

(2019) 07 JH CK 0184

In the Jharkhand High Court

Case No : Micellaneous Application No. 520, 521, 522, 523, 527, 528, 529, 530, 531, 667, 668 Of 2016

Union Of India through General Manager

APPELLANT

Vs

M/s. Bharat Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23(1)
Railways Act, 1989 — Section 2(32), 64, 65(2), 93, 94, 106 Indian Railway Commercial Manual, — Rule 1529(a), 2514

Citation : (2019) 07 JH CK 0184

Hon'ble Judges : Dr. S.N. Pathak, J

Bench : Single Bench

Advocate : Mahesh Tewari, Gautam Rakesh, R.K. Mittal, Manish Kumar

Final Decision : Dismissed

Judgement

Dr. S.N.Pathak, J

1. Heard the parties.

2. Since the issues involved in all these miscellaneous appeals are same and similar, they are tagged together and are being disposed of by this common order.

3. These appeals have been filed under Section 23(1) of the Railway Claims Tribunal Act, 1987, against the awards passed by the Railway Claims Tribunal at Ranchi Bench in following cases:-

Sl. No.

Case No. (Misc. Case)

Claim Case No.

Judgement dated

Compensation Amount awarded (in Rs.)

1.

527/ 2016

OA (I)/RNC/2010/0031

04.05.2016

28,08,707/- along with 7% interest

2.

523/ 2016

OA (I)/RNC/2010/0020

24.05.2016

28,32,356/- along with 7.5% interest

3.

522/ 2016

OA (I)/RNC/2010/0027

24.05.2016

2,56,122/- along with 7.5% interest

4.

521/ 2016

OA (I)/RNC/2010/0028

24.05.2016

6,27,222/- along with 7.5% interest

5.

668/ 2016

OA (I)/RNC/2011/0006

11.07.2016

2,31,217/- along with 7.5% interest

6.

520/ 2016

OA (I)/RNC/2010/025

24.05.2016

2,44,219/- along with 7.5% interest

7.

528/ 2016

OA (I)/RNC/2010/0030

24.05.2016

6,89,280/- along with 7.5% interest

8.

529/ 2016

OA (III)/RNC/2011/ 0015

24.05.2016

17,35,630/- along with 7.5% interest

9.

530/ 2016

OA (I)/RNC/2011/0003

24.05.2016

2,17,914/- along with 7.5% interest

10.

531/ 2016

OA (I)/RNC/2010/0032

24.05.2016

6,48,006/- along with 7.5% interest

11.

667/ 2016

OA (I)/RNC/2011/0005

09.08.2016

4,59,318/- along with 5% interest

4. The claims made by the Respondents- Bharat Petroleum Corporation Ltd. (for short "M/s. BPCL") in different miscellaneous appeals is given in tabular chart, as follows:-

Sl. No.

Case No. (Misc. Case)

Material (shortage) (in ltrs.)

Invoice No. and date

01.

527/ 2016

89296 ltrs. High Speed Diesel (HSD)

61 RR 212006663 dated 23.08.2008

02.

523/ 2016

76925 ltrs. of Motor Spirit

69 RR 688384 dated 07.08.2008

03.

522/ 2016

6053 ltrs. Motor Spirit

48 RR 212006120 dated 29.06.2008

04.

521/ 2016

19941 ltrs. of HSD

76 RR 212006661 dated 23.08.2008

05.

668/ 2016

7271 ltrs. of HSD

25 RR 212007160 dated 08.11.2008

06.

520/ 2016

5711 ltrs. of Motor Spirit

79 RR 212006737 dated 02.09.2008

07.

528/ 2016

21949 ltrs. of HSD

77 RR 212006662 dated 23.08.2008

08.

529/ 2016

41503 ltrs. of HSD

89 RR 701925 dated 21.09.2008

09.

530/ 2016

7675 ltrs. of Superior Kerosene Oil

86 RR 212007718 dated 25.02.2009

10.

531/ 2016

20802 ltrs. of HSD

61 RR 212006366 dated 23.07.2008

11.

667/ 2016

14444 ltrs. of HSD

26 RR 212007161 dated 08.11.2008

It was the case of the Applicant/ Respondents-BPCL before the Railway Claims Tribunal that the aforesaid articles were booked from Numaligarh to Ranchi at Railway Risk Rate and at the time of booking and loading of aforesaid articles, Railway Staff were present. When the aforesaid Wagons arrived at Ranchi, its top seal was found missing/ manhole cover opened in a leaky and empty condition resulting in shortage as detected during joint checking done with the railway authorities. Thus, it is claimed that there was negligence and misconduct on the part of the Railway Administration.

