

(2000) 06 GAU CK 0028
In the Gauhati High Court
Case No : M.A. (F) No. 69 of 1991

Union of India (UOI)

APPELLANT

Vs

Gauhati Trading Co.

RESPONDENT

Date of Decision : 28-06-2000

Acts Referred:

Railways Act, 1890 — Section 77C

Citation : (2002) ACJ 1406 : (2000) 3 GLT 439

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : P. Khataniar, K. Basar and K. Davi, for the Appellant; O.P. Bhati and J.C. Gaur, for the Respondent

Final Decision : Allowed

Judgement

J.N. Sarma, J.—This appeal has been filed u/s 28 of the Railway claims Tribunal Act, 1987 against the order dated 12.9.1991 passed in C.A. No. 18 of 1989, by the learned Railway Claims Tribunal, Guwahati Bench at Guwahati awarding Rs. 9,773.00 as compensation for damage to the respondent No. 1.

2. The brief facts of the case are as follows :

3. The applicant sent a consignment and the consignment was delivered to the applicant on 1.1.1987 and at the time of taking delivery it was found that 46 tins out of 574 tins of M. Oil were in dented and cracked condition and as a result thereof the shortage was found to the extend of 528 Kgs. of M. Oil. The case of the applicant was that the shortage was caused due to the negligence and misconduct on the part of the Agents/servants of the Railway Admn. In transit and as such there was a prayer for a decree for sum of Rs. 11,088. The Tribunal found that according to the bill Exbt. 6 the price of the goods comes to Rs. 9,467 and it was this amount which was decreed according to the Exbt. 6 and Beejuck.

4. A written statement was filed wherein the Railway Administration denied the allegations of negligence. As many as eight issues were framed in the case. It is

not necessary to quote the issues for disposal of this case. It was found by the Tribunal on consideration of the Railway receipts Ext. 5 and the Bill Exbt. 6 that the claimant is the legal owner of the suit consignment. The short certificate Exbt. 6 wherein the shortage as alleged by the claimant was admitted. It was further found that necessary notice u/s 78B of the Indian Railways Act and Section 80 of the CPC was served on the Railway and that was accepted as Exbt. 8 which is a combined notice by them u/s 78B and Section 80 of the CPC as such notice was found to be valid and it was found that the necessary statutory notice was served on the Railway authority. It was further found that vide Exbt. 7 it was admitted that there was a shortage. There was some endorsement regarding insufficient packing but the Tribunal found that the claimant is entitled to a sum of Rs. 9,773. Hence, this appeal.

5. I have heard Sri P.K. Khataniar, Learned Advocate for the appellant and Mr. O.P. Bhati, Learned Advocate for the respondents.

6. This matter is squarely covered by the decision of this court reported in 1997 (1) GLT 257 (Kanhaiyalal Kamal Singh v. Union of India) wherein the view of the Calcutta High Court in 1974 Cal 207 was not accepted as the correct decision. It follows from that decision that the Railway authority is entitled to get the benefit of Section 77(C) of Railway Act. In this particular case it is the finding of the tribunal which reads as follows :

"Now the main question to be considered by us is, whether the Respondent-Railway Administration is not responsible for the shortage in the suit consignment because the packing condition was not complied by the sender. In the forwarding note; Exh. 9, there is a Rubber Stamp endorsement which reads and under : "

"P 3 not complied with regarding Thickness of saw dust & paddy husk. Upper layer tins tied with string. All sides filled with saw dust & paddy husk insufficiently 12 wooden planks used as dunnage near door wagon boarded C/L pasted."

Similar endorsement in the Rubber Stamp appears on RR Exh. 5. So it cannot be said that this endorsement regarding non-compliance of packing condition was subsequently made by some Officer of the Railway Administration as suggested by Shri L.M. Barua, the Learned Advocate for the Applicant in the course of his argument. We take it for granted that this endorsement regarding P 3 not complied with etc. was made in the forwarding note with the knowledge of the sender of the suit consignment. Of course, the Rubber Stamp of this endorsement must have been used by the concerned Railway Officer of the forwarding station. It must be within the knowledge of the sender of the goods."

7. Same is the decision of a Single Judge of this-court in 1984 (1) GLR 276(Jyoti Flour Mills v. Union of India and others) wherein in paragraph 10 the law has been laid down inter alia as follows :

"Section 77C deals with responsibility of a railway administration for damage, deterioration, etc., of goods in defective condition or defectively packed under Clause (b) of Sub-section (1) of that section when any goods tendered to a railway administration to be carried by railway are either defectively packed or packed in a manner not in accordance with the general or special orders, if any, issued under Subsection (4) and as a result of such defective or improper packing are liable to damage, deterioration, leakage or wastage, and the fact of such condition or defective or improper packing has been recorded by the sender or his agent in the forwarding note, then, notwithstanding anything contained in the foregoing provisions of Chapter VII, the railway administration shall not be responsible for any damage, deterioration, leakage or wastage, or for the condition in which such goods are available for delivery at destination, except upon proof of negligence or misconduct on the part of the railway administration or any of its servants. Under Sub-section (2). thereof when any goods delivered to a railway administration to be carried by a railway are found on arrival at destination to have been damaged or to have suffered deterioration, leakage or wastage, then, notwithstanding anything contained in the foregoing provisions of Chapter-VIII, the railway administration shall not be responsible for the damage, deterioration, leakage or wastage of the goods on proof by the railway administration (a) that the goods were, at the time of delivery to the railway administration in a defective condition or were at that time either defectively packed or packed in a manner not in accordance with the general or special order, if any, issued under Sub-section (4) and as a consequence of such defective condition or defective or improper packing....."

8. That being the position on the findings of the Tribunal on the defective condition this appeal is to be allowed which I hereby do and the judgment and order of the Tribunal quoted above shall stand quashed.