
(2016) 04 GAU CK 0035
In the Gauhati High Court
Case No : M.F.A. No. 41 of 2009

Union of India

APPELLANT

Vs

M/s Sunrise Traders

RESPONDENT

Date of Decision : 21-04-2016

Acts Referred:

Railways Act, 1989 — Section 110, 23, 97

Citation : (2016) 163 AIC 591 : (2016) 4 GauLR 577

Hon'ble Judges : Manojit Bhuyan, J.

Bench : Single Bench

Advocate : Mr. D.K. Dey, Advocate, for the Appellant; Ms. M. Sarma, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Manojit Bhuyan, J. (Oral) - Heard Mr. D.K. Dey, learned counsel representing the appellant i.e. General Manager, N.F. Railway, as well as Ms. M. Sarma, learned counsel representing the respondents.

2. This appeal under Section 23 of the Railway Claims Tribunal Act, 1987 is directed against the judgment dated 18.11.2008 passed by the learned Railway Claims Tribunal, Guwahati Bench in Application No. 451/2000, whereby a direction was made to the Railway Authorities for making payment of Rs.47,400/- to the respondents together with interest @ 6% per annum from the date of institution of the claim application within three months thereof. Order was also passed to the extent that upon failure to do so the amount shall carry interest @ 7.5% per annum until realisation. The cost of application fee and the legal practitioner fee was also awarded.

3. Facts briefly are that a consignment of onions was booked by the Maharashtra State Cooperative Marketing Federation Limited at Manmad Railway Station in Maharashtra for delivery at New Guwahati (NFR). The consignment contained 951 packets of onion weighing 380.40 quintals. Upon unloading of the

consignment at New Guwahati, 321 packets of onions were found to be in damaged and rotten condition.

4. Claim was lodged before the Railway Authorities and eventually the matter was brought before the Railway Claims Tribunal, Guwahati Bench at the instance of the respondents herein. On the basis of the Damage Certificate cum Assessment Delivery Report, issued by the Divisional Commercial Manager, NF Railway Guwahati dated 4.4.2000, claim was made for an amount of Rs. 66,360/-. The said case being Application No. 451/2000 was decided by the Tribunal and judgment was delivered on 18.11.2008.

5. The material facts urged by the Railway Authorities in its written statement were noticed. The Railway Authorities had also filed five documents in their defence. The learned Railway Tribunal on the basis of the available materials and having regard to a judgment passed by this Court determined Rs.5.00 per Kg as a reasonable rate for award of compensation. The Tribunal found that a total 9478 Kgs of onions had been damaged in transit and accordingly issued direction to the Railway Authorities for making payment of Rs.47,400/- in favour of the respondents.

6. Under Section 110 of the Railways Act, 1987 the burden of proof to establish the monetary loss actually sustained lies on the person claiming compensation. Section 97 thereof also provides immunity to the Railway Authorities for any loss, destruction, damage, and deterioration etc. of any consignment carried at the owner's risk rate. An exception is carved out in case of any proof that such loss, destruction, damages etc. had occurred due to negligence or misconduct on the part of the railway administration.

7. It is the pleaded case of the appellant that the consignment was loaded by the sender at the forwarding station without the supervision of the Railway Staff and the said consignment arrived at the destination station without any interference en-route. A categorical plea was also taken in the written statement by the Railway Authorities that the alleged damage to the goods was primarily due to loading of already damaged goods by the sender at the forwarding station. In this respect, Mr. D K. Dey makes reference to the document which is marked as R-3.

8. Ms. M. Sarma for the respondent submits that there was negligence on the part of the Railway Authorities and the wagon seals were absent at the destination point. According to Ms. Sarma, the Railway Authorities did not produce the seal and card label before the Tribunal to controvert any debate that the consignment of onions did not reach the destination in good condition. According to Ms. Sarma, Rule 1714 of the Indian Railway Commercial Manual Volume II requires the Railway Authorities to preserve the seal and labels for six months. Despite the said requirement and the obligation of the Railway Authorities to produce the same before the Tribunal for examination, the same had not been done. The wagon carrying the consignment, which reached the

destination point without the seal and repeat in intact condition, as such, there was negligence on the part of the Railway Authorities to ensure delivery of the goods in good condition.

9. The allegations and counter allegations made by the learned counsel representing either parties have been noted. What is of utmost significance is that the Tribunal while deciding the case and in reaching a conclusion did not frame any Issues and also did not discuss the documents available on record. The learned Tribunal assessed the damage of 9478 Kilograms of onions and quantified the loss at the unit rate of Rs.5.00 per Kg. In my opinion the said judgment is wholly cryptic in nature as it does not discuss the pros and cons of the case as required under the law. Without commenting on the merits of the case, it would be appropriate to remand the matter to the learned Tribunal for passing necessary judgment/ order by framing Issues for adjudication and allowing the parties to adduce evidence and to exhibit necessary documents.

10. In view of the above, this appeal stands disposed of by making interference with the judgment dated 18.11.2008. The Registry is directed to transmit the records to the Railway Claims Tribunal, Guwahati Bench forthwith. The case now shall proceed before the Railway Claims Tribunal and the parties are directed to appear before the said Tribunal on 18.5.2016 for receiving further instructions from the Tribunal. While deciding the Application No.451/2000, it is expected that the said case will be disposed of by the Tribunal as expeditiously as possible, preferably within a period of six months from the date of appearance of the parties as indicated above. No costs.