

GAHC010108692011



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

Case No. : MFA/122/2011

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

VERSUS

M/S JAIPRAKASH ASSOCIATES LIMITED,
161/206 SHRIMANTA MARKET, A.T. ROAD GUWAHATI-1, ASSAM.

Advocate for the Petitioner : MR.N K DAS

Advocate for the Respondent : MR.B MAHESHWARI

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

Date of hearing : 13.05.2024

Date of Judgment : 28.06.2024

JUDGMENT & ORDER (CAV)

Heard Mrs. U. Chakraborty, learned Senior Railway Counsel appearing for
the appellant and Ms. M. Sharma, learned counsel appearing for the

respondent.

2. This is an appeal under Section 23 of the Railway Claims Tribunal Act, 1987 challenging the judgment and award dated 13.09.2011 passed by the Railway Claims Tribunal, Guwahati Bench in Original Application No. III-1325/2007 (Old), OA-I/GHY/2007/1325 (New).

3. On 31.01.2007, M/S Joyprakash Associates Limited (hereinafter referred to as the respondent only) send a consignment of 147480 bags of cement from JPRG - SATNA to GOM. At the time of unloading of the consignment at its destination, it was found that 1638 bags of cement were missing.

4. Therefore, notice u/s 106 of the Railways Act, 1989 was served.

5. Thereafter, the respondent filed the Original Application before the Tribunal seeking compensation for short delivery of 1638 bags of cement @ 248.50 per bag.

6. The appellant/Railways contested the said application by stating that the respondent did not take delivery of the goods at its destination. Rather, the delivery was taken by Senior Manager of Power House Complex at Kalaptukar, Lower Subansiri, Arunachal Pradesh. Therefore, the appellant/Railways denied the story of short delivery of cement bags.

7. On the basis of the pleadings of both the parties, the following issues were

framed by the Tribunal :-

1. Whether valid notice in terms of Section 106 of the Railways Act, 1989 served upon the respondent/Railways within time ?
 2. Whether the applicant holds legal title to demand compensation as prayed in his claim application with interest ?
 3. Whether the respondent/Railway had been negligent which resulted in shortage of consignment during railway transit ?
 4. Whether the respondent/Railway proves that goods arrived at destination in sealed intact wagon ?
 5. Relief, if any.
8. The Tribunal held that the notice u/s 106 of the Railways Act, 1989 was served within time.
9. The Tribunal further held that the respondent holds legal title to demand compensation because the respondent has proved the Exhibits A37 to A39, the letters of authority issued by National Hydro Electric Power Corporation Ltd. The Tribunal also held that the respondent/Railways was negligent, for which there was short delivery of the consignment.
10. The Tribunal held that at the destination, the said certificates i.e. Exhibit

A1 to Exhibit A12 were jointly signed by both parties, which confirms that there was short delivery of the consignment.

11. Finally, the Tribunal granted a compensation of Rs.3,77,472/ (Rupees three lakh seventy seven thousand four hundred and seventy two) to the respondent.

12. Aggrieved by the aforesaid judgment of the Tribunal, the appellant filed the present appeal.

13. The appellant claimed that the respondent has no legal title and legal right to file the said claim application before the Tribunal.

14. The appellant further claimed that the consignment was booked at forwarding station bearing remarks in the railway receipt recorded as "said to contain, loading not supervised by railway staff, loading from open platform, wagon sealed by F.Y. staff, B/G strips not used properly by F.Y. staff, SWA." The appellant has claimed that it was the burden of the respondent to prove the number of cement bags loaded into the train.

15. I have considered the submissions made by the learned counsels of both sides.

16. Exhibits A1 to A12 are the delivery certificates jointly signed by both sides, which confirms short delivery of the consignment. On the basis of the said

certificate, the Tribunal agreed with the respondent that there was a short delivery of the consignment.

17. I find that the learned Tribunal had correctly allowed the prayer of the respondent.

18. Therefore, this Court finds that there is no merit in this appeal.

19. The appeal stands dismissed and disposed of accordingly.

Send back the LCR.

JUDGE

Comparing Assistant