

(1997) 01 RAJ CK 0058

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 1106, 1107 and 1121 etc. etc. of 1996

Union of India (UOI)

APPELLANT

Vs

Roop Narayan and Others

RESPONDENT

Date of Decision : 24-01-1997

Acts Referred:

Evidence Act, 1872 — Section 114, 17
Railways Act, 1989 — Section 64, 65

Citation : (1999) ACJ 413 : AIR 1997 Raj 123 : (1997) 3 RLW 1697

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : M. Rafiq, for the Appellant; P.C. Gupta and A.K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—The core question which arises for consideration in all these 19 appeals is as to whether consignment booked under a "said to contain" railway receipt, amounts to admission on the part of the railway administration, that the said number of articles had in fact were loaded?

2. This question has emerged in the following circumstances:

(i) The claimants respondents (for short the claimants) had filed claim application before Railway Claims Tribunal Jaipur Bench (for short the Tribunal) for short delivery of the number of bags of cotton seeds Husk mentioned in each application, on account of the negligence of the Railway. The Railway administration admitted booking particulars and issuance of short certificates but pleaded that the short certificates were issued without prejudice and the Railway Receipts bear the remark "said to contain and whatever loaded was delivered to the claimants at the destination.

(ii) There was a difference of opinion between the two members of the Tribunal,

therefore the matters were referred to third member (judicial), who concurred the earlier view expressed by member (judicial). Thus, the majority judgment was delivered in favour of the claimants by members (judicial) of the Tribunal, against which present action for filing these appeals has been resorted to.

3. Mr. M. Rafiq learned counsel for the Union of India (for short UOI) vigorously canvassed that the abbreviations like "said to contain", "L/U", "SWA" are commonly accepted in the Railway. The concept of "said to contain" has been accepted not only by proviso to Section 65 of the Railways Act but also by Rule 1529 (b) of the Commercial Manual. The Tribunal was wholly unjustified in accepting the claim of the claimants merely on the basis of shortage certificate, which in the instant case could not in any manner prove the fact as to what quantity of goods were despatched/loaded when the consignment was initially entrusted to the Railways for carriage. The onus of proving the quantity and contents of consignments, was upon the claimants which they failed to discharge. The Railway receipts were prepared on the basis of the statements made by the consignor in the forwarding Notes and it was on the basis of the statements that entries in the outward Tally Books were made. All these facts were conclusively proved by the affidavits of Shri R. K. Berwa and Shri L. Nageshwar Rao.

4. Second limb of arguments of Mr. Rafiq the learned counsel is that the Tribunal failed to appreciate that the Principal Rules and Procedure for the Preferment and Disposal of Claims for Compensation and Refunds of Railways 1980 (for short "the Rules 1980") issued by the Ministry of Railways in its para 6, provided that in addition to the description, marks, weight, freight charges etc., for which specific columns are provided in the Railway Receipt, the remarks are incorporated in the said receipt.

--L/U indicates that loading and unloading is to be performed by the sender and consignee, respectively.

--OR/RR- indicates that the freight has been charged at owner's risk rate or railway risk rate.

--SC-- indicates that a "said to contain" railway receipt is issued when the loading is not supervised by the Railway Staff and the contents and/or number of packages is not known to the railway.

--SWA-- indicates that the sender's weight is accepted for the purpose of calculation of freight at the forwarding station, but it does not preclude the Railway from weighing consignment at destination and charging according to the weight found.

These definitions proved by the Rules of 1980 have the support of Section 65 of the Railways Act. In view of this the compensation awarded by the Tribunal is wholly unjustified.

5. Third limb of arguments of the learned counsel is that the Tribunal has failed

to appreciate that no compensation could be ordered to be paid since the claims had fallen within the exception Clause (f) of Section 93 of the Railways Act 1989 as it was owing to the omission or negligence on the part of the consignor that the goods were short loaded and hence short delivered.

6. Fourth limb of arguments of the learned counsel is that the Tribunal did not place reliance upon the Railways Receipts as photostat copies of the said receipts were filed. The act of Tribunal in not placing reliance upon the Railway Receipts was wholly unjustified and illegal on the ground that provisions of CPC and Evidence Act do not strictly apply to the proceedings before the Tribunal which has to be guided by the principles of natural justice as per the provision of Section 18 of the Act.

7. Fifth limb of argument of the learned counsel is that the tribunal was wholly unjustified in coming to the conclusion that the affidavit of Shri L. Nageshwar Rao could not be read in evidence since it was not properly verified.

8. Sixth and last limb of argument of the learned counsel is that the adverse inference drawn by the Tribunal with regard to non-production of seal labels, is wholly unjustified and illegal.