5. On the other hand, case of the appellant-Railway was that the material was loaded by the Respondents-BPCL at their own siding (at Numaligarh Refineries) which was not under the control of the Railways and the said loading was not supervised by any Railway Staff. The loading, sealing and dip measurement was done at the Respondent's own siding and it was not supervised by the Railway Staff. The appellants further contended that the booking was done with North Frontier Railways but it was not made party in the Claim Application filed before the Railway Claims Tribunal.

6. After hearing the pleadings of the parties and upon perusal of the records, following issues were framed by the learned Court below:-

(I) (a) Whether the loading, sealing and dip measurement were made by the

Sender at the Sender's siding?

(b) Whether it were supervised/ witnessed by the Railway Staff?

(II) What was the actual loading of quantity of materials in wagons at the Sender's siding?

(III) Whether a valid notice was served upon the Respondent under Section 106 of the Railways Act, 1989?

(IV) Whether shortage in the quantity of materials occurred due to negligence on Respondent?

(V) What was the value of the consignment?

(VI) Whether the Applicant will be entitled to be compensated?

(VII) What will be the compensation amount?

7. In support of its claim, the applicant-BPCL though did not produce any oral evidence but furnished photocopies of several documents along with claim application. Later on, those documents were marked as Exhibits.

8. On the other hand, respondent-Railway has also not adduced any oral evidence but has furnished the original/ certified copies of the following documents which were marked as exhibits:-

a) Railway Receipts- Ext. R/1

b) Joint Survey Report - Ext. R/2

9. The learned Tribunal after discussing all the issues in details, allowed the claim applications filed by the Applicant/Respondent-BPCL and directed the Railways to pay the decretal amount to the applicant/respondent-BPCL along with 5 to 7.5% interest from the date of filing of the respective claim applications till the date of actual payment.

10. The correctness of the orders/ judgments passed by the learned Tribunal in different cases are the subject matter of challenge in the present appeals.

11. Mr. Mahesh Tewari, learned counsel assisted by Mr. Gautam Rakesh, learned counsel appearing for the Appellant-Railways, submits that the learned Tribunal has not given due consideration to the actual facts of the case and had completely ignored that the loading of the goods were made at siding of the Respondents and it was neither under the control of the Railway Staff nor the loading was supervised by any Railway Staff. It has further been argued by Mr. Tewari that the Respondents did not brought any material on record in proof as to what quantity of the goods was loaded at the initial point nor the Respondents made North Frontier Railways as party in the claim case though the booking was done within the jurisdiction of North Frontier Railways. The learned Tribunal ought to have considered that mentioning of weights, etc. in railway receipt is for

the purposes of charging freight only. Learned counsel further argues that the learned Tribunal has failed to consider that the short delivery certificate was issued by the appellant-Railway on the request of the respondents-BPCL, being without prejudice, to record actual quantity received at the destination. The learned Tribunal ought to have considered that there was much time lapse between handing over the wagon to the respondents and the joint survey of the wagon; during this time gap, if the top seal/ manhole was opened by someone, the appellant ought not to have been held responsible for shortage.

12. Mr. Tewari draws the attention of the Court towards Red Tariff No. 20, which incorporates the Railway Red Tariff Rules, 1960, which was in force from 16th August, 2000 onwards. It was further argued that at the time of loading, the Railways' staff are not present unless they are called-for. In the instant case, they were never called-for or were present there, which is proved by the Railway Receipts. It is the entire jurisdiction of the Consignor and Consignee and not of Railways as per 'Red Tariff'. To strengthen his arguments, Mr. Tewari places reliance on Sub-Section 2 of Section 65 of the Railways Act, which is reproduced herein below:-

65(2) A railway receipt shall be, Prima facie evidence of the weight and the number of packages stated therein:

Provided that in the case of a consignment in wagon-load or train-load and the weight or the number of packages is not checked by a railway servant authorized in this behalf, and a statement to that effect is recorded in such railway receipt by him, the burden of proving the weight or, as the case may be, the number of packages stated therein, shall lie on the consignor, the consignee or the endorsee.

