

GAHC010197582008



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

Case No: MFA/3/2013

UNION OF INDIA
REPRESENTED BY THE GENERAL MANAGER
N.F. RAILWAY
MALIGAON
GUWAHATI
DIST. KAMRUP ASSAM

VERSUS

M/S P P ENTERPRISE
H.B. ROAD
FANCY BAZAR
GUWAHATI 781001
DIST. KAMRUP
ASSAM.

Advocate for : MRS.U CHAKRABORTY
Advocate for : MR.B MAHESHWARI appearing for M/S P P ENTERPRISE

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 12.12.2023

Heard Ms. M. Chatterjee, learned counsel appearing on behalf of Mrs. U. Chakraborty, learned counsel for the appellant. Also heard Ms. M. Sharma,

learned counsel for the respondent.

2. This appeal under Section 23 of the Railway Claims Tribunal Act, 1997 is directed against the order dated 11.09.2012 preferred for review of the judgment and order dated 09.04.2007, passed by the learned Railway Claims Tribunal, Guwahati Bench, Guwahati in Application No. 554/2000. By the said order, the learned Tribunal had decided that the correct chargeable distance was 1124 kms as against 1127 kms and accordingly, as against purported load charging for the distance of 3 kms, the respondent was found entitled to a refund of Rs.33,875/- (Rupees thirty three thousand eight hundred seventy five only) in respect of train load of sugar, which was booked from station HDCG to station NGC via BTNG-MLDT under invoice no. 17 to 21 RR No. 986360 to 986364 dated 1/2.02.2000.

3. The case of the respondent in the claim application was that train load of consignment on 29.12.1999 as aforesaid with freight charge on a distance of 1127 kms. It was contended that correct chargeable distance between two stations in between being station BTNG to station MLDT was 329 kms after reduction of 56 kms of inflated distance via Farraka in terms of Railway Board Circular dated 29.06.1998, which came into effect from 01.08.1998. However, pursuant to the Eastern Railway letter dated 06.02.1992, the travel of distance in kms for good traffic was revisited and re-fixed, which re-calculated the distance from Malda Town to Gadadharpur – Mollarpur to 385 kms.

4. The learned counsel for the appellant had submitted that post Railway Board rate instruction dated 29.06.1998, by the Eastern Railway Circular dated 03.03.2000, the distance between the Bhattanagar Junction to Malda Town was recalculated at 331 kms and that distance between New Farraka to Malda was

37 kms and therefore, the correct distance chargeable to the respondent was 1127 kms as per the distance calculation chart vide circular dated 03.03.2000.

5. It was in this regard, the learned counsel for the appellant has submitted that while the respondent has taken benefit of the distance chart calculated on 03.03.2000, which is only a part of the benefit availed in respect of the said circular of withdrawal of 56 kms, but they are refusing to pay the freight charges for the appropriate distance of 1127 kms. It is submitted that although the difference of distance is 03 kms, but as the impugned judgment shows the erroneous calculation of distance, this appeal has been preferred. It is submitted that if the respondent does not take benefit of the said circular, they would have to pay freight in respect of distance of 385 kms, which would exceed the freight charged by the Railways to the respondent.

6. The Court is unable to accept the contention of the learned counsel for the appellant. The reason for the same is that by Railway Board Circular dated 29.06.1998, which came into effect from 01.08.1998, the Railway Board had already notified the reduction of 56 kms of inflated distance. It is submitted by the learned counsel for the appellant that earlier when the Farraka Barrage was not there, it resulted in extra travel of 56 kms and after the Farraka Barrage came to operation, the distance was reduced by 56 kms.

7. It is observed that the reduction of 56 kms of inflated distance vide Railway Board circular dated 29.06.1998 was not made subject to any further re-calculation that would be made by the Railway authorities in future as regard to distance. Therefore, when the distance table came to existence on and from 03.03.2000, the Court is of the considered opinion that the distance table would be operating prospective as there is nothing contained in the relevant circular of

Railway distance table that such distance would be given effect from anterior date of 01.08.1998. Therefore, in the absence of any such record, it appears that the re-calculation of the distance vide Railway circular dated 03.03.2000 was an independent exercise and is not relatable to the previous Railway Board circular dated 29.06.1998, which came into effect from 01.08.1998.

8. Therefore, for the reasons assigned above, the Court is inclined to hold that the learned Railway Claims Tribunal did not commit any error to rely on the Railway circular of 29.06.1998 in respect of reduction/withdrawal of 56 kms of inflated distance and the Court does not find any infirmity in the decision of the learned Tribunal that the correct chargeable distance on reduction of 56 kms would come to 1124 kms as against 1127 kms, for which calculation was made by the Railways.

9. Accordingly, this appeal fails and the same is dismissed without interfering with the impugned order dated 11.09.2012 preferred for review of the judgment and order dated 09.04.2007, passed by the learned Railway Claims Tribunal, Guwahati Bench, Guwahati in Application No. 554/2000.

10. Under the circumstances, the parties are left to bear their own cost.

11. Let the LCR be returned back.

JUDGE

Comparing Assistant