
(2009) 06 GAU CK 0005
In the Gauhati High Court
Case No : M.F.A. No. 102 of 2007

Union of India (UOI)

APPELLANT

Vs

B.B. Enterprises

RESPONDENT

Date of Decision : 01-06-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 106, 34
Railways Act, 1989 — Section 103, 106, 107, 110, 127

Citation : AIR 2009 Guw 156 : (2009) 5 GLR 705 : (2009) 3 GLT 552 : (2009) 3 GLT 197

Hon'ble Judges : B.P. Katakey, J

Bench : Single Bench

Judgement

B.P. Katakey, J.—These appeals u/s 23 of the Railways Claims Tribunal Act, 1987 (in short, 1987 Act) are against the orders passed by the Railway Claims Tribunal, Guwahati Bench (in short, RCT) in various Original Applications filed by the respondents claiming compensation for short de livery or non-delivery of the consignment booked through the railways. Since all the appeals pose common questions of law, they are taken up together for hearing and disposal.

2. The respondents, alleging short delivery or non delivery of the goods carried by the railways issued notice u/s 106 of the Railways Act, 1989 (in short, 1989 Act) claiming different amounts and on receipt there of the railway administration issued cheques for certain amounts claiming to be the full and final settlement of the claims of the respondents with the condition that if the respondents are not satisfied with the amounts given by the said cheques, the same should immediately be returned to it and if the same are retained and encashed, it would be taken as the full & final settlement of the claims of the respondents. The respondents, on receipt of the communications attaching such conditions along with the cheques, raised protest by issuing various communications, which were received by the railways, intimating that the amount in such cheques were taken as part payment and demanding payment of the balance amount. The said cheques were thereafter encashed. Since the balance amounts have not been

paid, the respondents filed various Original Applications before the RCT for passing awards together with pendent elite, future interest and cost. The said Original Applications have been decided by the RCT in favour of the respondents and against the appellants. Hence, the present appeals.

3. I have heard Mr. U.K. Nair, learned Counsel for the appellants as well as Mr. H.P. Barman, learned Counsel appearing on behalf of the respondents.

4. Mr. Nair, learned Counsel for the appellants, has advanced 3 fold arguments in support of the appeals. Firstly, the respondents having accepted the offer made by the railways administration with the condition attached to it that in the event the cheques are encashed, it would amount to full and final satisfaction of the claims of the respondents, they cannot file claim applications before the RCT. Secondly, the RCT while determining the amount of compensation payable, though is required to assign reasons did not do so, in spite of the railway administration disputing the entitlement of the respondents to the amount claimed, in the written statement. Thirdly, the RCT being the creature of the 1987 Act and 1989 Act and unless it is vested with the power to award pendent lite interest, on the compensation payable, by the said Acts, no such interest can be awarded by it as has been done in the instant cases.

5. Mr. Nair, however relating to the 1st point of argument has fair]y submitted that since the said issue has already been answered in Union of India v. Jain Enterprises reported in 2009 (1) GLT 124 : AIR 2008 Gau 2266 (Gau), the same is no longer res integra, as the said decision of this Court has attained its finality, having not been challenged in the higher forum. It has been submitted that keeping in view the facts and circumstances involved in these appeals, that question is to be decided against the respondents.

6. Relating to the 2nd point of argument, it is contended that it is evident from the provisions of the 1989 Act, more particularly the provisions contained in Sections 106, 107, 110 and 127 there to as well as the provisions of Section 13 and 18(2) of the 1987 Act, which require the tribunal to determine the amount of compensation with regard to the claims raised before it and also keeping in view the provisions contained in Rule 21 of the Railway Claims Tribunal Procedure Rules, 1989 (in short 1989 Rules), which require the tribunal to frame issue and to pass order on such issues, it is evident that the RCT before passing the order awarding compensation is bound to record reasons for awarding such compensation and the order of the tribunal must indicate the basis for doing so; more so when such a decision of the tribunal is appealable u/s 23 of the 1989 Act Mr. Nair submits that in the orders appealed against, as since no reasons have been recorded by the RCT while awarding the compensation, the same are required to be remanded for fresh decision by giving reasons.

6A. In support of the 3rd point of argument, Mr. Nair submits that under the provisions contained in Section 127 of the 1989 Act, the tribunal is required to determine the reasonable compensation payable in respect of loss of any goods

and unless such determination is made by the learned tribunal, no interest can be awarded by it, when there is absolutely no provision either in the 1989 Act or in the 1987 Act empowering it to award pendente lite interest. According to Mr. Nair the tribunal being the "creature of the Statute, unless such power of awarding pendente lite interest is conferred specifically by the Statute, it cannot award the pendente lite interest as has been" done in the instant cases. However, Mr. Nair submits that once the determination is made the tribunal can no doubt assume the jurisdiction to award interest from the date of such determination till the date of payment on the principle that the claimants are deprived of such amount from the date of determination and not before that. Learned Counsel in support of his contention has placed reliance on the decision of the Apex Court in *Rathi Menon Vs. Union of India*, of the Andhra Pradesh High Court in Civil Misc Appeal Nos. 160/2003, *Union of India (UOI) Vs. Konduru Venkata Reddy*, of the Allahabad High Court in F.A.F.O. No. 813/2002 (*Union of India through General Manager, Northern Railway, Baroda House New Delhi v. Smti. Geeta (Mishra) Devi*) and of the Bombay High Court in *Union of India (UOI) Vs. Sanjay Sampatrao Gaikwad etc.*,

7. Mr. Barman learned Counsel appearing for the respondents on the other hand in reply to the 1st point of argument of Mr. Nair has submitted that the said point relating to the entitlement of the respondent to approach the tribunal after acceptance of the amount offered by cheques on pro test, has already been decided by this Court in *Jain Enterprises (supra)* by following the decision of the Apex Court in *Bhagwati Prasad Pawan Kumar Vs. Union of India (UOI)*, and there being no further appeal by the railway administration against the said decision of this Court, the point raised by it does not require any elaborate discussion as the said issue is no longer res-integra. According to Mr. Barman, in the present appeals the respondents having accepted the amount offered by the railway administration under protest and the cheques having been encashed after such protest by treating the same as part payment, they cannot be de barred from claiming the balance amount, before the tribunal.

