

(2008) 12 MAD CK 0123

Madras High Court

Case No: C.M.A. No"s. 176 to 179, 235 to 238 and 388 to 392 of 2000

Seshasayee Paper and
Boards Limited

APPELLANT

Vs

The Union of India
(UOI)

RESPONDENT

Date of Decision: Dec. 23, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 34
- Railway General Traffic Rules - Rule 125, 125(1), 180
- Railways Act, 1890 - Section 106, 27A
- Railways Act, 1989 - Section 71(1)

Citation: (2008) 12 MAD CK 0123

Hon'ble Judges: R. Sudhakar, J

Bench: Single Bench

Advocate: Aiyar and Dolia, for the Appellant; V.G. Suresh Kumar, for the Respondent

Judgement

R. Sudhakar, J.

These thirteen appeals have been filed by M/s. Seshasayee Paper and Boards Limited, Pallipalayam, Erode against the following thirteen different orders, dismissing the appeals by the Railway Claims Tribunal, Chennai Bench.:

(1) O.R.95 00011 dated 6.8.1999 (OR 95 00011 dated 17.4.1998) (C.M.A. No. 176 of 2000);

(2) O.R.95 00012 dated 6.8.1999 (OR 95 00012 dated 17.4.1998) (C.M.A. No. 177 of 2000);

(3) O.R.95 00013 dated 6.8.1999 (OR 95 00013 dated 17.4.1998) (C.M.A. No. 178 of 2000),

- (4) O.R.95 00014 dated 6.8.1999 (O.R.95 00014 dated 17.4.1998) (C.M.A. No. 179 of 2000);
- (5) O.R.95 00005 dated 3.8.1999 (O.A.III/5/95 dated 17.4.1998) (C.M.A. No. 235 of 2000);
- (6) O.R.95 00009 dated 3.8.1999 (O.R.95 0009 dated 17.4.1998) (C.M.A. No. 236 of 2000);
- (7) O.R.95 00010 dated 6.8.1999 (O.R.95 00010 dated 17.4.1998) (C.M.A. No. 237 of 2000);
- (8) O.R.95 000016 dated 2.8.1999(O.R.95 00016 dated 17.4.1998), (C.M.A. No. 238 of 2000);
- (9) O.R.95 00004 dated 2.8.1999 (OA III/4/95 dated 17.4.1998) (C.M.A. No. 388 of 2000);
- (10) O.R.95 00006 dated 3.8.1999 (OR 95 00006 dated 17.4.1998), (C.M.A. No. 389 of 2000);
- (11) O.R.95 00007 dated 3.8.1999 (OA III/7/95 dated 17.4.1998), (C.M.A. No. 390 of 2000);
- (12) O.R.95 00008 dated 3.8.1999 (OR 95 0008 dated 17.4.1998) (C.M.A. No. 391 of 2000) and
- (13) O.R.95 00015 dated 6.8.1999 (OR 95 00015 dated 17.4.1998), (C.M.A. No. 392 of 2000).

2. The appellant in all the appeals is a limited company engaged in manufacture of paper for which they purchase coal from the Neyveli Lignite Corporation hereinafter called "N.L.C.". The goods are transported from N.L.C. Railway siding to the appellant SPB Railway siding, by rail. In the present case, 49 wagons of lignite were booked as a Train Load at Train Load Rate from N.L.C. Railway siding to the appellant SPB Railway siding under various invoice. The appellant filed claims for refund of excess freight together with interest at 12% from the date of booking by way of 13 claims as follows:

Sl. No.	C.M.A. No.	Invoice date	Amount claimed in Rupees
1	176 of 2000	21.10.1992 and 22.10.1992	42,852/-
2	177 of 2000	4.11.1992 and 5.11.1992	41,850/-

3	178 of 2000	19.5.1992, 20.5.1992, 21.5.1992 and 23.5.1992	42,772/-
4	179 of 2000	18.4.1992 and 19.4.1992	20,439/-
5	235 of 2000	11.11.1992, 12.11.1992, 13.11.1992 and 14.11.1992, 16.11.1992 and 17.11.1992	42,118/-
6	236 of 2000	1.7.1992 and 2.7.1992	37,101/-
7	237 of 2000	26.11.1992 and 27.11.1992	42,783/-
8	238 of 2000	21.11.1992 and 22.11.1992	41,856/-
9	388 of 2000	6.11.1992 and 7.11.1992	42,582/-
10	389 of 2000	1.5.1992,	18,969/-
11	390 of 2000	19.7.1992, 20.7.1992, 21.7.1992 and 22.7.1992	42,388/-
12	391 of 2000	28.10.1992 and 29.10.1992	42,393/-
13	392 of 2000	5.8.1992 and 9.8.1992	42,028/-

