

(2021) 09 GAU CK 0056
In the Gauhati High Court
Case No : MFA No. 76 Of 2011

Union Of India

APPELLANT

Vs

M/S Ramesh And Co.

RESPONDENT

Date of Decision : 27-09-2021

Acts Referred:

Railways Act, 1989 — Section 65, 65(2), 93, 106
Railway Claims Tribunal Act, 1987 — Section 23(2)

Citation : (2021) 09 GAU CK 0056

Hon'ble Judges : Rumi Kumari Phukan, J

Bench : Single Bench

Advocate : K P Maheswari, G. Goswami, M. Sharma

Final Decision : Dismissed

Judgement

1. Heard Mr. G. Goswami, learned standing counsel appearing for the appellant Railway as well as Ms. M. Sharma, learned counsel appearing for the private respondent.

2. The present appeal is directed against the judgment and order dated 10.01.2011, passed by the learned Railway Claims Tribunal, Guwahati, in Claim Application No.OAI/GHY/2004/0441 (Old No.441/04), whereby the respondent/appellant was directed to pay an amount of Rs.57,375/- (Rupees fifty seven thousands three hundred seventy five) only along with interest @ 6% per annum, from the date of filing within three months, failing which the amount shall carry interest @ 7% per annum till realization. The Railway shall also pay proportionate costs of application fee Rs.2500/- and Legal Practitioner's fee of Rs.1500/-.

3. According to the applicant, a clubbed consignment (300 packets of dried peas and 400 packets of Arhar Dal) was booked from DKZ to NGC vide Invoice No.1966, RR No.340314, on 24.03.2003. At destination, as per Delivery Certificate, 45 packets of Arhar Dal found short. As per applicant @ Rs.25.50 per

kg., the compensation amount comes to Rs.57,375/- for which the applicant has filed the claim petition and stated that the respondent railway is fully liable for the abovementioned loss.

4. Upon receipt of notice of the application, the respondent filed their written reply, wherein they have stated that the notice, U/s.106 of the Indian Railway Act was received in time, but the whole contents of the notice is voluntarily denied and the application is liable to be dismissed. It is also stated that the question of negligence and misconduct does not arise, as the consignment was loaded by the sender at the forwarding station and unloaded by the consignee at the destination station. Moreover, the consignment was booked by the sender at the forwarding station under the remarks in the railway receipt containing "loading and unloading done by the sender, train load condition complied with, directly loaded from truck to wagon, quantity and contents not checked by Railway Staff, senders wt. accepted" and thus the respondent is not liable to pay any compensation. The respondent also pleaded that the nature of relief as sought for in the application is not admitted since there is no contract between the parties in this case to pay cost and interest, the applicant is not entitled for the same and as such the application is liable to be dismissed with cost.

5. Upon the pleadings of the parties, the following issues were framed:

- 1) Whether the Notice U/s.106 of the Railways Act was served by the applicant in time?
- 2) Whether the applicant hold legal title to demand compensation?
- 3) Whether the respondent has delivered the entire consignment intact at destination as per RR?
- 4) Whether the applicant proves that they have not receive the full consignment at destination?
- 5) What Relief? What Order?

6. Both the parties filed various documents in support of their respective claim.

7. After going through the documents available before it and hearing arguments of learned counsel for both sides, the learned Railway Claims Tribunal, Guwahati decided all the issues in favour of the applicant and passed the impugned judgment and order, against which the present appeal is preferred by the appellant/respondent Railway.

8. The grounds taken by the appellant in the present appeal is that inter alia, that the learned Tribunal failed to take into consideration the correct factual and legal aspect of the matter in deciding the matter, that the learned Tribunal, while passing the impugned judgment has failed to take into consideration the objection raised by the Railway towards the preliminary objection in respect of sufficiency and validity of notice made under Section 106 of the Railway Act, etc. etc.

9. I have heard the arguments advanced by learned counsel for both sides and perused the documents available in the record.

10. According to the learned counsel for the appellant, the claim of the respondent cannot rest upon the RR because according to Section 65(2) of the said Act, RR shall be prima facie evidence of weight, but not the number of package stated therein. It is contended that as the respondent failed to discharge the obligation to prove the weight loaded in the wagon, their claim cannot be entertained. Reliance has also been placed upon the decision rendered in MFA 269/2010 (Union of India v. M/s. Shree Gopal Enterprises); 2002 (1) GLT 605 (Sreenivas Basudeo v. Union of India and Ors.) in support of the contention that Railway Receipt indicating "said to contain" meaning thereby weight declared by the sender was accepted for the purpose of freight only.

11. Countering the submission of the learned counsel for the appellant, it is vehemently contended by the learned counsel for the respondent that prior to filing of the case, notice under Section 106 of the Act, was issued to the General Manager within the stipulated period of six months and as such there cannot be any violation of rule and the delay is inconsequential. Furthermore, it is submitted that there is no any violation of Section 65 of the Act and there is violation of rules as enumerated in the Indian Railway Commercial Manual (Reference has been made to the Rule 1402, 1415, 1418, 1512 and 1714). The learned counsel for respondent has vehemently argued that in view of Section 93 of the Railway Act, coupled with the rules as mentioned above, Railway Authority is responsible for the loss, destruction, damage of the articles loaded for transportation.

12. Having heard the rival submission of learned counsel for both the parties, this Court has also gone through the impugned judgment as well as the rules and the provisions of the Act referred above.

13. On perusal of the initial claim petition filed by the respondent, it reveals that there are specific claim about the damage at the time of delivery of consignment with further claim that wagon seals and card labels were absent, with damage to the body of the wagon with leakage etc. As against the said specific claim the appellant/the Railway Authority did not take any specific plea save and except general denial. The rule mentioned above provides that at the time of dispatching of goods, the forwarding note must contain declaration of the number, weight, description of the articles, and every consignment should be properly packed in accordance with packing conditions for goods, so that goods are not likely to deteriorate or otherwise loose weight or value in transit. The rules further provide that seals and labels should be carefully preserved for six months and then to be destroyed. In the instant case, claimant in its notice under Section 106 of the Act, claimed damages because of non-maintaining of wagon seal in proper condition, no card label etc. which was to be maintained, but no any response/reply made by the Railway Department against such claim.

14. Coming to the matter at hand, it reveals that the learned Tribunal in its judgment in issue no.3 has categorically held that the respondent in their written statement has made a general denial without supporting documents, whereas the Delivery Certificate reveals that there are short delivery of 45 packet (2250 kg) of Arhar Dal. It has further held that the respondent (Railway) has not submitted ORR, original F. Note, transit report, seal and card label whereas unloading report revealed that S/Side W/D without original seal and card label, protection seal badly broken thereby disputing that the respondent has not taken due care of consignment after such entrustment.

15. Further, while discussing the issue nos.3 and 4, the Tribunal has held that as regard the rate the applicant has submitted the beejuk and the rate, is claimed on the basis of same and at the stage of argument both the parties agreed for the compensation at the rate of Rs.25.50 per kg. [2250 Kg. X Rs.25.50 = Rs.57,375/- and the order was passed on the basis of such agreement, which tantamount to be consent decree and that being so, appeal is not maintainable while the amount of compensation was already decided on being agreed. As per Section 23(2) of Railway Claims Tribunal Act, no appeal will lie against consent decree, hence appeal is not maintainable.

16. Learned counsel for the appellant did not address the above aspect and in the considered opinion of this Court, the parties cannot be permitted to travel beyond their own pleaded case. Therefore, without addressing the various issue raised in this case, this Court is of the opinion that the appeal is not maintainable and consequently stands dismissed. No cost.

Send back the LCR.