8. Relating to the second point raised by the appellants, it has been submitted by Mr. Barman that the tribunal is constituted for the speedy disposal of the claim petitions filed by the claimants and it is empowered even to decide such claim cases on the basis of the pleadings as well as the documents produced before it, even without examination of any witness. According to Mr. Barman the tribunal is not required to give detailed reasons in passing an order either rejecting the claim petition or allowing the same as u/s 127(2) of 1989 Act the tribunal is required to determine the amount of compensation payable which is reasonable.

9. Mr. Barman, in reply to the submission of the learned Counsel for the appellants relating to the tribunal's power to award pendente lite interest, has submitted that Section 13 of the 1987 Act has empowered the tribunal to exercise such jurisdiction, powers and authority that were exercisable immediately before the appointed day by any civil Court or a Claims

Commissioner appointed under the provisions of the Railway Act, amongst others, relating to the compensation for loss destruction damages deterioration or non delivery of animal or goods entrusted to the railway administration for carriage in the railway and therefore, it has the power and jurisdiction to award pendente lite interest as awardable by the civil Court u/s 34 of the CPC. According to Mr. Barman, the provisions contained in Section 18(3) of the 1987 Act by which certain powers of the civil Courts have been vested on the tribunal while trying a suit, do not exclude the jurisdiction of the learned tribunal to award pendente lite interest, in view of the provisions contained in Section 13 of the said Act. Mr. Barman, further submits that a single Bench of this Court in *Union of India v. Oinam Keirukngba Meetei* 2006 (2) GLT 200 , has held that such pendente lite interest can be awarded, which cannot be held to be *par incuriam* as submitted by the learned Counsel for the appellants. Learned Counsel in support of his contention that the tribunal has the power to award pendente lite interest has also placed reliance on the decisions of the Apex Court in *A.A. Haja Muniuddian Vs. Indian Railways*, as well as of Karnataka High Court in *D.B. Avalakki and Another Vs. Union of India and Others*, Mr. Barman, in support of his contention, has also placed reliance on a Division Bench judgment of Madhya Pradesh High Court in *Union of India v. Smti Laxmipati* AIR 1995 MP 1990.

10. Mr. Nair, in reply has submitted that the decision of a single Bench of this Court in *Oinam Keirukngba Meetei* (supra) that the tribunal can award pendente lite interest, being contrary to the provisions of the 1987 Act as well as 1989 Act and also of the decision of the Apex Court in *Rathi Menon* (supra), the said decision of this Court cannot be applied in support of the contention that the tribunal has the power to award pendente lite interest. Referring to the decision of the Apex Court in *Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy*, Mr. Nair has submitted that the Apex Court in the said decision has held that the arbitrator under the provisions of the Arbitration Act 1940 can award pendente lite interest by virtue of the powers u/s 3 of the said Act read with Rule 8 of Schedule-II thereof and as the entitlement of the interest being a part of the dispute referred to the arbitrator by the parties, though the provisions of Section 34 of the CPC are not applicable to the proceedings before the arbitrator. According to Mr. Nair, since such a situation does not arise in the present appeals, inasmuch as there is no agreement between the parties for the grant of pendente lite interest and there being no provisions in the 1987 and 1989 Act, the ratio decidendi of the said case decided by the Apex Court cannot be applied in the appeals in hand.

11. Before advertng to the facts of the individual appeals, I shall first deal with the issues raised by the learned Counsel for the appellants in support of the appeals and thereafter, shall deal with the appeals individually.

12. The learned Counsel for the appellants though has raised the 1st issue relating to the entitlement of the respondents/claimants to file the claim petition before the learned tribunal after acceptance of the amount offered by cheques

with condition and after raising the protest however, as noticed above during the course of argument, has submitted that the said issue is no longer res-integra having been decided in Jain Enterprises (supra), against which no further appeal has been preferred by the railways administration. The appellants also do not dispute that the respondents/claimants before encashment of the cheques have protested the conditions attached to it and as such, are entitled to the benefit of the judgment in Jain Enterprises (supra), which judgment has been delivered by following the decision of the Apex Court in Bhagwati Prasad (supra). That being the position, the said issue has not been discussed in details, being not required to do so, and is decided against the appellants.

Whether the tribunal while deciding a claim application is required to record reasons.

13. Section 107 of the 1989 Act provides for filing application for compensation for loss destruction, damage, deterioration or non-delivery of goods against the railway administration upon whom a notice u/s 106 of CPC has been served. Section 110 of the said Act imposes burden on the person claiming compensation of proving the monetary loss actually sustained or where the value has been declared under Sub-section (2) of Section 103 in respect of any consignment that the value declared is true value, for loss, destruction, damage, deterioration or non-delivery of any goods. However, it would not be necessary for such person claiming compensation to prove how the loss, destruction, damage, deterioration or non-delivery was caused. Sub-section (2) of Section 127 of the said Act provides that the compensation payable in respect of the loss of goods shall be such as the RCT may, having regard to the circumstances of the case, determine to be reasonable.

14. The RCT established under the provisions of the 1987 Act is conferred with the jurisdiction to entertain and decide any application for compensation for loss, destruction damage deterioration or non-delivery of animals or goods entrusted to a railway administration for carriage by it apart from others. Section 18 of the 1987 Act lays down the procedure and the power of the ECT, Sub-section (1) of the Section provides that RCT shall not be bound by the procedures laid down by the Code of Civil Procedure, but shall be guided by the principles of natural justice and subject to other provisions of the Act and of any Rules, it shall have the power to regulate its own procedure. Sub-section (2) thereof requires the RCT to decide every application as expeditiously as possible and such application, ordinarily is to be decided on perusal of documents, written representations and affidavits and after hearing such oral arguments, as may be advanced.

