

(2024) 03 GAU CK 0021
In the Gauhati High Court
Case No : MFA No. 303 Of 2010

Union Of India

APPELLANT

Vs

M/S Shree Mahalaxmi Mills

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 0021

Hon'ble Judges : Malasri Nandi, J

Bench : Single Bench

Advocate : U Chakraborty, K P Maheswari

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 16.08.2010 passed by the learned Railway Claims Tribunal at Guwahati Bench in Claim Application No. OA-I/GHY/2001/0433 (old No. O.A.433/2001).
3. The case of the applicant/respondent is that two consignments of 1375 + 1375 tins of R-S oil was booked from Rajkot to NGC under invoice No.5 and 6 RR No. 886614 and 886615 dated 14-19.10.1998. At destination 1956 kgs of R.S. Oil found short. As per shortage damage certificate, the shortage was also admitted. The applicant has claimed @ Rs.44.43 per kg of R.S. Oil and at this rate, the compensation amount comes to Rs. 86,905/- for which the application was filed before the Claims Tribunal by stating that the Railway Authority was fully liable for the said loss.
4. The appellant as respondent filed written statement wherein they denied the title, service validity and sufficiency of notice under Section 106 of Railways Act.

The Railway authority also stated that the consignment was booked under the caption "said to contain" as such the claim case is not maintainable and hence, prayed for dismissal of the claim case.

5. In the judgment, the learned Railway Claims Tribunal has held that the consignment was booked on 14-19.10.1998 and notice under Section 106 of the Act was served on 04.10.2001 which was received by the respondent on the same date. Therefore, the notice was served in time.

6. The learned RCT also held that it was established that entire consignment was not delivered at destination. The same fact has been mentioned in the application which was further affirmed in the affidavit. For the loss, the applicant had requested to issue a short certificate and also wanted a remark in the delivery book but neither the short certificate was issued nor the claim was settled.

7. In the judgment, it was also mentioned by the tribunal that F/Note has not been submitted by the respondent though the applicant prayed for production of F/Note, loading tally, transit record, seal and card labels etc.

8. The further case of the applicant/respondent is that though the applicant wrote a letter 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. 86,905/- as per market rate.

9. 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.

10. 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.

11. The learned Tribunal by the judgment passed on 16.08.2010 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.

12. 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.

13. Section 110 of the Railways Act, 1989 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.

14. To discharge the said burden, the applicant had to file an application before the Tribunal praying for discovery of documents which are in the 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 alleged 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.

15. Accordingly, the judgment dated 16.08.2010 passed by the learned Railway Claims Tribunal, Guwahati is set aside.

16. 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.

17. 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.

18. In the result, appeal is allowed.

19. There is no order as to cost.