9. Mr. Rafiq, the learned counsel has placed reliance on the following cases:

(i) Hari Sao v. The State of Bihar AIR 1970 SC 843.

(ii) Dominion of India v. Firm Museram AIR 1950 Nag 85.

(iii) Union of India (UOI) Vs. Chotelal Shewnath Rai,

(iv) Union of India (UOI) Vs. Aluminium Industries Limited,

(v) Union of India (UOI) and Another Vs. Aluminium Industries Ltd.,

(vi) Union of India (UOI) Vs. B.D. Jhunjhunwala,

10. Mr. Poonam Chand Gupta and Mr. Ashok Kumar Sharma, learned counsel for the claimants have supported the majority judgment of the Tribunal and contended that Railways Act 1989 came into force with effect from July 1, 1990 therefore with regard to four consignment, which were booked prior to July 1, 1990 the provision of Section 65 of the said Act were not applicable. Learned counsel further contended that the Tribunal vide its order dated March 4, 1994 directed the Railway administration to produce "Tally Books" but the said books were not produced in seven cases therefore the adverse inference was drawn against the Railway. The claimants have discharged their burden by their evidence and on the basis of documents summoned from the Railways. The affidavits filed by the persons on behalf of those persons who were present at the time of loading the consignments. The affidavits were inadmissible in evidence. Railway administration has failed to prove that consignments were delivered intact since no seal labels of the wagons were produced. The Railway has issued Damage and Deficiency Advice message to booking station in each

case which is an admission of Railway in accordance with section 31 of the Evidence Act. Reliance has been placed on the following:

- (i) A.K.K. Nambiar Vs. Union of India (UOI) and Another,
- (ii) Rudnap Export v. Eastern Association AIR 1984 Delhi 20.
- (iii) Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others,
- (iv) Avadh Kishore Das Vs. Ram Gopal and Others,
- (v) Jawala Singh Vs. Prem Singh and Others,
- (vi) Ajit Prasad Narayan Singh Vs. Smt. Nandini Satpathy,
- (vii) State of Madhya Pradesh Vs. Sardarmal,
- (viii) Sobharam Jokhram Vs. Union of India (UOI),
- (ix) India Wire Products v. U.O.I. (1990) 2 SCC 574.
- (x) Abdul Hakim v. Jodhpur Rly. 1953 R LW 607.
- (xi) Mohan Lal Vs. Union of India (UOI) and Others,
- (xii) Uttam Singh Kala Singh and Others Vs. Union of India and Others,
- (xiii) Union of India (UOI) and Another Vs. Orissa Textile Mills Ltd. and Another,
- (xiv) Union of India (UOI) Vs. Bihar State Food and Civil Supply Corporation Ltd.,
- (xv) Basanta Lal Vs. Comrs. for the Port of Calcutta and Others,
- (xvi) Anil Behari Ghosh Vs. Smt. Latika Bala Dassi and Others,
- (xvii) Onkarmal and Another Vs. Banwarilal and Others,

11. In Hari Sao (AIR 1970 SC 843) (supra) the Apex Court has referred Dominion of India v. Firm Museram AIR 1950 Nag 85 and U.O.I. v. S. P. Lakhu Reddiar AIR 1956 Mad 176 and observed as under:

"The decision in the Nagpur case (supra) was followed in Madras and it was held that the endorsement to the effect that the consignment was "said contain" a certain number of bage did not amount to any admission on the part of the railway administration that the said number of bags had in fact been loaded."

12. The Division Bench of Patna High Court in Union of India (UOI) Vs. Chotelal Shewnath Rai, has held that where the loading was done at the despatching station by the consignor himself under L/U condition, the Railway Administration was not liable for the short delivery detected at the destination. From mere mention of a particular weight of the consignment a railway receipt and forwarding note which carried such endorsement only for calculating the freight charge, no admission on the part of the Railway as to correctness of the weight

loaded could be made out to fix the liability.

13. Division Bench of Orissa High Court in Union of India (UOI) Vs. Aluminium Industries Limited, has held that where consignment booked at consignor's siding without being supervised by the Railway Staff, the Railway administration was not liable until plaintiff proved actual quantity of goods despatched, shortage certificate and railway receipt are of no help in this regard.

14. In Union of India (UOI) Vs. B.D. Jhunjhunwala, the Orissa High Court has observed that in absence of proof of actual delivery of goods to the care of Railway for dispatch, suit for compensation cannot be decreed against Railways.

15. Rule 1529 (b) of the Commercial Manual explains the concept of "said to contain" railway receipt which can be issued when the loading is not supervised by the railway staff.

