
(2010) 09 GAU CK 0024
In the Gauhati High Court
Case No : MFA No. 39 of 2008

Union of India (UOI)

APPELLANT

Vs

Bharat Trading Co.

RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23

Citation : (2011) 2 GLR 274 : (2011) 2 TAC 639

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : S. Sarma and B. Devi, for the Appellant; A. Goel, for the Respondent

Judgement

I.A. Ansari, J.—This is an appeal u/s 23 of the Railway Claims Tribunal Act, 1987, against the judgment and order, dated 23.8.2007, passed by the learned Railway Claims Tribunal, Guwahati Bench, in application No. 275/2004.

2. The Respondent herein lodged a claim with the Railway Claims Tribunal, Guwahati Bench, seeking recovery of a sum of Rs. 51,795, the case of the applicant Respondent being, in brief, thus: A consignment of 2474 tins, containing Soya Refined Oil ("SR oil"), was booked with the railways at the railways risk, but, when the consignment arrived at the destination after undue delay, it was found, at the time of unloading of the, consignment, that the wagon did not have any seal and the doors of the wagon were lying open. This apart, on the body of the wagon, no indication, by way of label, or otherwise, was given indicating that the articles kept there were to be protected. The tins of SR oil were found totally damaged and crushed and there was shortage of 1151 kgs. of SR oil. Though the applicant had raised his claim for compensation, no compensation was paid by the railways. Thus, the applicant has sustained substantial loss due to gross negligence and misconduct on the part of the railway authorities and the railway is, therefore, liable to make good the loss, which the applicant has sustained.

3. By filing their written statement, the railways denied their liability by contending, inter alia, that the soldering joints of the tins, in question, were leaky and the SR oil flowed out and that there was no negligence on the part of the railway and its employees and, hence, the railway was not responsible for the loss, if any, sustained by the applicant.

4. By judgment and order under appeal, the learned Tribunal has held the railways, (i.e., the Appellant) liable for the loss, which has been sustained by the applicant-Respondent, and has accordingly directed the Appellant herein to pay Rs. 46,275, as compensation with interest @ 6% per annum, to the applicant-Respondent Aggrieved by the findings of the learned Tribunal and the directions, so given, the present appeal has been preferred by the railway.

5. I have heard Mr. S. Sarma, learned Counsel for the Appellant, and Mr. A. Goel, learned Counsel for the Respondent.

6. While considering the present appeal, it needs to be noted that, in the present case, the allegations, made by the Respondent herein, (i.e., the applicant in the claim application), attributing negligence on the part of the railway and its employees in carrying the consignment, were denied and disputed by the present Appellant. The Appellant also disputed that there was any negligence on the part of the railway or its employees and asserted that they were in no way liable to make payment of compensation for the loss, if any, sustained by the applicant.

7. The learned Tribunal, however, neither framed any issue nor fixed points for determination. This apart, no evidence whatsoever was recorded on the disputed questions of fact and the entire claim was disposed of by a summary order recording findings of fact, which were contrary to the defence, which the Appellant had taken inasmuch as the learned Tribunal has held to the effect, without recording any evidence, as indicated hereinbefore, that there was negligence on the part of the railway and its employees in carrying the said consignment.

8. It needs to be noted that when the Appellant had not admitted the allegations of negligence, made against them, or the liability, which the Respondent herein had claimed as the liability of the Appellant, the learned Tribunal ought to have framed appropriate issues, or fix points, for determination and, then, upon taking of evidence, which may have been adduced by the parties concerned, on the various disputed questions of fact, decided the legality, or otherwise, of the claim, which had been made by the applicant-Respondent.

9. As the learned Tribunal has decided the question of fact without bringing any evidence on record and without, in fact, allowing any of the parties to the claim application to adduce evidence, the directions, given by the impugned judgment and order, cannot be sustained.

10. In the result and for the foregoing reasons, the impugned judgment and order are hereby set aside and the claim proceedings are remanded back to the

learned Tribunal for disposal, in accordance with law, bearing in mind the observations made in the preceding paragraphs of this judgment and order.

11. The claim application shall be taken by the learned. Tribunal, on 11.10.2010, for further necessary order. The parties to this appeal shall appear before the learned Tribunal on the date as fixed hereinbefore. The claim application shall be disposed of by the learned Tribunal within a period of two months from the date of appearance of the parties concerned in the claim proceeding.

12. With the above observations and directions, this appeal shall stand disposed of.

13. No order as to costs.