15. The 1989 Rules, which has been framed in exercise of the powers conferred by Clauses (c), (e), (f) and (g) of Sub-section (2) of Section 30 of the 1987 Act lays down the territorial jurisdiction of Benches of the tribunal, procedure for filing applications, fee to be paid on such application, documents to be accompanied to the application, place of filing the application, scrutiny of application, service of notice and processes issue by the tribunal filing of

affidavit, filing reply and other documents by the respondents, hearing of applications, procedure and powers of the tribunal, framing and determination of issues, summoning witnesses and method of recording the evidence, etc. Though the RCT has been conferred with the power to decide every claim application filed before it on perusal of the documents, written representations and affidavits, by virtue of the powers conferred by Section 18(2) of the 1987 Act, it can under Rule 22 of 1989 Rules, if applied for by any of the parties to the proceeding, summons any witnesses for their appearance unless it considers that their appearance is not necessary for just decision of the case. Rule 21 of 1989 Rules imposes a duty on the tribunal, after considering the reply submitted by the respondents before it, to frame and record the issues upon which the right decision of the case appears to it to depend. The RCT is also required to distinguish the issues relating to the facts and the law. For better appreciation, Rule 21 of 1989 Rules is reproduced below:

21. Framing and determination of issues.

(1) After considering the reply the Tribunal shall ascertain upon what material propositions of fact or of law the parties are at variance and shall thereupon proceed to frame and record the issues upon which the right decision of the case appears it to depend.

(2) In recording the issues, the Tribunal shall distinguish between those issues which in its opinion concern points of facts and those which concern points of law.

(3) After framing the issues, the Tribunal shall proceed to record evidence thereon which each party may desire to produce.

16. It is, therefore, evident from the aforesaid provisions of the Act and the Rules that where the respondents before the tribunal do not admit the claim of the claimants in the written statement filed and if such respondents dispute such claim, the RCT is required to frame issues on facts as well as on law, depending on the pleadings of the parties. The tribunal, thereafter is required to decide such issues either on the basis of the pleadings and the documents filed and also the affidavit, if any, or may also proceed to record the evidence of the witnesses in the form of a brief memorandum of the substance of such evidence, in the event any application is filed by any of the parties to the proceeding for summoning and recording of evidence and decide the proceeding thereafter. The RCT, however, in the event such an application is filed for summoning of witnesses and recording of evidence may refuse to do so if it appears to it that the appearance of such witness is not necessary for just decision of the case.

17. The claimant before the RCT is to prove the monetary loss actually sustained by him for loss, destruction damage deterioration or non-delivery of any goods or where the value has been declared u/s 103(2) in respect of any consignment, that the value so declared is the true value, in view the provisions contained in Section 110 of the 1989 Act. The tribunal u/s 127(2) of the said Act is to ascertain the amount of compensation which is found to be reason able and

payable to the claimant for the loss of goods, having regard to the circumstances of the case. As discussed above, the tribunal on the basis of the written statement filed by the respondents before It is required to frame the issues on facts as well as on law and to decide the same. The tribunal therefore, before determining the reasonable amount of compensation has to frame the issues based on the written statement filed by the respondents and gives reasons for deciding such issues in awarding the reasonable compensation or refusing to award the same, on the basis of the pleadings of the parties and the documents and affidavits filed and also on the basis of the testimony of witnesses, if recorded. Recording of such reason is also necessary, decision of the tribunal being appealable u/s 23 of the 1987 Act, so that the appellate Court while considering the appeal that may be filed by any aggrieved party may scrutinize the reasons assigned. Recording of reasons, which may not be very elaborate, is there fore, a must.

Whether the tribunal has the power to grant pendente lite interest.

18. The 1987 Act is promulgated to provide for establishment of RCT to inquire into and determine the claims against the railway administration for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to it to be carried by the railway or for the refund of fares or freight or for compensation for death or injury to passengers occurring as a result of railway accidents or untoward incidents and for matters connected therewith or incidental thereto. The claims tribunals are established under the provisions of Section 3 of the said Act. Section 15 of the said Act bars the jurisdiction of any other Court or authority to exercise any jurisdiction, power or authority in relation to the matters referred to in Sub-sections (1) and 1(A) of Section 13 of the said Act. Section 13 provides the jurisdiction, powers and authority of the claims tribunal. Sub-section (1) of the said Section provides that the claims tribunals shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any Civil Court or a Claims Commissioner appointed under the provisions of the Railway Act relating to the responsibility of the railway administrations as carrier under Chapter-VII of the Railways Act in respect of claims for (i) compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a railway administration for carriage by railway and (ii) compensation payable u/s 82(A) of the Railways Act or the Rules framed there under and also in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of the animals or goods entrusted to a railway administration to be carried by it. For better appreciation, Section 13 of the 1987 Act is reproduced below:

13. Jurisdiction, powers and authority of Claims Tribunal ? (1) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any civil Court or a Claims Commissioner appointed under the provisions of the

Railways Act,?

(a) relating to the responsibility of the railway administrations as carriers under Chapter VII of the Railways Act in respect of claims for ?

(i) compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a railway administration for carriage by railway;

(ii) compensation payable u/s 82-A of the Railways Act or the rules made thereunder; and

(b) in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway.

19. Section 18 of 1987 Act lays down the procedures and powers of Claims Tribunal. It authorizes the Tribunal to regulate its own procedure in deciding of such application filed and also vested with the power as are vested in a Court under the CPC while trying a suit in respect of matters enumerated in Sub-section (3) thereof. The jurisdiction and power of the Tribunal to exercise all the powers of the Civil Court, which were exercisable immediately before the appointed day by virtue of Section 13 of 1987 Act has not been taken away by the provisions contained in Section 18 of the said Act. The Civil Court has been conferred with the power to grant pendente lite interest u/s 34 of the CPC. Such power, therefore and in view of the provisions contained in Section 13 of the 1987 Act can be exercised by the tribunal and hence, the tribunal can award pendente lite interest on the amount of compensation ascertained by it. That apart, a person deprived of the use of money to which he is legitimately entitled to have a right to be compensated for the deprivation call it by any name, it may be called interest compensation or damages. The contention of the learned Counsel for the appellant that the Tribunal cannot award pendente lite interest, therefore, cannot be accepted.

