

(2008) 03 CAL CK 0011

Calcutta High Court

Case No: F.M.A. No. 316 of 2001

Union of India

APPELLANT

Vs

M/s. Bajranglal
Jugalkishore

RESPONDENT

Date of Decision: March 7, 2008

Acts Referred:

- Railways Act, 1989 - Section 106, 16, 79

Citation: (2008) 03 CAL CK 0011

Hon'ble Judges: Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: A.K. Banerjee, S.N. Chattopadhyay, for the Appellant; Saptangshu Basu, for the Respondent

Final Decision: Allowed

Judgement

Bhaskar Bhattacharya, J.

The Judgment of the Court was delivered by:

1. This appeal is at the instance of the Eastern Railway and is directed against the award passed by the Railway Claims Tribunal, Calcutta, in Claim Application No. 574 of 1999 thereby allowing the claim petition by directing the Railway Authority to pay Rs. 23,116/-.

2. The facts giving rise to filing of this appeal may be summed up thus:

(a) On 29th September, 1998, four consignments were booked from Chirai to Malda Town Station and the consignments were loaded in ten wagons. It appears that at the time of loading, the consigned goods were not actually weighed under the supervision of the Railway staff but based on declaration given by the consignor, those consignments were loaded.

(b) According to the Railway Authority, a vigilance team of the Eastern Railway intercepted the train concerned and conducted reweighment of the said four wagons at Pakur Railway weighbridge and it appeared that the consignments were in fact overloaded and based on the said report, overcharge at the prescribed rate was demanded from the claimant to the tune of Rs. 20,804/- at the destination.

(c) It appears from record that the claimant made payment of the excess charges and at the same time, removed the goods; but thereafter, the claimant served a notice u/s 106 of the Railways Act, 1989 demanding repayment of the charge paid by him. As the Railway Authority refused to settle the claim, the claimant submitted application u/s 16 of the Railway Claims Tribunal Act for repayment of Rs. 20,804/-.

(d) The proceedings were contested by the Railway by submitting written statement denying the material allegations and the stance taken by the Railway was that there was no illegality in realising the excess amount loaded at the time of booking as the Railway Authority is entitled to reweigh the goods at any point of time in course of the journey.

(e) The Tribunal below, however, came to the conclusion that the Railway Authority acted illegally in claiming the excess amount on the basis of alleged vigilance report without giving opportunity to the claimant's representative to witness the reweighment checked at Pakur Station and even, at the destination station, no step was taken for reweighment and, therefore, for the violation of principles of natural justice, the Tribunal below directed the Railway Authority to refund the charge of overloading with costs.

3. Being dissatisfied, the Railway Authority has come up with the present appeal.

4. Mr. Banerjee, the learned advocate appearing on behalf of the Railway Authority, has, by drawing our attention to the fact that the claimant removed the goods without any protest, contended that unless a demand was made for reweighment at the destination, the claim made by the respondent was not entertainable. Mr. Banerjee submits that if any demand was made for reweighment with proper application and if such prayer was refused, the claimant could pray for refund of the amount. He, therefore, prays for setting aside the award passed by the Tribunal.

5. Mr. Basu, the learned advocate appearing on behalf of the respondent, on the other hand, supports the award impugned and contends that the Railway Authority could not invoke Section 79 of the Railway Act without giving an opportunity of participating in the reweighment and in this case, such opportunity not having been given, the Tribunal below rightly set aside the demand of overloading. He, therefore, prays for upholding the award passed by the Tribunal.

6. After hearing the learned counsel for the parties and after going through the materials on record we are of the view that if the Railway Authority specifically declared short-delivery at the destination to the owner of the consignment without disclosing the reason for short-delivery, the acceptance of such short-delivery cannot create estoppel

against the owner in claiming the balance amount of goods or compensation for the loss in future within the period of limitation because the shortage is admitted by the Railway Authority and if the goods are not removed, he would be liable to demurrage. The position, however, would have been different, if at the time of declaration of shortage of the goods at the destination, the Railway Authority also alleges overweight and discloses that unloading of the excess goods was the reason for shortage, in such a case, if in spite of such disclosure, owner of the consignment decides to take into custody any amount of the short-delivered goods without protest and without praying for reweighment of the entire goods i.e. the short-delivered goods and the goods unloaded behind his back disputing the allegation of overloading, he should be precluded from raising such dispute in future when the excess charge is imposed. The moment the owner's representative takes into custody any part of the short-delivered goods without protest, it will be impossible to verify in future whether there was really the excess loading than the permitted amount at the time of booking.

7. In this case, the Railway Authority disclosed the reason for short-delivery and demanded excess charge for overloading. No material has been produced before the Tribunal or before us showing that the claimant demanded reweighment by disputing the allegation. It appears that the claimant actually paid the amount and removed the goods and subsequently, after such removal gave notice in term of the Section 106 of the Railway Act.

8. We, therefore, find no substance in the contention of Mr. Basu that in this case, even in the absence of any protest the claimant was entitled to lodge the claim notwithstanding the fact that he had removed the goods after payment of the overcharge without complaint. We, thus, find that the learned Railway Tribunal overlooked the aforesaid vital aspect in the facts of the present case and wrongly passed direction for refund. The award impugned is set aside on the aforesaid ground alone. The appeal is, thus, allowed. In the facts and circumstances, there will be, however, no order as to costs. Later: Let Xerox certified copy of this order be given to the parties within a week from the date of making of such application.

Rudrendra Nath Banerjee, J.