage of the goods booked.

12. To discharge the said burden, the applicant had to file application before the tribunal praying for discovery of documents which are in custody of the railway authorities. But there is no any indication in the record to show that the applicant/respondent took any initiative praying before the tribunal for discovery of such documents which are supposed to be kept in the custody of the railway authorities. The order sheet also does not show that any direction was issued by the Tribunal on any application filed by the claimant. The findings of the learned

Tribunal, therefore, that the railway authorities failed to produce the document is perverse. As the impugned judgment is based on the sole consideration and the learned tribunal did not construe the provision of Section 110 read with proviso to Section 65 of the Railways Act, 1989 as to the burden of proof in claim case, the impugned judgment cannot be sustained.

13. Accordingly, the judgment dated 17.04.2012 passed by the learned Railway Claims Tribunal, Guwahati is set aside.

14. The records are remitted to the learned Tribunal for passing necessary orders on the application filed by the applicant/respondent for discovery/ production of documents and thereafter, to decide the claim case in accordance with law by affording adequate opportunities to both sides for leading evidence.

15. This shall be done within a period of three months from the date of receipt of the records as the case is very old pending one.

16. In the result, appeal is allowed.

17. There is no order as to cost.