20. The Apex Court in *Secretary, Irrigation, Govt of Orissa (supra)*, while dealing with an arbitration proceeding under the provisions of the Arbitration Act, 1940 and where the arbitration agreement does not provide for grant of interest, in para 43 has observed as follows:

43. The question still remains whether arbitrator has the power to award interest pendente lite and if so on what principle. We must reiterate that we are dealing with the situation where the agreement does not provide for grant of such interest nor does it prohibit such grant. In other words, we are dealing with a case where the agreement is silent as to award of interest. On a conspectus of aforementioned decisions the following principles emerge:

(i) A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation call it by any name. It may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the arbitrator as it is for the period prior

to the arbitrator entering upon the reference. This is the principle of Section 34, CPC and there is no reason or principle to hold otherwise in the case of arbitrator.

(ii) an arbitrator is an alternative form for resolution of disputes arising between the parties. If so, he must have the power to decide all the disputes or differences arising between the parties, if the arbitrator has no power to award interest pendente lite, the party claiming it would have to approach the Court for that purpose, even though he may have obtained satisfaction in respect of other claims from the arbitrator. This would lead to multiplicity of proceedings.

(iii) An arbitrator is the creature of an agreement. It is open to the parties to confer upon him such powers and prescribe such procedure for him to follow, as they think fit, so long as they are not opposed to law. (The proviso to Section 41 and Section 3 of Arbitration Act illustrate this point). All the same, the agreement must be in conformity with law. The arbitrator must also act and make his award in accordance with the general law of the land and the agreement.

(iv) Over the years, the English and Indian Courts have acted on the assumption that where the agreement does not prohibit and a party to the reference makes a claim for interest, the arbitrator must have the power to award interest pendente lite. *Seth Thawardas Pherumal Vs. The Union of India (UOI)*, has not been followed in the later decisions of this Court. It has been explained and distinguished on the basis that in that case there was no claim for interest but only a claim for unliquidated damages. It has been said repeatedly that observations in the said judgment were not intended to lay down any such absolute or universal rule as they appear to on first impression. *Executive Engineer (Irrigation), Balimela and Others Vs. Abhaduta Jena and Others*, almost all the Courts in the country had upheld the power of the arbitrator to award interest pendente lite. Continuity and certainty is a highly desirable feature of law.

(v) Interest pendente lite is not a matter of substantive law, like interest for the period anterior to reference (pre-reference period). For doing complete justice between the parties, such power has always been inferred.

21. In *Smt. Laxmipati (supra)*, a Division Bench of the Madhya Pradesh High Court while dealing with the question as to whether the RCT has the power to award pendente lite interest, upon consideration of different provisions of the 1987 Act and the rules framed there under has held that the Claims Tribunals had the power to award interest on the basis of the principles of Section 34 of CPC and there should be no reason as to why the claimant will be deprived of the benefit of interest. A Division Bench of Karnataka High Court, in *D.B. Avalakki (supra)* has also held that though there is no specific provision either empowering or disentitling the tribunals from ordering interest on the amount of compensation awarded by it but since it has been made incumbent on the Tribunal to exercise powers of a Civil Court in relation to grant of compensation and since it pertains to substantive right of the claimant, the tribunal in not

passing an appropriate orders ordering interest, has erred in not exercising its jurisdiction. The Division Bench of the said Court having held so has awarded the pendente lite interest on the basis of the principles laid down in Section 34 of the CPC. The Apex Court in *A. A. Haja Muniuddian (supra)* while dealing with the question as to whether an application before the Railway Claims Tribunal in forma pauperis is maintainable, has held that although the Act and the Rules do not specifically provide for the application of Order 33 of the CPC, there is nothing in the Act or in the Rules which precludes the tribunal from following the procedure, if the ends of justice so require. It has further been observed that nowhere in the Act is there any provision which runs counter to or inconsistent with the Order 33 and the access to justice cannot be denied to an individual merely because he does not have the means to pay the prescribed fee and it is essential that the provisions of the Act and the Rules must be broadly interpreted to ensure access to justice and interpretation, which denies justice must be avoided. It has also been observed that Section 18 of the 1987 Act only says that the Claims Tribunal shall not be bound by the procedure laid down by the Court, but does not go so far as to say that it shall be precluded from invoking the provisions laid down even if the same is not inconsistent with the Act and the Rules.

22. A single Bench of this Court in *Oinam Keirukngba Meetei (supra)* has held that the principle of natural justice demands that the persons who are deprived from the use of the money due to it should be compensated by way of interest and, therefore, the tribunal has the jurisdiction to award pendente lite interest.

23. The Apex Court in *Rathi Menon (supra)*, on which the learned Counsel for the appellant has placed reliance in support of the contention that the tribunal has no jurisdiction to award pendente lite interest, has awarded interest w.e.f. the date of the order. In another recent judgment in *Rajasthan State Electricity Board Vs. Union of India (UOI) and Others*, the Apex Court has awarded interest from the date of filing the claim petition. In both these cases no occasion arose for going into the question as to whether the Tribunal has jurisdiction to award pendente lite interest. A decision is an authority for what it actually decides. What is the essence of the decision is its ratio. The enunciation of the reason or principle, on which a question before a Court has been decided is alone binding as a precedent. A case is a precedent and binding for what it explicitly decides. Hence the decision in *Rathi Menon (supra)* case cannot be treated as precedent on the issue in hand.

24. For the reasons recorded above, I could not persuade myself to agree with the views expressed by the Allahabad High Court, Andhra Pradesh High Court and Bombay High Court in *Smt. Geeta (Mishra) Devi (supra)*, *Konduru Venkata Reddy (supra)* and *Sanjar Sampat Rao Gaikwad (supra)*, respectively, relating to the power of the Tribunal to award pendente lite interest.

