

(2004) 12 AP CK 0011
In the Andhra Pradesh High Court

Union of India (UOI)

APPELLANT

Vs

I.B.P. Co. Ltd.

RESPONDENT

Date of Decision : 15-12-2004

Acts Referred:

Railways Act, 1989 — Section 81, 94

Citation : (2007) 2 ACC 194 : (2005) 2 RCR(Civil) 465

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Judgement

V. Eswaraiah, J.—Heard the learned Counsel for appellant and learned Counsel for the respondent.

2. This C.M.A. is preferred by appellant Railways being aggrieved by the order of Railway Claims Tribunal, Secunderabad Bench, Secunderabad in O.A.A. No. 108 of 1998 dated 7.6.1999 in granting compensation of Rs. 68,362 to respondent herein.

3. Respondent is the applicant in the O.A.A. filed the said application contending that a consignment of tank wagon No. SC 49044 consisting of 27020 litres of M.S. was booked with appellant Railways under R.R. No. 106309 dated 2.4.1994 from Visakhapatnam to Rajahmundry with the loaded dip of 210.8 cm, but when the tank wagon was received at the destination Rajahmundry on 5.4.1994, there was shortage of 4353 litres of M.S. It is stated that while the wagon was under the custody of the Rai Iways, the top seal was found missing and the bottom seal was found intact and there was a drop in dip by 36.8 cms and, therefore, claimed compensation from the appellant Railways.

4. The case of the appellant Railways is that since the original railway receipt bears remarks "said to contain" and loading is not supervised by railway staff and, therefore, Railways is not liable to pay any compensation for the alleged shortage of M.S. It is stated that the appellant Railways is not responsible for the contents, condition, quality, quantity and value of the consignment loaded, since

the loading takes place in the applicant's siding and loading was not supervised by the railway staff and, therefore, the Railways is not responsible for the alleged missing of seals since the responsibility for sealing, etc., rests with the applicant only. It is also stated that the short delivery certificate was issued on the request of the consignee, without prejudice, at the destination station only to place on record the actual quantity received at the destination station and it does not amount to admission of any liability or the shortage was occurred due to Railways negligence in the carriage of consignment.

5. None was examined on behalf of the applicant. Based on certain documents, the Tribunal held that Section 94 of the Railways Act, 1989 cannot be used as a defence and there is no law that prohibits the Railways to supervise the loading and unloading and, therefore, Railways is liable to pay the compensation.

6. A perusal of the records discloses that nowhere, the railway authorities admitted that the railway staff supervised loading and unloading and merely because the dip measurement was mentioned in the receipt, it cannot be said that the Railways has admitted the dip measurement at the time of loading.

7. There is no dispute with regard to the fact that the loading was made at the applicant's siding, which is not under the control of Railways. Admittedly, the railway authorities have not supervised the loading of the said consignment.

8. In this context, it is relevant to note Sections 81 and 94 of the Railways Act, 1989, which reads as under:

81. Open delivery of consignments.--Where the consignment arrives in a damaged condition or shows signs of having been tampered with and the consignee or the endorsee demands open delivery, the Railway Administration shall give open delivery in such manner as may be prescribed.

94. Goods to be loaded or delivered at a siding not belonging to a Railway administration.--(1) Where goods are required to be loaded at a siding not belonging to a Railway Administration for carriage by Railway, the Railway Administration shall not be responsible for any loss, destruction, damage or deterioration of such goods from whatever cause arising, until the wagon containing the goods has been placed at the specified point of interchange of wagons between the siding and the Railway Administration and a Railway servant authorised in this behalf has been informed in writing accordingly by the owner of the siding.

(2) Where any consignment is required to be delivered by a Railway Administration at a siding not belonging to a Railway Administration, the Railway Administration shall not be responsible for any loss, destruction, damage or deterioration or non-delivery of such consignment from whatever cause arising after the wagon containing the consignment has been placed at the specified point of interchange of wagons between the Railway and the siding and owner of the siding has been informed in writing accordingly by a railway servant

authorised in this behalf.

9. In the instant case, as per the applicant, the bottom seal of the wagon was found intact, but the top seal was found missing. There is no evidence to show that there is a shortage due to the opening of top lid at the delivery point. In the absence of any such evidence and in the absence of Railway supervision at the time of loading and unloading, Section 94 of the Act gives protection to the Railway authorities from paying the compensation.

10. In the instant case, admittedly, the goods were loaded and delivered only at the siding of the applicant which did not belong to the Railway Administration and, therefore, I am of the view that the Railways is not responsible for any loss of the said shortage of M.S. The Tribunal below, without considering any of the contentions raised by the Railways and without dealing with any of the legal provisions contained u/s 94 of the Act, simply allowed the application on the ground that there is no law which prohibits the Railways to supervise the loading and unloading. It is not the case of applicant that the Railways has supervised the loading and unloading. In the absence of any proof that Railways has supervised the loading and unloading, I am of the opinion that the respondent herein is not entitled for any compensation in view of Section 94 of the Railways Act, 1989 and as such the order of the Claims Tribunal below in O.A.A. No. 108 of 1998 dated 7.6.1999 granting compensation of Rs. 68,362 to respondent herein is liable to be set aside.

11. The C.M.A. is accordingly allowed and the order of the Railway Claims Tribunal, Secunderabad Bench, Secunderabad in O.A.A. No. 108 of 1998 dated 7.6.1999 is hereby set aside. There shall be no order as to costs.