The claims were filed on the premise that the goods, viz., lignite should have been carried from N.L.C. Railway siding to the appellant SPB Railway siding through the shortest and rationalised routes in terms of General Order No. 1 of 1990 which comes into effect from 1.6.1990. The General provisions in particular para 6.9 to the General Order No. 1 of 1990, which is relevant to this case, reads as follows:

WHEREAS in the opinion of the Central Government it is necessary in the public interest so to do:

Now, therefore, in exercise of the powers conferred by Clause 1(b) of Section 27-A of the Indian Railways Act, 1890 (IX of 1890), the Central Government hereby directs that all Railway Administrations shall carry, unless it is necessary to divert such wagons for operational convenience after the consignments have been booked any goods or class of goods by such route or routes as specified in this order.

1. GENERAL PROVISIONS.

Para	Traffic		To be booked and routed via
	From	To	
	Traffic in Lignite,	a) To BG stations North of Erode.	Via Salem Market
6.9	Leco, Leco fines from Nayveli.	b) To Erode - Tiruchchirappalli section.	Via Tiruchchi

The respondents are bound to follow the above said G.O. No. 1/1990 and if there is any change they are bound to follow the procedure prescribed under the Rules.

3. As far as rate is concerned, para 10 of General Order No. 1 of 1990 states that the rates will be charged to those chargeable by the route specified above. According to the appellant, the consignments in these cases were booked for transport from N.L.C. Railway siding yard to the appellant SPB Railway siding. The consignments in all these cases were transported between two places stated above via Tiruchirappalli goods yard whereas in terms of General Order No. 1 of 1990, they should have been transported via Salem market which is the shortest route in terms of G.O. No. 1/1990. The cost per metric tonne for the routes and the excess paid by appellant is as follows:

Distance slab for 281-290 KM (wrongly routed by Respondent)	Rs. 134.50 per MT
Distance slab for 206-210 KM (shortest Route/rationalized route)	Rs. 105.90 per MT
Difference in Tariff Charges	Rs. 28.60 per MT

Stating that a sum of Rs. 28.60 per Metric Tonne were paid in excess for all the consignments, transported through the longer route, appellant issued statutory notice for refund was issued and since it was not accepted, Applications for refund together with interest were filed before the Railway Claims Tribunal.

4. All the matters were adjudicated by the Railway Claims Tribunal and the Vice Chairman accepted the appellant's plea and held that the Railway authorities have transported the goods through longer route, contrary to the General Order No. 1 of 1990 and without following the Railway General Traffic Rules and allowed the claim. The Member (Technical) disagreed with the view of the Vice Chairman. The Member (Technical) stated that the appellant was aware of the change in route for the transport of the goods through the Thiruchirappalli route and they have voluntarily paid the excess fare at the time of booking of the consignments. The claim was rejected. Due to difference of opinion between the Vice Chairman and the Member (Technical), all the matters were referred to Third Member, who agreed the view of the Member(Technical) and consequently, the claims were dismissed. Hence, the present appeals.

5. The learned Counsel for appellant contended that the Railway authorities in terms of Rule 125(1)(b) are bound to transport the goods between the two places by the shortest route under the rationalised scheme and in terms of G.O. No. 1/1990. The payment of freight for transport of the goods through the longer route cannot be a ground to deny the claim for refund of excess fare, because the Railway authorities have not followed the Rule 125 of the Goods Tariff Part-I, Vol.I, which reads as follows:

Rule 125: Routing of goods traffic: (1)(a) The term "shortest route" wherever appearing in this rule, is the shortest route between the forwarding and receiving stations as determined upon the basis of the distance notified by Railways as being the distance for charge. For purposes of determining the shortest route in cases in which break-of-guage transshipment is involved, each break-of-guage transshipment is to be reckoned as equivalent to 200 kilometres.

(b) In the absence of specific instructions in writing from the sender or his authorised agent to the contrary, goods will be despatched by the shortest route at the charges by the cheapest route, i.e., the route by which the freight charges are at the lowest.

(c) When a consignment is required to be despatched by the cheapest route, although such route is not the shortest route, the sender or his authorised agent must give written and signed instructions on the Forwarding Note as under:

To be forwarded via at my request.