13. It was further argued by Mr. Tewari that the Railway's Receipts show that deep measurement was zero and the same has at all not been dealt by the Tribunal, which finds strength from page-58 of the L.C.R. Further it was also argued that what was the quantity loaded at entry point has not been mentioned and only shortage has been mentioned and nothing has been brought on record that what was the shortage. The joint certificate only shows the amount found and what was the amount loaded was never mentioned in the Railway Receipts. It was specifically contended that interest awarded by the learned Tribunal to the extent of 5%-7.5%, is totally erroneous since the Tribunal was not functioning for five long years and as such, the Railway cannot be fastened with liability to pay interest and also because interest can only be awarded in commercial transactions. The attention of the Court was also drawn to Section 2 (32) of the Railway Act which talks of notice and it was submitted that no proper and valid notice under Act was given

14. Mr. R.K. Mittal, learned counsel assisted by Mr. Manish Kumar, learned counsel appearing for the respondent-BPCL, vehemently opposes the contention of the learned counsel appearing for appellant-Railway and submits that quantity has been loaded as per the calibration chart, which is apparent from page 30 of

the memo of appeal. It is argued that Clause 58 of Railway Receipts, clearly mentions the actual weight and as per Clause 59 of Railway Receipt, freight has been paid and overweight chargeable is zero and high speed freight is also mentioned in the Railway Receipts. The learned counsel placed reliance on Section 64 of the Railways Act and submits that forwarding note has not been filed as per Section 64 of the Railways Act. The joint report shows that Railways acceptance is there and criminal interference in the route cannot be ruled-out. Regarding valid notice, learned counsel submits that there is a valid notice and further notice is not required, which finds place in the order-sheet. Learned counsel submits that there is loss of profit as at present, rate of diesel is much higher so interest @ 5%-7.5% is justified. On the point of supervision, it was argued that counter-claim of the Railway is falsified from the fact that they were paid for it and as such, as per Section 93 of the Railway Act, liability cannot be absolved. Justifying the impugned order, learned counsel submits that there is no illegality or any infirmity in the order of the Tribunal holding the Railway to pay the decretal amount to the applicant-BPCL along with interest on the date of filing of the claim application, as there has been no delay on the part of the applicant/ respondent-BPCL and delay, if any, was caused by the Railway itself which is apparent from the impugned judgment.

15. In support of his contention, learned counsel for the respondent-BPCL has placed heavy reliance on the following judgments:-

(I) Bihar State Co-operative Marketing Union Vs. Union of India & Ors. [AIR 1978 Pat. 213]

(II) Union of India Owing Southern Railway Vs. M/s. Shri Ganeshar Traders [2001 (2) TAC 203 (Mad.)]

(III) Raman & Co. Vs. Union of India & Anr. [AIR 1985 Mad. 37]

(IV) Union of India Vs. Hindustan Petroleum Corp. Ltd. [2005 (2) TAC 442 (Del.)]

16. Be that as it may, having heard the rival submissions of the parties, from perusal of the documents brought on record, the Lower Court's Records and the judgments of the Hon'ble Supreme Court, it appears that the claim of the respondent-applicant is fully justified. As such, no interference is warranted in the impugned judgments for the following reasons:-

(I) The contention of the learned counsel appearing for the Railway regarding valid notice is totally misconceived as the letter bears an endorsement with office stamp acknowledging the same on the above date. Since the consignment was booked on 23.08.2008, rightly it was observed by the learned Tribunal that a valid notice was served within the prescribed period of six months from the date of entrustment of goods to the Railway, as per the provisions of Section 106 of the Railways Act.

(II) The Railway Receipt shows that consignment was booked at Railway Risk Rate. Rate for entrustment of goods is applicable only when the loading, sealing

and dip measurement in a private siding are witnessed by the railway staff. Wages cost of the staff has been paid, which is admitted and never repudiated by the appellant-respondent-Railway.

(III) As per rule 1529 (a) and 2514 of the Indian Railway Commercial Manual, where a Goods Clerk is posted in a private siding and his wages and other costs are paid by the owner thereof, the loading of goods will be supervised and tallied by the Goods Clerk and Railway Receipts will be granted for the specific number of packages loaded. This Rule will be applicable for petroleum products. Hence, in view of the fact that the goods were booked at Railway Risk Rate, it is absolutely imperative that the loading, etc. at the private siding would have been witnessed by the railway staff and the dip measurement accepted by the railways in terms of the above provisions.

In view thereof, the contention of the Railway is not acceptable that loading, etc. was not witnessed by the Railway Staff and as such, on this point also, the contention of the learned Tribunal is fully justified.

(IV) The finding of the learned Tribunal regarding the shortage also does not warrant any interference as it shows that all the wagons were found with top seals broken from manhole covers, nuts and bolts in open condition whereas bottom valve/nut bolts were found closed. The joint certificates supports the claim of shortage of quantity in the wagons.

