

GAHC010006342013



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MFA/61/2013

UNION OF INDIA
REPRESENTED BY THE GENERAL MANAGER, N.F. RAILWAY, MALIGAON,
GUWAHATI-11

VERSUS

M/S. DINESH SALES CORPORATION
SAXENA BILDING, IIND FLOOR, CHAMPAGURI ROAD, P.O. NORTH
BONGAIGAON, ASSAM.

Advocate for the Petitioner : MR.D K DEY

Advocate for the Respondent : MR. A GOYAL

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

JUDGMENT

Date : 10-12-2021

This appeal is directed against the judgment and order dated 10.01.2013 passed by the learned Railway Claims Tribunal, Guwahati Bench in O.A. I/GHY/2004/0074 (Old No. O.A. 74/04).

2. The respondent booked Railway wagons for carriage of 26458 bags each containing 75 kilograms of salt and 5865 bags each containing 50 kilograms of salt. The respondent paid the required freight charge. Necessary railway receipts (A/1 to A/4) were issued). There was short delivery at the destination point. Therefore, the respondent served a notice under Section 106 of the Railways Act, 1989 upon the railways.

3. The respondent staked its claim for compensation in the Railway Claims Tribunal.

4. The learned Tribunal framed the following four issues:

(i) Whether notice U/s 106 of the Railways Act, 1989 was served by applicant to the respondent in time and maintainable?

(ii) Whether the respondent prove that there was over loading?

(iii) Was there was any shortage as alleged by the applicant?

(iv) Relief and Order?

5. The respondent proved its claim, that it had booked a certain amount of goods, by submitting stock return of Deputy Director of Food & Civil Supplies (A) Department dated 05.08.2003 (A/19).

6. The appellant neither submitted delivery report nor issued delivery

certificate before the learned Tribunal.

7. After hearing both sides, The Tribunal directed the present appellant to pay Rs 1,41,850/- as compensation along with other ancillary reliefs.

8. I have given my anxious considerations to the submissions made by the learned counsel for both the sides.

9. The respondents exhibited the Railway receipts as Ext. A/1 to Ext. A/4. Until the Railway receipts are handed over to the consignee till then the consignor is the rightful owner of the consignment. When the Railway receipts are handed over to the consignee then the consignee attains all rights and liabilities of the consignor. Whenever there is loss, destruction, damage, deterioration or non-delivery of goods, then the consignee shall be entitled to claim compensation from the Railways, provided he first issues notice to the Railways under Section 106 of the Railways Act.

10. Here in this case, the Railways did not submit any documents to show that the consignor did not actually load the quantity of goods as claimed. On the other hand, the respondent proved the amount of load, loaded into the wagons by submitting the stock return by submitting the order of the Deputy Director of Food & Civil Supplies (A) Department dated 5.8.2006 which is exhibited as A/19.

11. Under the aforesaid circumstances, this court is of the opinion that

the Tribunal had correctly appreciated the evidence, the connected legal provisions and thereby arrived at a correct finding. The present appeal is devoid of merit and therefore, there is no necessity of interfering with the impugned judgment of the Tribunal.

12. The appeal is dismissed and disposed of accordingly.

13. Send down the LCR.

JUDGE

Comparing Assistant