The Railway Receipt and its counterfoils must also be endorsed by staff of the forwarding station as under:

Booked route selected by sender.

(d) When a consignment is required to be charged and forward by other than the shortest route or the cheapest route the sender or his authorised agent must give written and signed instructions on the Forwarding Note as under:

To be forwarded via.... a dearer route" and the Railway Receipt and its counterfoils must be endorsed by the booking station staff as under:

Dearer route selected by sender.

(e) In the event of the shortest route, when also the cheapest being partially or wholly closed for traffic, the correct route for carriage of traffic shall be the next shortest open route at the charges by the next cheapest open route. In such a case, the sender or his authorised agent should give written and signed instructions on the Forwarding Note as under:

To be charged by the next cheapest open route, the cheapest route via ... being closed.

The Railway Receipt and its counterfoils must be endorsed by the booking station staff as under:

Charged by next cheapest open route, at senders request, the cheapest route via ... being closed; and booked via

(f) In the event of the shortest route when not the cheapest being partially or wholly closed for traffic, the goods may be despatched by the next shortest open route at the charges by the cheapest route. In such cases the Railway Receipt and its counterfoils must be endorsed by the staff of the forwarding station as under:

Booked via ... the correct route being partially closed/closed.

(g) In the event of charges being equal or two by more open routes, the sender or his authorised agent may elect to have his goods charged and despatched by any open route and, where the route so selected is not the shortest route, the sender or his authorised agent must give written and signed instructions on the Forwarding Note as under:

To be forwarded via... at my request.

The Railway Receipt and its counterfoils must be endorsed by the staff of the forwarding station as under:

Booked route selected by sender.

(h) Notwithstanding anything contained in Rule 125(1)(b), on the Central Government issuing an order u/s 71(1)(b) of the Railways Act, 1989 that goods specified in the order can be carried and charged by a route specified therein or by any of the two alternative routes specified therein, the goods will be chargeable by the specified route or any of the specified alternative routes over which such goods are actually carried, even if it is not the cheapest route.

(2) Where a sender has endorsed a Forwarding Note to the effect that goods should be despatched by a dearer route and the goods are carried by that route, the consignment will be charged at the rate applicable by that route, even though an endorsement to the effect that the dearer route was selected by the sender does not appear on the invoice or is defective.

(3) When there are separate goods booking stations at the same railway centre or separate goods sheds belonging to the same Railway or different railways at the same station, the correct route shall be determined from amongst such routes only as are open from the particular station or goods shed at which goods have been tendered for despatch.

(4) Regarding booking of explosives by dearer route, see relevant rules in the I.R.C.A. Red Tariff in force.

(5) For the purpose of rating and routing, a transhipment point should be treated as closed if no arrangements exist there for transhipment of liquids in bulk vide Rule 180.

Note:

(1) A consignment may be despatched by a route other than the normal or elected route if it becomes necessary, to do so on account of causes beyond the control of Railway Administration or due to congestion in yards or other operational reasons.

(2) When the Central Government issues any order u/s 71(1)(b) of the Railways Act, 1989 to carry any goods or class of goods by such route or routes and at such rates as may be specified in the order, the same will apply notwithstanding what is stated above.

In this case Clause (e) of Rule 125(1) of the Goods Tariff Par-I, Vol.I, is more relevant.

6. The specific plea of the appellant is that as per Rule 125(1)(e) of the Goods Tariff Par-I, Vol.I, in the event of the shortest route as also the cheapest route being closed for traffic, the goods can be carried on the next shortest and cheapest open route. However, in such a case, the sender or his authorised agent should give a written and signed instructions on the Forwarding Note. Since the Railway Authorities did not inform the appellant about the closure of the shortest route, viz., Salem market, the appellant did not endorse in writing the forwarding note. Further, the booking staff has not made the endorsement on the railway receipt and its counterfoil stating "Charged by next cheapest open route, at senders request, the cheapest route via ... being closed; and booked via". These two endorsements are missing in all the cases. Therefore, the Railway authorities, having not followed the procedure prescribed, are bound to refund the excess freight. The respondents have not strictly complied with the mandate of the Act and the Rules.

7. Learned Counsel for the Railway on the other hand referred to the order of the Member (Technical) and the Third Member and stated that the appellant in these cases, after knowing that the Salem market Route was closed, had voluntarily come forward to pay the freight for the next cheapest route and he has filled up the forwarding note for the purpose of transporting the goods via Thiruchirappalli route. Therefore, the question of Railway Authorities not informing the appellant does not arise.