25. In view of the aforesaid discussions, I am of the view that the learned tribunal has the jurisdiction to award pendente lite interest on the amount of compensation determined by it under the provisions of the 1987 Act and 1989 Act

26. Having held so, I shall now deal with the individual cases:

A) MFA No. 102/07.

OA No. 33/2000 has been filed by the respondent claiming an amount of Rs. 21,162/-, being the balance amount due, out of the value of total loss at Rs. 69,120/- after deducting Rs. 47,958/-, being the amount received under protest, contending that out of a consignment of 10557 bags of cement which was booked at railway risk at AKT for NLP under Invoice dated 11-9-1997 for carriage by the railway, 18 bags were found to be short delivered and 757 bags were found to be damaged at the destination station. The appellant railway has disputed the claim as well as the rate at which such amount has been claimed. The learned tribunal vide order dated 19-4-2007, on the basis of the Assessment Delivery Certificate dated 18-1-98 issued by the railway administration certifying net shortage of 384 bags of cement held that a sum of Rs. 7,722/- is payable, being the balance amount to be paid for the said quantity of cement by taking Rs. 145/- per bag as the reasonable rate in the absence of Beejuck, without, however, recording any reason as to how Rs. 145/- per bag cement has been calculated.

B) MFA No. 113/07.

OA No. 978/1999 has been filed by the respondent claiming an amount of Rs. 8095/-, contending that out of a consignment of 140 bags of wheat which was booked at GD for NBQ at railway risk under Invoice dated 18-7-98 for carriage by the railway, 94 bags were found to be in damaged condition, the cost of which was Rs. 23,232/- @ Rs. 8/- per kg and accordingly Railway issued Assessment Delivery Certificate certifying damage of 2904 kg of wheat. It has further been contended that an amount of Rs. 15,137/- already been paid by cheque, which was encashed by the respondent on protest, leaving a balance of Rs. 8,095/- to be paid by the railway. The appellant railway has disputed the claim as well as the rate at which such amount has been claimed. The learned tribunal vide order dated 19-4-2007, on the basis of the Shortage/Damage Certificate dated 28-8-1998 issued by the railway administration certifying that a net 2847 kgs were found to be short delivered, has recorded the finding about the short delivery of such quantity of wheat. Having held so, the learned tribunal has awarded a sum of Rs. 7280/- being the balance amount to be paid for the said quantity of wheat by taking Rs. 7.80 per kg. as the reasonable rate in the absence of RR, without, however, recording any reason as to why Rs. 7.80 per Kg has been taken as reasonable rate.

C) MFA No. 117/07.

OA No. 26/2000 has been filed by the respondent claiming an amount of Rs. 21,203/-, after deducting Rs. 6319/- being the amount received under protest, contending that out of a consignment of 786 bags of salt which was booked at CHIB for DKM at railway risk under Invoice dated 30-1-95 for carriage by the railway, 134 bags were found to be short delivered, the cost of which was Rs.

14,485/- @ Rs. 67.37 per bag with interest @ 18% for 5 years. The appellant railway has disputed the claim as well as the rate at which such amount has been claimed. The learned tribunal vide order dated 23-4-2007, on the basis of the Shortage/Damage Certificate dated 22-11-95 issued by the railway administration certifying that net 215 bags of 75 Kgs each were found to be short delivered, has recorded the finding about the short delivery of such quantity of salt. Having held so, the learned tribunal has awarded a sum of Rs. 8166/-, being the balance amount to be paid for the said quantity of salt by taking Rs. 67.37 per bag as the reasonable rate in the absence of RR, without, however, recording any reason as to how Rs. 67.37 per bag has been calculated.

D) MFA No. 120/2007.

OA No. 27/2000 has been filed by the respondent claiming an amount of Rs. 7,220/-, being the balance amount payable in respect of the price of 2051 kgs of rice @ Rs. 1000/- per quintal, being the short delivery in the destination station in respect of the consignment dated 1-5-1998, whereby and where under 3496 K/ S rice was booked from RIG to NGC at railway risk. The said amount has been claimed after deducting an amount of Rs. 13,290/- being the amount paid by the railway on receipt of the notice u/s 106 of the 1987 Act under protest from the cost of the said quantity of rice delivered short being Rs. 20,510/-. The said amount has been claimed with interest and cost. In the written objection filed, the railway administration, apart from others has also challenged the claim of the respondent as well as the price thereof. The learned tribunal vide order dated 19-4-2007 has come to the finding of fact that there was shortage of 2051 Kgs of rice due to torn and loose as reflected in the Delivery Certificate dated 20-5-1998 and assessed the price of the said quantity of rice at Rs. 17,433/- @ Rs. 9.50 per kg by taking the same as reasonable rate in the absence of Beejuck and directed payment of the balance amount of Rs. 4,143/- by deducting an amount of Rs. 13,290/- which amount has already been received by the respondent, without, however, recording any reason for taking Rs. 9.50 per kg as reasonable rate. The railway administration has also been directed to pay pendente lite interest and cost.

E) MFA No. 121/07.

The respondent filed OA No. 194/2000 before the learned RCT claiming an amount of Rs. 1636/- with interest, being the cost of 38 bags of iodized salt delivered short by the railways, out of 1492 bags booked at railway's risk at BVTD for NGC vide Invoice dated 17-8-1997 at railways risk by deducting the amount paid by cheque from the total cost of the said 38 bags of iodized salt amounting to Rs. 3217/- which cheque has been encashed on protest. In the written statement filed by the railway administration, the claim of the respondent has been objected to on the ground that having accepted the cheque they cannot claim the further amount. It has further been contended that since the respondent did not submit sale invoice or Beejuck, the railway administration has settled the claim at Rs. 1581/-. The learned tribunal vide order dated 25-5-2007

by taking into account the short delivery certificate dated 21-6-1997 certifying shortage of 38 bags of 75 kg each and also the Govt. rates circular dated 11-4-1997 ascertained the loss caused to the respondent at Rs. 1636/- which has been directed to be paid with interest @ 6% per annum with cost from the date of filing the claim application.

