

(2014) 04 GAU CK 0026

Gauhati High Court**Case No:** Case Nos. MFA 273, 283, 285, 293/2010, 43/2013 and 2/2009

G.M. [NF RLY]

APPELLANT

Vs

M/S. Stores and Spares Corpn.

 Union of India Vs M/s. P.P.

RESPONDENT

Enterprise

Date of Decision: April 1, 2014**Acts Referred:**

- Railway Claims Tribunal Act, 1987 - Section 20
- Railways Act, 1989 - Section 106, 110, 23, 64, 65

Citation: (2014) 4 ACC 775 : AIR 2014 Guw 99**Hon'ble Judges:** N. Chaudhury, J**Bench:** Single Bench

Advocate: U.K. Nair, Mr. D.K. Dey, Mr. U.K. Goswami, S.C., N.F. Rly., Mrs. U. Chakraborty, S.C., N.F. Rly., Mr. B. Sarma, Mr. A. Chetry, Mr. G. Goswami, Mr. H.K. Das, Mr. N.K. Das, Ms. B. Devi, S.C., N.F. Rly., Mr. S. Sarma, Ms. S. Chakraborty, Ms. M. Chatterjee, Miss. D. Sonowal and Ms. R.R. Borah, Advocate for the Appellant; K.P. Maheswari, Mr. A. Goyal, Mr. B. Maheswari, Mr. A. Choudhury, Mr. D. Mozumder, Mr. R. Sarma, Mr. P. Borah and Mr. G. Khandelia, Advocate for the Respondent

Judgement

N. Chaudhury, J.

In this batch of appeals u/s 23 of the Railways Act, 1989, the Union of India, represented by General Manager, N.F. Railway, has challenged the final judgment, passed by the learned Railway Claims Tribunal, Guwahati Bench, allowing respective claim applications and directing the appellant to pay compensation to the applicant along with interest from the date of the order till date of actual payment along with cost of the application and legal practitioners fee. All these appeals are based on a set of broad common facts. The claimants booked goods of various types including Onion, Rice etc. for delivery at destination as per the consignment booked. The claimants submitted forwarding notes u/s 64 of the Indian Railways Act, 1989

(hereinafter referred to as "the Act") and thereupon Railway Receipts u/s 65 of the Act was issued in each of these cases. After the goods were delivered at destination, according to the claimants, either there was short delivery or there was damage of the goods and such eventuality is discernible from the Tally books evidencing delivery. It is the case of the claimants that despite specific demands to the Railway authorities, short delivery certificate was not issued for which ultimately the claimant was compelled to serve notice on the Railway authority u/s 106 of the Act. As the Railway authorities did not respond, the claimants in each of the se cases were compelled to file claim petitions.

2. The Railway authorities contested the claim by filing a written statement and thereupon issues were framed in each of these cases not only on the point of merit but also on the ground of maintainability. This is because, in their defence the Railway authorities challenged the very basis of the claims stating that all these claim cases are based on Railway Receipts under the category of "said to contain". This means that the quantity and quality of the goods booked by the claimants were as per their declaration unilaterally made and the employees of the Railways did not verify the correctness or otherwise of such declarations made by the consignors. Referring to the respective Railway Receipts it was claimed that the goods were directly loaded in the wagon/train by the consignors from their trucks. It was mentioned in the R.R. itself that the booking was under the category of "said to contain" and as such the claim petitions are not maintainable.

3. The appeal was admitted by this court and records were called for. I have perused the records of the claim cases. I have heard Mr. UK Nair, Mr. DK Dey, Mrs. U Chakraborty and Mr. UK Goswami on behalf of the appellants in all these cases. I have also heard Mr. Amit Goyal and Mr. B Maheswari on behalf of the respondents/claimants.

4. The learned Tribunal by judgment passed in all these aforesaid cases allowed the claim of the respondents holding that the notice served u/s 106 of the Act was valid in each of the cases and that the applicants are entitled to relief as claimed. Such a view was taken only on the basis that despite prayers made by the applicants in the afore said claim cases, the short certificate was not issued and that unloading Tally, forwarding note, true copy of Tally book, delivery book extract, seal and card labels were not produced by the Railway authority. The Tribunal held that in the absence of those documents it is not proved that the wagons were received in SRI condition and that there was adequate care from the side of the Railway authorities. Thus, the judgment is based on the alleged failure on the part of the Railway authority to produce document.

5. Having so noticed, it is to be seen as to whether any direction was issued to the Railway authorities for production of the aforesaid documents. Section 20 of the Railway Claims Tribunal Act, 1987 (hereinafter referred to as "the Claims Tribunal Act") has vested power and jurisdiction of Civil court on a Claims Tribunal for the

purpose, inter alia, for summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of documents and also for receiving evidence on affidavits. Section 110 of the Railways Act deals with the burden of proof in a proceeding before the Claims Tribunal. It is expressly provided in the said section that burden of proving the monetary loss actually sustained shall lie on the person claiming compensation. This being the position in Section 110 as well as proviso to Section 65 of the Railways Act, undoubtedly burden lies on a claimant to prove his case. It was, therefore, the burden of the claimants of the aforesaid cases to establish by leading evidence that the amount/quantum of goods claimed to have been loaded in the wagon/train was actually so loaded and that there was either short delivery or damage of the goods booked. To discharge the said burden the claimants appear to have submitted applications before the learned Tribunal on various dates praying for discovery of documents which are in custody of the Railway authorities. But order sheet does not show that such applications received any consideration of the learned Tribunal. The order sheet does not show that any direction was issued by the Tribunal on those applications of the claimants. The finding of the learned Tribunal, therefore, that the Railway authorities failed to produce the documents is perverse. As the impugned judgment is based on this sole consideration and the learned Tribunal did not construe the provision of Section 110 read with proviso to Section 65 of the Railways Act, 1989 as to the burden of proof in claim cases, the impugned judgments are vitiated. The same are accordingly set aside and appeals are allowed.

6. The records are remitted to the learned Tribunal for passing necessary orders on the application filed by the claimants for discovery/production of documents and thereafter to decide the claim cases in accordance with law by affording adequate opportunities to both sides to reading evidence. This shall be done within a period of 3 (three) months from the date of receipt of the records as the cases are old pending ones.

7. The Registry shall transmit the records to the learned Railway Claims Tribunal at Guwahati immediately.

8. Before parting it needs to be mentioned here that in MFA 08/2011 in this batch of appeals there was an order by this court directing the appellant to deposit 50% of the awarded amount with the Registry of the Railway Claims Tribunal. Mr. UK Goswami, who represents the appellants in this case, submits that the appellants had accordingly deposited the ordered amount and it is lying with the concerned Claims Tribunal. This amount shall remain with the Tribunal and shall not be released to any one till the claim case is decided afresh in the light of the observations made hereinabove. No order as to cost.