(V) In view of the evidence on record, which also includes the Respondent's admission of the shortage as reflected in the joint checking certificates, rightly the learned Tribunal held that the applicant has proved that there was shortage in the aforesaid tank wagons at the time of delivery. Different figures have been mentioned in all the aforesaid miscellaneous appeals regarding the shortage of quantity of materials.

Section 93 of the Railways Act impose general responsibilities on the Railways' Administration as carrier of goods for any loss, destruction, damage, deterioration in transit or non-delivery of consignment for any cause, except for the causes mentioned in Clauses (a) to (i). The proviso to the Section states that even when such losses etc. is provide to have arisen from any one or more of the aforesaid causes, the railways shall not be relieved of its responsibility for the loss etc. unless the railway administration further proves that it has used reasonable foresight and care in the carriage of the goods.

The learned Tribunal has rightly held that in view of the admission of the Railway, it is proved that there has been negligence on the part of the Railway administration in carriage of the goods entrusted and being responsible under the proviso to Section 93 of the Railways Act, 1989, Railway is also liable to pay compensation.

This finding of the learned Tribunal requires no interference.

17. Learned counsel for the Respondent-Railway relied on several Rules and the

Red Tariff No. 20, particularly Rules 311.1, 317.2 and 317.3, which are reproduced herein below:-

311.1. Unless otherwise notified by the Railway Administration, consignors and consignees shall do the loading and unloading of consignments of petroleum and other inflammable liquids in wagon loads.

317.2. Special precautions to be observed while loading and unloading tank wagons.-

(1) Tank wagons used for conveyance of petroleum and other inflammable liquids shall be in good condition and free from leakage.

(2) In filling tank wagons, an air-space of not less than 5 per cent of the capacity of the tank wagon shall be left: Provided that the prescribed air space may be reduced to-

(i) 2.5 per cent in the case of-

(a) High Speed Diesel Oil,

(b) Light Diesel Oil,

(c) Batching Oil,

(d) Furnace Oil,

(e) Kerosene Oil,

(f) Vapourising Oil,

(g) Aeromex Oil,

(h) Iomex,

(i) Mineral Turpentine,

(j) Xylene,

(k) Superior Kerosene Oil,

(l) M. T. (SUBS)

(n) Aviation Turbine Fuel,

(o) F.O. /TDO,

(p) Axle/Labs,

(q) Jute Batching Oil,

(r) Low Sulphur Heavy Oil,

(s) Carbon Blackfeed Stock.

(ii) 4 per cent in the case of-

- (a) Aviation Spirit,
- (b) Petrol,
- (c) Solvent Oil,
- (d) Power Alcohol,
- (e) Rectified Spirit,
- (f) Naptha,
- (g) Motor Spirit
- (h) J.P.4&J.P.5,
- (i) Hexane,
- (j) Benzene,
- (k) Toluene,
- (l) Andi Oil.

(3) All inlets and outlets shall be securely closed.

(4) Petroleum and other inflammable liquids, Class 'A', shall not be filled in or discharged from tank wagons:

(a) within a distance of 30 meters from any fire, furnace or artificial light capable of igniting inflammable vapour: Provided that the distance may be reduced to 9 meters when the liquid is filled or discharged under seal and closed vapour return pipe lines are provided, and;

(b) at any place where the tank wagon is exposed to sparks.

317.3. Empty tank wagons. -All empty tank wagons which have contained petroleum and other inflammable liquids shall, except when they are opened for the purpose of cleaning them and rendering them free from vapour, be kept securely closed unless they have already been thoroughly cleaned and rendered free from vapour."

18. The aforesaid rules of the Railway Red Tariff No. 20 are of no help to the appellant-Railway as it has been admitted by the Railway that there was shortage as also reflected in the joint checking certificates and the negligence on the part of the Railway Administration in carriage of the goods entrusted to them has been proved and as such, Railway was held responsible under proviso to Section 93 of the Railways Act, 1989, as the same goes against the Railways and in favour of BPCL.