The preface (para 3) to commercial Manual States as under -

"The provisions of this Manual do not supersede, alter or substitute rules and instructions contained in the statutory publications like Acts. Codes, Conference Rules, Tariffs."

Under these circumstances it is necessary to look at the provisions available in the Acts and other statutory publications which have the overriding status over the provision of the Manuals.

Section 65 of the Railways Act 1989 reads as under -

"65. Railway Receipt-- (1) A Railway Administration shall -

(a) in case where the goods are to be loaded by a person entrusting such goods

(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 railway receipt by him, the burden of proving the weight or, as the case may be, the number of packages stated therein, shall, be on the consignor the consignee or the endorsee."

The proviso u/s 65 provides a statutory confirmation, that the number of packages or weight in case of consignment in wagon-load or train-load are not checked by the railway servants necessary remarks to that effect can be recorded in the relevant railway receipt.

Para 6 of Rules 1980 issued by the Ministry of Railways, as already stated,

relates to such remarks which may be incorporated in the receipt as "L/U" OR/ RR. S/C, SWA"

The remarks "said to contain" sufficiently convey that the bags are not counted and qualify both the number of bags as well as description of the commodity.

In "said to contain" railway receipts, the responsibility of the Railway Administration would be covered u/s 93 of the Railways Act 1989 provided that the consignor, consignee or endorsee proves that the specified in number of bags were actually loaded in the wagon at the originating station. In a specific case of damage or deterioration in transit the proviso regarding number of bags u/s 65 of the Railways Act would be obviously not attracted as the receipt at destination sufficiently confirms the presumption that those bags were loaded at the originating station.

16. It is necessary to discuss at this juncture the provisions with regard to "Forwarding Note".

Section 64 of the Railways Act 1989 provides as under

"64 Forwarding Note.

(1) Every person entrusting any goods to a Railway Administration for carriage shall execute a forwarding note in such form as may be specified by the Central Government.

Provided that no forwarding note shall be executed in the case of such goods as may be prescribed.

(2) The consignor shall be responsible for the correctness of the particulars furnished by him in the forwarding note.

(3) The consignor shall indemnify the Railway Administration against any damage suffered by it by reason of its correctness or in completeness of the particulars in the forwarding note."

A perusal of Section 64 of the Act goes to show that forwarding note is a primary evidence and railway receipt is secondary evidence as railway receipt is prepared on the basis of forwarding note and not otherwise.

17. Learned Tribunal vide order dated March 4, 1994 directed the Railway Administration to produce Tally Books" but it appears that the Tally Books were produced only in seven cases.

18. The procedure to maintain the outward Tally Book" at booking station has been provided in Rule 1512 and 1513 of the Indian Railways Commercial Manual.

Rule 1513(1) provides -

"The outward tally book is an important and initial record of the actual loading of consignments and is likely to be referred when responsibility has to be fixed in

the event of any package found missing at repacking and trans shipping points or at destination station".

19. The Railway administration also took a plea that the subject wagons were received at the destination directly with R.S.I. (Riveters and Seal intact) but despite the directions issued by the Tribunal "seal labels" of the wagon were not produced.

| 20. Non production of "outward tally book" and seal labels of the wagon was fatal for the Railway Administration and the adverse inference was rightly drawn by the learned Tribunal.

21. I am also of the view that "Forwarding Note", is a original contract, one side of which is to be filled by the consignor and other is to be filled up by the Railway Administration. In absence of the affidavit of loading clerk of the railway, a presumption may be drawn that the entries made in the Forwarding Note were correct.

22. Railway Administration also submitted before the Tribunal the copy of D.D.A. (Damage and Deficiency Advice Message) admitting the shortage. This amounts to admisison u/s 31 of the Evidence Act.

23. Even if procedural technicalities with regard to verification of affidavits etc. are ignored, then also no case of interference is made out. In the cases cited by the learned counsel for the appellant, the provisions pertaining to Tally Books" and "Forwarding" Note" were not considered. Therefore the ratio of the said cases, is not applicable in these appeals.

24. Upshot of the above discussion is, that if the railway receipt contains the "said to contain" remark, it does not amount to admission on the part of the Railway Administration that the said number of articles had in fact been loaded. But when responsibility has to be fixed in the event of any package found, missing at destination station, then examination of "outward tally book" and "Forwarding Note" is necessary. The learned Tribunal by a majority judgment, has rightly allowed the applications. In view of this, all the arguments advanced by the learned counsel for the appellants, devoid of any force.

25. In the result all these appeals are dismissed. No costs.