

**(2005) 06 MAD CK 0134****Madras High Court****Case No:** None

Shivashankar Textiles

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

**Date of Decision:** June 13, 2005**Citation:** (2005) 3 ACC 831

Hon'ble Judges: S. Ashok Kumar, J; R. Balasubramanian, J

Bench: Division Bench

**Judgement**

@JUDGMENTTAG-ORDER

1. The appellant in this appeal is the applicant before the Railway Claims Tribunal, Madras Bench. Admittedly, he entrusted to the Railways at Coimbatore three bundles of handloom clothes for its onward journey to Hazrat Nizamuddin Railway Station at New Delhi. It is also not in dispute that out of the three bundles entrusted to the Railways, only one bundle was delivered at the place of destination. The Railways had also given partial delivery certificate (Ex. A2). The applicant/appellant made a statutory claim by issuing a notice (Ex. A-4) u/s 106 of the Railways Act, 1989, claiming a sum of Rs. 22,896, being the value of short delivered goods. The Railways replied by Ex. A-7 and Ex. A-10 denying the liability to the extent as claimed by the applicant/appellant. Before the Tribunal, the Railways took the defence that as contemplated u/s 103(2) of the Railways Act read with Rule 3(1)(iii) of the Railway (Extent of Monetary Liability and Prescription of Percentage Charge) Rules, 1990, the Railway is not liable to meet the claim of the applicant as quantified by him but they are liable to pay only at the rate of Rs. 50/- per kg. of the declared weight of goods. This defence was accepted by the Tribunal and, in turn, it awarded a sum of Rs. 2,600/- as compensation with interest. The appellant is challenging that order before this Court on the ground that the appellant is entitled to the entire sum of Rs. 22,896/-. Heard the learned Counsel on either side.

2. Learned Counsel for the appellant would submit that his client was never

put on notice at the time of entrusting the goods with the Railways for its onward journey that unless he declares the value of the consignment and pays the percentage charge, as may be prescribed on the value of the goods, his client would not be entitled to the value of the goods consigned, if in transit either the whole of the consignment or a part of it was lost. He took us through Ex. 3, the Railway receipt, given by the Railways accepting entrustment of the consignment and submitted that it is not provided/indicated anywhere therein that the consignor must declare the value of the goods and pay percentage charge. Therefore, for such failure on the part of the Railways, the consignor cannot be forced to suffer any loss. In answer to this, Mr. V.G. Suresh Kumar, learned Counsel appearing for the respondents would contend that the liability of the respondents in case of total non-delivery or partial delivery is governed by Section 103 of the Railways Act, 1989 read with Rule 3(1)(iii) of the Rules, referred to earlier. Since Statutorily the consignor is expected to declare the value of the goods and pay percentage charges on such value, the consignor cannot complain of absence of any intimation on the consignor asking him to declare the value of the goods and pay percentage charges. Admittedly in this case, learned Counsel for the Railways would submit that the consignor had not declared the value of the goods and paid the percentage charges. Therefore, his submission is that the order under challenge cannot be interfered with.

3. Having regard to the submissions made by the learned Counsel on either side, we applied our mind to the materials available on record. There is no dispute and in fact the consignor admitted in his pleadings that he had not declared the value of the goods and paid percentage charges as prescribed on such value. u/s 64(1) of the Railways Act, every person entrusting any goods to the Railway Administration for carriage shall execute a forwarding note in such form as may be specified by the Central Government. Under Sub-section (2) of Section 64, the consignor is made responsible for the correctness of the particulars furnished by him in the forwarding note. Furnishing of Railway receipt is provided for u/s 65 of the Railways Act, which the Railway furnishes to a consignor at the time of entrustment of the goods for its onward journey. Under Sub-section (2) of Section 65, a Railway receipt shall be *prima facie* evidence of the weight and the number of packages stated therein. Therefore, Ex. A3 relied upon by the learned Counsel for the consignor would only be the *prima facie* evidence of the weight and the number of packages stated therein. The consignor is not disputing the number of packages and its weight as found entered in Ex. A3. Ex. B1 is the forwarding note. As already stated, the consignor is bound statutorily vide Section 64 of the Railways Act to give such a forwarding note giving the particulars. Of course, in Ex. B1 there is no column indicating that the consignor must declare the value of the goods and pay percentage charges on it. But none-the-less, we find that if the consignor wants to make the Railway Administration liable for the value of the goods, he has to necessarily declare the value and pay percentage charges. The extent of monetary

liability of the Railways is governed by Section 103 of the Railways Act. Under Sub-section (1) of the said Act, the liability of the Railways for non-delivery, etc of the consignment, shall in no case exceed such amount calculated with reference to the weight of the consignment. Therefore, the liability of the Railways on a lost consignment or a non-delivered consignment is absolute, as provided for under Sub-section (1) of Section 103 of the Railways Act. Of course, this is subject to the exception provided under Sub-section (2) of Section 103 of the Railways Act, under which the Railway Administration is made liable for an amount not exceeding the value declared by the consignor at the time of entrustment, on the paying such percentage charges as may be prescribed on the value of such consignment. In other words, the monetary liability of the Railways is normally governed by Sub-section (1) of Section 103 of the Railways Act and in any case if Sub-section (2) of Section 103, had been complied with, then the liability of the Railways is stated to be not exceeding the value so declared. If the value is not declared at the time of entrustment, then the monetary liability of the Railway Administration is worked out as per Rule 3(1)(iii) of the Rules referred to earlier namely, Railways (Extent of Monetary Liability and Prescription of Percentage Charge), Rules, 1990. We perused Exs. B1 and B2. There is a clear endorsement on Exs. B1 and B2 that unless the consignor declares the value of the goods, the monetary liability of the Railway Administration is only u/s 103(1), read with Rule 3(1)(iii) of the Rules referred to above. Since admittedly the consignor had not declared the value of the goods and paid such percentage charge as may be prescribed on such value, the consignor cannot legally claim that he is entitled to be paid the entire value of that portion of non-delivered goods. When the rights of the consignor and the Railway Administration are governed by Statutory provision as referred to above, we are not in a position to hold that to make the Railway Administration liable for the entire value of the goods entrusted to them, the Railway Administration must call upon every consignor to declare the value of the goods and pay such percentage charges on such value of the goods. In other words, when the provision of the Statute is very clear, it is for the consignor to take advantage of such provision in his favour; declare the value of the goods; pay percentage charges as may be prescribed on such value and then claim the entire value of the goods, if he suffers any damage. Absence of any indication in the prescribed format of the forwarding note that unless the consignor declares the value of the goods, the liability of the Railway Administration is restricted as per Section 103(1) of the Railways Act read with Rule 3(1)(iii) of the Rules referred to above would not give any legal right to the consignor to defeat the statutory limitation referred to above and claim the entire value of the goods.

4. For all the reasons stated above, we find that the judgment of the Claims Tribunal do not suffer from any illegality and accordingly it is sustained and the appeal is dismissed with no order as to costs.