The learned tribunal in ascertaining the compensation payable has given the reasons for such ascertainment, which is reflected in the order. Hence, no interference is called for by this Court in appeal.

F) MFA No. 122/07.

The respondent filed OA No. 46/2000 claiming an amount of Rs. 26,973/- being the cost of 11154 kg of wheat @ Rs. 690/- per quintal stated to have been damaged on transit, after deducting a sum of Rs. 49,990/- being the amount paid from the total value of the said wheat amounting to Rs. 76,963/- stating inter alia that on 23-6-97 a consignment of 150 bags of wheat was booked at BRK at railway risk for carriage to CGS and on arrival of the consignment at the destination on 24-2-1998, the goods were found to be partly damaged for which the damage certificate has been issued by the railway administration. The railway administration filed the written statement, mainly contending that since an amount of Rs. 49,990/- by cheque has been offered towards the full and final settlement of the claim and the same has been retained and encashed, no further claim can be lodged by the respondent. In the written statement filed, the railway administration however has also disputed the genuineness of the claim. The learned tribunal on appreciation of the documents produced by the parties more particularly the shortage certificate dated 18-3-1999 has held that there was shortage to the extent of 110 bags of wheat due to damage. The learned tribunal has taken Rs. 675/- per bag as the reasonable rate in the absence of any Beejuck and calculated the amount payable at Rs. 24,260/- and directed to pay the same with interest @ 6% per annum from the date of filing the claim application. The learned tribunal, however, while accepting Rs. 675/- per bag as the reasonable rate has not given any reason whatsoever.

G) MFA No. 125/07.

OA No. 30/2000 has been filed by the respondent claiming an amount of Rs. 27368/- after deducting an amount of Rs. 35921/- already paid by cheque which was encashed by the respondent on protest contending that out of a consignment of 2084 packets of rice, which was booked at RIG for NGC at railway risk under Invoice dated 9-7-1998 for carriage by the railway, 6329 kgs of rice in 428 packets were found to be in damaged condition, the cost of which was Rs. 63,290/- @ Rs. 10/- per kg. The appellant railway has disputed the claim as well as the rate at which such amount has been claimed. The learned tribunal vide order dated 23-4-2007, on the basis of the Delivery Certificate cum A/D dated 31-1-98 issued by the railway administration certifying short delivery of 6009 kgs of rice, has recorded the finding about the short delivery of such

quantity of rice. Having held so, the learned tribunal has awarded a sum of Rs. 15,155/- being the balance amount to be paid for the said quantity of rice by taking Rs. 8.50 per kg, as the reasonable rate in the absence of Beejuk, without, however, recording any reason as to the basis for taking Rs. 8.50 kg as the reasonable rate.

H) MFA No. 126/07.

The respondent filed OA No. 48/2001 claiming an amount of Rs. 2245/- contending that out of a consignment of 2319 bags of salt, which was booked at HVD for DKM under invoice dated 17-7-1998 for carriage by the railway at its risk, 40 bags were found to be short delivered, the cost of which was Rs. 3574/- @ Rs. 89.34 per bag. According to the respondent, out of the said amount, Rs. 2616/- has already been paid by cheque, which was encashed by the respondent on protest, leaving a balance of Rs. 2245/- to be paid by the railway. The appellant railway in the written objection has disputed the claim stating that it is highly excessive. The learned tribunal vide order dated 27-4-2007, on the basis of the Delivery Certificate dated 18-6-99 issued by the railway administration certifying that 40 bags of salt of 75 Kgs each were short delivered, has recorded the finding about the short delivery of such quantity of salt. Having held so, the learned tribunal has awarded a sum of Rs. 578/- being the balance amount to be paid for the said quantity of salt by taking Rs. 79.87 per bag for 40 bags, as the reasonable rate in the absence of Beejuk, without, however, recording any basis for taking the reasonable rate at Rs. 79.87 per bag.

I) MFA No. 128/07,

OA No. 24/2000 has been filed by the respondent claiming an amount of Rs. 7,360/- contending that out of a consignment of 1160 packets of 50 Kg each of rice which was booked at RIG for NGC under Invoice dated 21/22-2-98 for carriage by the railway at its risk, 50 packets were found to be short at the destination, the cost of which was Rs. 21,250/- @ Rs. 8.50 per kg. after deducting an amount of Rs. 17,640/- already paid by cheque, which was encashed by the respondent on protest, leaving a balance of Rs. 7360/- to be paid by the railway. The appellant railway has disputed the claim as well as the rate at which such amount has been claimed. The learned tribunal vide order dated 19-4-2007, on the basis of the Delivery Certificate dated 9-3-98 issued by the railway administration certifying that 50 bags of 50 kgs each were found to be short delivered, has recorded the finding about the short delivery of such quantity of rice. Having held so, the learned tribunal has awarded a sum of Rs. 3,610/-, being the balance amount to be paid for the said quantity of rice by taking Rs. 8.50 per kg, as the reasonable rate in the absence of Beejuk, without, however, recording any reason as to why Rs. 8.50 per kg of rice has been taken as reasonable rate.

J) MFA No. 130/07.

The OA No. 96/2000 has been filed by the respondent before the learned tribunal

claiming an amount of Rs. 15,764/- being the balance amount of the value of 5656 kgs of wheat contending that a consignment of 360 bags of wheat was booked from MRIJ to NGC under Invoice dated 10-5-98 for carriage by the railway at its risk and at the destination station, 112 bags of wheat were found in damaged condition, the value of which is Rs. 45,248/- @ Rs. 800/- per quintal and out of which an amount of Rs. 29,484/- has been paid by cheque which has been encashed after due protest, leaving a balance of Rs. 16,764/- to be paid. The railway administration in the written objection, apart from others has disputed the price of the goods, as claimed. The learned tribunal, by taking into account the delivery report issued by the railway on 11-5-98 and the damage certificate has recorded the finding that 559 kgs of wheat was damaged, the value of the said quantity of wheat was assessed at Rs. 41,993/- @ 7.50 per kg and directed payment of Rs. 12,509 with interest from the date of filing the application and cost after deducting the amount already paid. In this proceeding also, the learned tribunal has not recorded any reason as to why Rs. 7.50 per kg is taken to be the reasonable rate in the absence of Beejuck.