8. It may be true that the Salem market route which is the cheapest route was closed at the time of transport of the goods. The Railway Receipts were prepared admittedly for the longer route via Thiruchirappalli junction. The Railway Authorities in these cases have to charge the appellant on the cheapest route in terms of G.O. No. 1/1990 and Rule 125(1)(b). If there is a deviation, then they have to follow the procedure prescribed under the various clause set out in Rule 125 of the Goods Tariff.

9. The finding of the Member (Technical) is that the appellant was conscious of the fact that the Salem Market Route was closed at the time of booking of the consignment. Therefore, appellant aware of the transport of the goods through Thiruchirappalli Junction, paid the charges. It shows that appellant had knowledge that the goods are to be transported in the next available route, that is why they have made the entry as via Thiruchirappalli junction. This reasoning of the Member (Technical) cannot be accepted in view of the Rule 125(1)(e) which mandates that the Railway Authorities to make an endorsement as set out in the rules on railway receipt and counterfoil as per Clause (1)(e) of Rule 125. Further, the forwarding note also does not contain the written and signed instruction in terms of Clause (1)(e) of Rule 125.

10. The finding of the Member (Technical) that the appellant had knowledge of the alternate route cannot be accepted in the light of Rule 125(1)(e) which specifically states that the Railway Receipts and the counterfoils are to be endorsed by the booking station staff stating that "Charged by next cheapest open route, at sender's request, the cheapest route via... being closed; and booked via Thiruchirappalli". This endorsement is admittedly absent in the Railway Receipt. Therefore, the finding of the Member (Technical) is contrary to the Rules and therefore, cannot be accepted.

11. The next reasoning of the Member (Technical) to reject the claim of the appellant is that the local rate advice was issued indicating that the Salem market Junction route was closed upto 31.3.1992 and will be reopened from 1.9.1992 and therefore, the appellant have knowledge of the closure of the route. This reason cannot be accepted because the local rate advice cannot override the General Order No. 1 of 1990 issued by the Central Government in terms of Section 27(A) of the Indian Railways Act 1890. That apart, the specific rule provides for endorsement by the Railway Authorities at the time of booking of the consignment stating that "charged by next cheapest open route, at sender's request the cheapest route via... being closed; and booked via....". In the absence of specific endorsement on the railway receipt, the department cannot charge on the next cheapest route. The Rules have to be strictly complied with and in any event, the railway

department is bound by the rules and it has to adhere to the same. The claims cannot be rejected on the ground that the appellant had the knowledge of closure of shortest route. The view of the Vice Chairman, therefore is to be accepted and the appellant is entitled to refund of excess freight paid in respect of each of the consignment as above under dispute.

12. As far as interest is concerned, as rightly pointed out by the Third Member, in the notice issued u/s 106 of the Indian Railways Act, the appellant has not claimed pre-suit interest and that was accepted by the Third Member. The appellant having not claimed, the pre-suit interest at the first instance, while issuing notice of claim, cannot now pray for the same. The Division Bench of this Court in [Batliboi and Company Ltd. Vs. Beama Manufacturers P. Ltd.](#), held in para 20 as follows:

20. The claim of the plaintiff/respondent to pre-suit interest is to be judged keeping in view the aforesaid principles. There is no dispute that in the present case, there is no written instrument, under which the debt is payable at a certain time. The plaintiff has also not specifically averred in the plaint that there was any agreement with the defendants regarding payment of interest or there is any usage having the force of law regarding payment of interest. It is of course vaguely asserted that the plaintiff was paying interest to the bank for the arrangement with the bank and the defendants were making such payment, but, in our opinion, the pleading is not clear about any usage having the force of law regarding payment of interest. Similarly the evidence to the effect that on few occasions interest is paid by the defendants does not have the effect of establishing a usage having the force of law. In the absence of any proof of agreement, either express or implied, or usage having the force of law regarding payability of interest, and in the absence of any written instrument, the claim of interest can be sustained only if it is proved that a written notice to that effect has been issued.

13. In so far as the interest pendente lite and future interest it has been repeatedly held by Courts that it is within the discretion of the court to grant such rate of interest depending upon the facts and circumstances of the cases.

