

(1999) 09 OHC CK 0030
In the Orissa High Court
Case No : Misc. Appeal No. 528 of 1996

Union of India (UOI)

APPELLANT

Vs

Industrial Development Corporation Ltd.

RESPONDENT

Date of Decision : 08-09-1999

Acts Referred:

Railways Act, 1989 — Section 65, 65(2)

Citation : (1999) 09 OHC CK 0030

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : Bijay Pal, P.C. Panda, A.K. Mishra, S.K. Ojha and P. Das, for the Appellant; A.S. Naidu, P.K. Mohapatra and D. Mohapatra, for the Respondent

Judgement

P.K. Misra, J.—This appeal has been filed by the Union of India u/s 23 of the Railway Claims Tribunal Act, 1987, challenging the decision of the Railway Claims Tribunal, Bhubaneswar Bench, in O.A. No. 13 of 1994 directing payment of Rs. 2,34,996/- to the claimant-respondent.

2. It is alleged that the claimant-respondent had booked 20 wagons of hard coke containing 1065 M.T. under Invoice No. 52, R/R No. 898935, dated 3-9-1991 from Durgapur Coke Oven Plant Siding to 1. D.C. Siding at Barbil in the district of Keonjhar. It is further stated that on 6-9-1991, the train was derailed near Podapahar station as a result of which five numbers of wagons loaded with hard coke had to be grounded to clear the line as well as the train. These five wagons subsequently transhipped to six box wagons and were subsequently sent to the I.D. C. Siding. As per the Railway Receipt, the total weight of the hard coke in the five wagons was 286.6 M.T., but the claimant received only 167.1 M.T. of hard coke as per the weighment recorded by the railway authority and there was a shortage of 119.5 M.T. due to damage, pilferage et cetera. On the aforesaid basis, after issuing necessary notice to the railway authority, the claim was filed before the Tribunal.

3. The Union of India filed written statement stating that hard coke had been

loaded at the Siding at Durgapur and there had been- no supervision by the railway authority and necessary endorsement to that effect had been made on the railway receipt and as such without proof of the actual entrustment of 286.6 M.T. of hard coke, it cannot be assumed that there was any shortage. It was also claimed that at the time of receiving the consignment, no objection had been raised.

4. The Tribunal consisting of the Technical Member and the Judicial Member found that there was no evidence to the effect that 286.6 MT of hard coke had been loaded at the place of loading and in the absence of proof of entrustment, no shortage can be found. However, it was found that since the wagons had been derailed and in the process of unloading and re-loading there might have been shortage and since admittedly only 167.1 M.T. had been delivered, it can be concluded that there was a shortage of 119.5 M.T.. On this basis, the Tribunal directed for payment of compensation. The Judicial Member who agreed with the aforesaid order also gave a separate reasoning in support of the finding.

5. The learned Counsel appearing for the Appellant submitted that merely because R/R had been issued in respect of the five wagons indicating the, total weight to be 286.6 MT., no presumption can be raised regarding the actual quantity loaded in view of the provisions contained in Section 65 of the Railways Act, 1989, particularly the provision contained in Section 65(2), proviso, Section 65 of the Rail ways Act read as follows:

65. Railway receipt.

(1) A railway administration shall,-

(a) in case where the goods are to be loaded by a person entrusting such goods, on the completion of such loading; or

(b) in any other case on the acceptance of the goods by it, issue a railway receipt in such form as may be specified by the Central Government.

(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 authorised in this behalf, and a statement to that effect is recorded in such rail way 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

A bare reading of Section 65 indicates that ordinarily the rail way receipt shall be prima facie evidence of the weight and the number of packages stated therein, but in case of consignment in wagon-load or train-load, when the -weight or number of packages was not checked by an authorised railway servant and a statement to that effect is recorded in the railway receipt, the burden of proving the weight is on the consignor, the consignee or the endorsee. In other words, in

case such endorsement was made that loading was not in presence of authorised railway servant, no presumption is available to be raised.

Interpreting the aforesaid provision, it has been held in the decision reported in Union of India (UOI) Vs. Aluminium Industries Limited, that where Proviso is applicable, the burden is on the consignor, the consignee, or the endorsee, as the case may be, to prove the actual weight of the materials loaded into the wagon and in the absence of any such proof, no presumption can be raised merely from the shortage certificate. In the present case, necessary endorsement had been made on the railway receipt. Therefore, prima facie, no presumption can be raised regarding the quantity of hard - coke loaded into the five wagons and in the absence of any proof, prima facie, the claim could not have been sustained.

6. It appears in the present case that though Issues had been framed, the issues did not properly reflect the question to be decided. Issue No. 1 which is somewhat relevant, is as follows

1. Does the applicant prove booking of goods in, the consignment of 119.5 M.T. out of 286. 6 M.T. of hard coke

7. Keeping in view the nature of dispute, there is no doubt that Issue No, 1 is not appropriately framed. The question is as to whether 286.6 M.T. of hard coke had been loaded and/or the actual weight of the hard coke loaded into the five wagons in question. The issue framed appears to be quite confusing.- The Rules under the Rail way Claims Tribunal Act envisage that the matter is to be decided after framing issue. Though the rules permit taking of evidence by affidavit, the rules also contemplate that oral evidence is to be taken. Since in the present case, appropriate issue had not been framed and the issue was somewhat confusing, it is quite possible that the parties were misled regarding the nature of proof required in the case. The claimant itself is a public sector undertaking under the State and the Appellant is a department of the. Central Government. Public interest requires that every effort should be made to ferret out the truth. It is not understood as to why the claimant-respondent had remained contented by merely filing affidavit of an employee who had no personal knowledge in the matter. It is quite possible that the Respondent has,been misled by the adjective issue which had been, framed. Interest of justice require that appropriate issue should be framed and both parties should be given further opportunity of adducing further evidence. Accordingly, while setting aside the judgment of the Claims Tribunal, it is directed that the. Claims Tribunal, shall frame issue to the following effect:

Whether 286.6 M.T. of hard coke had been loaded, at Duigapur Railway Siding as claimed, in the claim application?

8. This issue shall be tried in place of original issue No. 1. From the materials on record, it is apparent that 167.1 M.T. of hard coke had been delivered. If it is found that more than 167.1 M.T. of hard coke had been loaded into the five wagons in questions is apparent that there has been short delivery and as such

necessary direction can be given for payment of compensation. Parties are directed to appear before the Railway Claims Tribunal on 7th. October, 1999. No costs.

Ordered accordingly.