K) MFA No. 131/07.

OA No. 80/2000 has been filed by the respondent claiming an amount of Rs. 22,162/- contending that out of consignment of 555 bags containing 6140 kg of rice, which was booked at TSG for NGC under Invoice dated 2-6-1998 for carriage by the railway at its risk, 3298 kgs of rice were found to be damaged, the cost of which was Rs. 61,400/- @ Rs. 1000/- per quintal. It has further been contended that out of the said amount, Rs. 39,238/- has already been paid by cheque, which was encashed by the respondent on protest, leaving a balance of Rs. 22,161/- to be paid by the railway. The appellant railway in the written objection has disputed the claim as well as the rate at which such amount has been claimed. The learned tribunal vide order dated 25-4-2007, on the basis of the Delivery Certificate dated 2-6-98 issued by the railway administration certifying that 5411 kgs of rice were found to be damaged, has recorded the finding about the delivery of such quantity of salt. Having held so the learned tribunal has awarded a sum of Rs. 4,050/-, being the balance amount to be paid for the said quantity of rice by taking Rs. 8/- per kg for 40 bags, the reasonable rate in the absence of Beejuck, without, however, recording any reason as to how Rs. 8/- per kg bag has been calculated.

L) MFA No. 145/07.

The respondent filed OA No. 976/99 before the learned tribunal claiming a sum of Rs. 6127/- with interest, being the cost of 810 kgs of C/Masur contending that a consignment of 360 Kattas C/Masur was booked from Hardoi to BPRD under Invoice dated 2-8-97 for carriage by railway at railway risk and at the destination, 55 Kattas were found in damaged condition. The said amount has been claimed @ Rs. 2,000/- per quintal and by deducting an amount of Rs. 10,073/-, being the amount paid by the railway administration by cheque which has been encashed under protest, from out of the total cost of Rs. 16,200/- for

the said quantity of C/Masur Objection relating to the claim has been raised by the railway administration in the written statement. The learned tribunal vide its order dated 4-6-2007 on the basis of the report of the railway administration dated 2-11-1997 has recorded the finding of fact that there was net shortage of 793 Kgs due to damage. The value of the said quantity was assessed at Rs. 11,189/- @ Rs. 14.11 per kg as the reasonable rate in the absence of Beejuck and upon taking into account the amount already paid, the balance amount of Rs. 1,116/- has been directed to be paid with interest @ 6% per annum from the date of filing the claim application. The learned tribunal, however, has not recorded any reason as to why Rs. 14.11 per kg is taken as the reasonable rate, though for the reasons recorded above in the judgment, the learned tribunal is required to record the reasons.

M) MFA No. 5/2008.

OA No. 45/2000 has been filed by the respondent claiming an amount of Rs. 13,689/- with interest after deducting an amount of Rs. 42,153/- paid by the railway administration pursuant to the notice issued u/S. 106 of the Act, being the cost of 8093 kgs of wheat damaged during transit by the railway vide consignment dated 23-6-97 from BRK to CGS at railways risk. The railway administration has contested the claim by filing objection disputing inter alia the amount claimed. The learned tribunal in its order dated 25-4-2007, on the basis of the award and the damage certificate issued by the railway has recorded the finding that 8006 kgs of wheat was found to be damaged and by taking Rs. 6.75 per kg as the reasonable rate in the absence of Beejuk directed payment of the balance amount of Rs. 11,887/- with interest @ 6% per annum and cost after deducting the amount of Rs. 42,153/-, out of the total value of Rs. 54,040/- paid by the railway administration after the notice issued u/S. 106 of the Act. The learned tribunal, however, has not recorded any reason whatsoever as to why Rs. 6.75 per kg has been accepted as reasonable rate in the absence of Beejuck.

N) MFA No. 7/2008.

The respondent filed OA No. 519/99 before the learned tribunal claiming an amount of Rs. 3,808.50 contending that out of 360 and 180 bags of rice booked from KHH to TZTB under invoice dated 11/12-7-97 and 13-7-97 at the owner's risk, 70 and 60 bags of rice respectively were found in damaged condition against the said 2 Invoices, that the railway administration upon receipt of the notice issued u/s 106 of the Act paid an amount of Rs. 8078 and Rs. 7859/- against the aforesaid 2 Invoices by cheque which was accepted under protest. It has further been contended that since the railway administration has failed to pay the balance amount of Rs. 3,808.50, the claim application has been filed. The railway administration in this case also has filed the objection disputing the claim of the respondent as regards the amount, apart from other grounds. The tribunal on the basis of the shortage/damage certificate dated 25-9-1997 has recorded the finding relating to the shortage of 1216 kgs of rice and in the absence of Beejuck has accepted Rs. 7.50/- per kg as the reasonable rate and

directed payment of an amount of Rs. 1042/- with interest and cost after deducting the amount already paid. In this proceeding also the learned tribunal in its order dated 28-8-2007 has not recorded any reason for taking Rs. 7.50 per kg as the reasonable rate in the absence of Beejuck.

O) MFA No. 10/2008.

OA No. 47/01 has been filed by the respondent claiming an amount of Rs. 5433/- with interest and cost contending that out of 5865 bags of iodized salt booked at CHIB for carriage to NLP at railway risk vide consignment dated 19-11-1997, 67 bags of iodized salt was delivered short in the destination on 8-3-98 and but of the value of the said quantity of iodized salt an amount of Rs. 2982/- has been paid by the railway administration, leaving the balance amount to be paid, which has been accepted by the respondent under protest. The railway administration in the objection filed has contested the claim of the respondent relating to the rate also. The learned tribunal in its order dated 12-6-2007, on the basis of the short/damage certificate dated 8-3-98 has recorded the finding relating to the short delivery of 67 packets of iodized salt and has ascertained the value of such quantity to be Rs. 5025/- by taking Rs. 75/- per packet as the reasonable rate including freight and directed payment of the balance amount of Rs. 2043/- with interest and cost after deducting an amount of Rs. 2982/-, which has already been paid to the respondent by the railway administration. The learned tribunal in the said proceeding has also not recorded any reason for taking Rs. 75/- per packet as the reasonable rate in the absence of Beejuk.