(i) The Apex Court in [Central Bank of India Vs. Ravindra and Others](#), in para 55(8), held as follows:

(8) Award of interest pendente lite and post-decree is discretionary with the court as it is essentially governed by Section 34 CPC dehors the contract between the parties. In a given case if the court finds that in the principal sum adjudged on the date of the suit the component of interest is disproportionate with the component of the principal sum actually advanced the court may exercise its discretion in awarding interest pendent lite and post-decree interest a a lower rate or may even decline awarding such interest. The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner.

(ii) In [Batliboi and Company Ltd. Vs. Beama Manufacturers P. Ltd.](#), A Division Bench of this Court held in para 22 as follows:

22. In such view of the matter, the appellants are right in their contention that no interest could have been claimed and decreed prior to the date of filing of the suit. So far as pendent lite and future interest are concerned, it is well settled that such matters are within the discretion of the Court.

14. As far as pendente lite is concerned, in this case, the period runs over two decades, if interest as claimed is granted it will exceed the principal adjudged. The rate of interest given by the Nationalised Banks during the period fluctuates around 6% to 12%. Before the Railway Claims Tribunal, the respondent Railway had the benefit of an order in their favour. Inasmuch as the claims made by the appellant were dismissed by the Railway Claims Tribunal by majority and it is only in appeal that the order has been reversed with the benefit of refund of excess freight. Therefore, it will be appropriate that the appellant in these cases is entitled to interest at the rate of 6% per annum pendente lite (i.e.) from the date of claim petition till the order of this Court. The appellant will be entitled to further interest at the rate of 6% from the date of decree till date of deposit. The post decree interest will be on the sum as per the claim i.e., on the excess freight amount only.

15. Accordingly, all the Civil Miscellaneous Appeals are allowed in part as follows:

(i) The appellant in all the cases is entitled to get refund of excess freight amount paid and interest from the date of claim petition as follows:

Sl. No.	C.M.A. No.	Decree amount granted by this Court
1	176 of 2000	Rs. 42,852/- with interest at 6% per annum from the date of claim petition till date of this judgment and at 6% per annum from this date till date of deposit on Rs. 4,2,852/- .
2	177 of 2000	Rs. 41,850/- with interest at 6% per annum from the date of claim petition till date of this judgment and at 6% per annum from this date till date of deposit on Rs. 41,850/- .
3	178 of 2000	Rs. 42,772/- with interest at 6% per annum from the date of claim petition till date of this judgment and at 6% per annum from this date till date of deposit on Rs. 42,772/- .
4	179 of 2000	Rs. 20,439/- with interest at 6% per annum from

the date of claim petition till date of this judgment and at 6% per annum from this date till date of deposit on Rs. 20,439/-.

5	235 of 2000	Rs. 42,118/- with interest at 6% per annum from the date of claim petition till date of this judgment and at 6% per annum from this date till date of deposit on Rs. 42,118/-.
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6	236 of 2000	Rs. 37,101/- with interest at 6% per annum from the date of claim petition till date of this judgment and at 6% per annum from this date till date of deposit on Rs. 37,101/-.
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7	237 of 2000	Rs. 42,783/- with interest at 6% per annum from the date of claim petition till date of this judgment and at 6% per annum from this date till date of deposit on Rs. 42,783/-.
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8	238 of 2000	Rs. 41,856/- with interest at 6% per annum from the date of claim petition till date of this judgment and at 6% per annum from this date till date of deposit on Rs. 41,856/-.
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9	388 of 2000	Rs. 42,582/- with interest at 6% per annum from the date of claim petition till date of this judgment and at 6% per annum from this date till date of deposit on Rs. 42,582/-.
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10	389 of 2000	Rs. 18,969/- with interest at 6% per annum from the date of claim petition till date of this judgment and at 6% per annum from this date till date of deposit on Rs. 18,969/-.
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11	390 of 2000	Rs. 42,388/- with interest at 6% per annum from the date of claim petition till date of this judgment and at 6% per annum from this date till date of deposit on Rs. 42,388/-.
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12	391 of 2000	Rs. 42,393/- with interest at 6% per annum from the date of claim petition till date of this judgment and at 6% per annum from this date till date of deposit on Rs. 42,393/-.
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Rs. 42,028/- with interest at 6% per annum from the date of claim petition till date of this judgment and at 6% per annum from this date till date of deposit on Rs. 42,028/- .

(ii) The appellant in all the cases is not entitled to pre-suit interest.

(iii) The respondent railway is permitted to deposit the decree amount with interest as above in eight weeks.

(iv) Since the appellant in all the cases, lost before the Tribunal and succeeded now before this Court, both the parties will bear their own costs.