19. The Hon'ble High Court of Madras in case of Union of India Owing Southern Railway, represented by its General Manager, Madras Vs. M/s. Shri Ganeshar Traders, reported in 2001 (2) T.A.C. 203 (Mad.) has held that,

"12. The consignments have been booked at the railway risk as evidenced by Ext. B1. It is seen from Ex. B2 that the consignment loaded in the wagon was checked at Itrasi on 10th August, 1986. The claims Tribunal found that in the normal course of transit of the consignment, there was no necessity to check the wagon at Itrasi, an enroute statement and the circumstances under which this checking was done at Itrasi have not been brought forth by the railway leading to adverse inference and secondly, the damaged bags were found near both doorways, side panels and buffer ends i.e. all over the wagon and thirdly, the D. Message Ex. A2 issued by the Chief Goods Supervisor states that monsoon precautions had not been observed by the railways which is a very important lapse on their part, the consignments having been transported in the month of August, which is rainy season, over the long distance from New Delhi to Royapuram and inspite of the wagon having been sealed for certification by the Train Examiner at Royapuram, as per D. Message, Ext. B2, the railway has not filed the certificate of the Train Examiner, again leading to adverse inference and thus, the plea of the railway in its reply statement that the wagon was certified water-tight at Royapuram by the Train Examiner has not been proved by documentary evidence. On analyses of evidence, the Tribunal found that the railway did not use reasonable foresight and care in the carriage of the goods and accordingly found that the railway is liable to pay damages."

20. Further, the Hon'ble Madhya Pradesh High Court in case of Union of India Vs. Bharat Petroleum Corp. Ltd., reported in II (2002) ACC 411, has held that, "the learned Tribunal had taken note of the situation that no body had prevented the Railway staff either from supervising or checking the loading. According to it the appellant had accepted the weight as declared by the respondent and it could not apply a double standard, one for charging the fair and the other for imposition of liability. As per Tribunal both top and bottom seals were found broken at the destination. The Claims Tribunal had relied upon the stand of the respondent that a dip was taken at the time of despatch, the same being 211.3 cms, while at the time of delivery the same was only 202.7 cms".

The Hon'ble High Court of Delhi in case of Union of India Vs. Hindustan Petroleum Corp. Ltd., reported in 2005 (2) T.A.C. 442 (Del.) has held as under:-

"4. Counsel for the appellant submits that the Railways are protected under Sections 93 and 94 of the Railways Act inasmuch as it was the duty of the respondent to ensure that the consignment entrusted to the Railways was properly secured and to prove that damage was caused during transit. The question whether the consignment was properly secured at the time of placement with the Railways is one of the fact. The Tribunal finds that there is no evidence on record to show that the Railways can claim protection under Section 93 by insinuating that the consignments were not properly sealed and/or handed over in defective condition. On the contrary, there is positive evidence on record to show that the seals were checked when the container moved into the yard as also was examined by the Railway staff for any leakage of wagon. In that event

of the matter, the Railways can hardly claim protection under Section 93 of the Railways Act. I find no infirmity in the judgment under challenge.

5. I may point out that the Supreme court in ONGC case has directed the setting up of a Committee of Secretaries to resolve disputes inter se Public Sector Undertakings and the Government of India. In the present case, orders had been made on 12th March, 2004, to resolve the matter in accordance with the aforesaid judgment of the Supreme Court, which obviously has not been done and has unnecessarily taken up judicial time."

The Hon'ble Madras High Court in case of Raman & Co. Vs. Union of India and Anr., reported in AIR 1985 Mad. 37 has held as under:-

It is contended before me that the defendants are liable to pay the value of the goods lost notwithstanding the fact that seven days time from the date of termination of the transit has expired Sub-secs. (1) and (2) of S. 77 of the Railways Act run thus:

"77. (1) A railway administration shall be responsible as a bailee under Ss. 151, 152 and 161 of the Contract Act, 1872 (9 of 1872), for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway within a period of seven days after the termination of transit:

Provided that where the goods are carried at owner's risk rate, the railway administration shall not be responsible for such loss, destruction, damage, deterioration or non-delivery, except on proof of negligence, or misconduct on the part of the railway administration or of any of its servants.

(2) The railway administration shall not be responsible in any case for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway arising after the expiry of the period of seven days after the termination of transit."

21. In view of the aforesaid rules, guidelines, observations, findings of the learned Court below, this Court is of the opinion that no interference is warranted in the aforesaid appeals and hence, having no merits, all the appeals are dismissed.

22. The Appellant-Railway is directed to pay the decretal amount as per the terms and conditions imposed by the learned Tribunal in the aforesaid cases. Needless to say that as the Railways has not deposited the aforesaid sums, the same shall be released within a period of 36 months from the date of receipt/production of a copy of this order and the same shall be paid to the respondent-BPCL, within a period of eight weeks thereafter.

23. No order as to costs.

24. As a sequel to the disposal of the aforesaid appeals, pending I.As. if any, also stand dismissed.

25. Office is directed to return the LCR, if any, to the Court concerned at the earliest.