

GAHC010121952012



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

Case No. : MFA/72/2012

UNION OF INDIA and ANR
REPRESENTED BY THE GENERAL MANAGER, N.W. RAILWAY, JAIPUR,
RAJASTHAN

2: THE GENERAL MANAGER

N.F. RAILWAY
MALIGAON
GUWAHATI-11
ASSAM

VERSUS

M/S SIROHIA and SONS PVT. LTD.
PREMTALA ROAD, P.O. SILCHAR, ASSAM.

Advocate for the Petitioner : SC, NF RLY

Advocate for the Respondent : MR.K P MAHESWARI

Linked Case : MC/2562/2013

M/S SIROHIA and SONS PVT. LTD.

VERSUS

UNION OF INDIA and ANR.

Advocate for : MS.M CHATTERJEE
Advocate for : MR.A GOYAL appearing for UNION OF INDIA and ANR.

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellants : Mrs. U. Chakraborty,
Special Senior Counsel for Railways.

For the Respondent : Ms. M. Sharma,
Advocate.

Date of Hearing : 25.07.2024.

Date of Judgment : 29.07.2024.

JUDGMENT AND ORDER (CAV)

Heard Mrs. U. Chakraborty, learned Special Senior Counsel for the Railways. Also heard Ms. M. Sharma, learned counsel representing the respondent.

2. This is an appeal under Section 23 of the of the Railway Claims Tribunal Act, 1987, challenging the judgment and order dated 09.02.2012 passed in the Review Application whereby the Tribunal set aside and modified its own order dated 13.09.2011 passed in Claim Application No.O.A. 138/2008 (Old), O.A.-III/GHY/2008/0138 (New).

3. On 22.01.2008, the respondent booked 75110 packets, each containing 50 kilograms of RPP/SSP (51800 packets of RPP and 23310 packets of SSP), for transporting them from RPZ to HBN. The appellant Railways collected freight for the distance of 2448 kilometers instead of correct freight charge distance by the shortest route i.e. 2391 kilometers. According to the respondent, the correct freight charge should have been ₹1460.30 per MT. The respondent claimed that the Railways wrongly collected under charge of ₹64,110/- at destination point on the allegation of overloading. The respondent further claimed that the booking station granted only 20% concession on RPP instead of 35%.

4. The Tribunal held that according to Exhibit-33, the distance from RPZ to HBN was 2405.22 kilometers. The Tribunal further held that the said distance was within the slab of 2401 to 2425 kilometers and the rate was ₹1468.90 per ton. According to the Tribunal, that since the consignment of RPP and SSP were booked on 23.01.2008 in train load condition, the Railways did not realize the correct freight charge for the correct distance basis.
5. The Tribunal directed the Railways to refund ₹8,25,316/- along with interest at the rate of 6% per annum to the respondent.
6. Aggrieved by the aforesaid order of the Tribunal, the appellant Railways filed an application under Rule 18(3) (f) of Railway Claims Tribunal Act, 1987 praying for reviewing the said order.
7. The Railways contended that the respondent filed the Original Application before the Tribunal for ₹84,82,265/-, which included the punitive charge of ₹64,110/-. According to the appellant Railways, during the hearing of the claim petition, the Railways took the decision not to press for the punitive charge and the terminal charges till disposal of a particular writ petition pending before this Court.
8. The appellant Railways further contended that the distance of 2448 kilometers was wrongly charged instead of 2406 kilometers.
9. In its review petition, the Railways contended before the Tribunal that the punitive charge of ₹64,110/- was wrongly included by the Tribunal in the judgment dated 13.09.2011.
10. The Railways further contended that the terminal charges of ₹51,940/- and ₹23,400/- also need not be included in the judgment dated 13.09.2011.
11. The Railways prayed before the Tribunal that the judgment dated 13.09.2011 should be set aside and both sides should be heard again for passing a fresh judgment.
12. On 09.02.2012, the Tribunal disposed of the Review Application. The Tribunal set aside its earlier order dated 13.09.2011 and modified the said order. This time, the Tribunal recalculated and found that the respondent is entitled to receive ₹6,85,866/- along with interest at the rate of 6% per annum.
14. The Railways again felt aggrieved by the aforesaid order of the Tribunal and filed the present appeal.
15. I have considered the submissions made by the learned counsel of both sides.
16. The Tribunal accepted all the points raised by the Railways in its Review Petition and thereafter

passed the impugned judgment. I have gone through the memo of appeal containing the grounds of appeal.

17. The Tribunal had accepted all the pleas taken by the review petitioner. This Court is of the opinion that the grounds shown in the memorandum of appeal should have been taken up by the Railways at the time of filing of the review petition. The Railways did not do it and unnecessarily filed this appeal compelling this Court to spend it's precious judicial time since the year 2012.

18. This Court finds that the appeal is devoid of merit and stands dismissed accordingly.

Send back the LCR.

JUDGE

Comparing Assistant