P) MFA No. 13/08.

The respondent filed OA No. 52/01 before the learned tribunal claiming an amount of Rs. 7,345/- being the balance amount to be paid by the railway administration towards the cost of 132 bags of salt allegedly delivered short, contending that out of 4704 bags of salt booked at HVD to DKM at railway risk vide consignment dated 17-7-1998, 132 bags of salt was delivered short and out of the value of the said quantity, an amount of Rs. 8692/- has been paid by the railway administration which has been received by the respondent under protest. The railway administration filed the objection contesting the claim of the respondent relating to the rate also. The learned tribunal vide order dated 18-7-07, on the basis of the documents produced has accepted the short delivery of 132 bags of salt and ascertained the amount payable by taking the Beejuk rate at Rs. 80.27/- which has been produced by the respondent and directed payment of the balance amount of Rs. 1903/- with interest. Since the learned tribunal has ascertained the amount of compensation payable on the basis of the Beejuk rate, It cannot be said that there is no basis for ascertaining the amount of compensation payable. Hence, the appeal filed by the railway administration is dismissed.

Q) MFA No. 16/08.

OA No. 316/99 has been filed by the respondent claiming an amount of Rs.

2819.50 contending that out of the 180 bags of rice booked from BC to TZTB under Invoice dated 30-6-1997 at the railway risk, 51 bags were found in damaged condition and 1529 Kgs of rice were found to be damaged while taking assessment delivery. It has further been contended that out of the total value of the said rice amounting to Rs. 12,996.50, an amount of Rs. 10,177.00 has been paid which has been accepted by the respondent under protest. The railway administration like in other cases contested the proceeding relating to the rate also. The learned tribunal in its order dated 9-4-2007, on the basis of the A/D Report dated 6-9-1997 found that 1513 Kgs of rice was delivered short and ascertained the value of the same by taking Rs. 8/- per Kg as the reasonable rate in the absence of Beejuk and directed payment of the balance amount of Rs. 1,927/-with interest and cost. The learned tribunal, however, has not recorded any reason as to why Rs. 8/- per Kg. is taken as the reasonable rate in the absence of Beejuk.

R) MFA No. 32/2008.

OA No. 426/2000 has been filed by the respondent before the learned tribunal claiming an amount of Rs. 5849/- being the balance amount to be paid by the railways towards the cost of 153 bags of salt delivered short at the destination station on 12-9-99, out of 5459 bags of salt booked at CHIB for carriage to DKM at railway risk vide Invoice dated 7-7-1999. The respondent also claimed interest and cost. The railway administration in this case also contested the proceeding questioning the amount of compensation claimed. The learned tribunal on the basis of the short delivery certificate dated 12-9-1999 issued by the railway administration, in its order dated 25-7-2007, has recorded the finding relating to the short delivery of 153 bags of salt and ascertained the value of such quantity of salt on the basis of the rate as per Beejuk and directed payment of the balance amount of Rs. 1994/-with interest and cost. The tribunal has recorded the reason for ascertaining the amount of compensation i.e. Beejuk rate. Therefore, it cannot be said that there is no basis for ascertaining the amount of compensation payable as awarded by the learned tribunal. Hence, the appeal filed by the railway administration stands dismissed.

S) MFA No. 41/2008.

The respondent filed OA No. 306/99 before the learned tribunal claiming an amount of Rs. 2694/- with interest and cost, being the balance amount payable by the railway administration out of Rs. 10,960/-, contending that 548 Kgs of Masoor Dal was found to be in damaged condition in the destination station, out of the consignment of 180 Kattas of M/Dal booked from BC to TZTB under Invoice dated 17-7-97 at the railway risk. It has further been contended in the said Original Application that out of Rs. 10,960/-, the railway administration has paid Rs. 8266/-, which has been received under protest, leaving the balance amount of Rs. 2694/- to be paid. In the objection filed by the railway administration, the amount claimed and also the rate at which it has been claimed has been contested. The learned tribunal in its order dated 19-7-2007,

on the basis of the A/D Report cum Damage Certificate dated 22-8-1997 has recorded the finding relating to the short delivery of 537 Kgs of Dal and assessed the value of the said quantity at Rs. 9,666/- by taking Rs. 18/- per Kg as the reasonable rate in the absence of Beejuk and directed payment of the balance of amount of Rs. 1400/- after deducting Rs. 8266/- already paid by the railway administration. The learned tribunal has also directed payment of interest and cost by the order dated 19-7-2007. The learned tribunal, however, has not recorded any reason as to why Rs. 18/- per Kg has been accepted as the reasonable rate.

27. In view of the aforesaid discussions, the orders of the learned tribunal challenged in MFA Nos. 102/07, 113/07, 117/07, 120/ 07, 122/07, 125/07, 126/07, 128/07, 130/07, 131/07, 145/07, 5/08, 7/08, 10/08, 16/08 and 41/2008 are set aside, there being no reason recorded by the learned tribunal while ascertaining the reasonable rate, though reasons are required to be recorded, even though the issues are not framed. The said appeals are accordingly allowed. The connected Original Applications are directed to be decided afresh by the learned tribunal, keeping in view the observations made hereinbefore in" this judgment, as expeditiously as possible, preferably within a period of 3 months from the date of receipt of the relevant records. Parties are directed to appear before the learned ROT on 15-6-2009. However, for the reasons recorded above, MFA Nos. 121/07, 13/08 and 32/08 are dismissed as the orders passed by the learned tribunal in the connected Original Applications reflect the reasons for ascertaining the amount of compensation payable to the respondents therein.

28. Keeping in view the entire facts and circumstances of the appeals, the parties are directed to bear their own costs in the appeals. Send down the records forthwith.