

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.4901 of 2012 (O&M)

Date of decision: 05.05.2015

M/s R.R.Coals

..... Appellant

versus

Union of India

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Harsh Aggarwal, Advocate for the appellant
Mr.Nitin Kumar, Advocate for the respondent

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

Impugned in the present appeal is the judgment dated 28.3.2012, passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for short, 'the Tribunal'), vide which the application of the appellant under Section 16 of the Railway Claims Tribunal Act, 1987 (for short, 'the Act') for grant of compensation to the tune of Rs.24,45,728/-, on account of short delivery of consignment was dismissed.

Brief facts which need to be recorded for the purpose of disposal of the present appeal are that M/s Bharat Coal Depot, Guwahati loaded a rake of coal in 40 BCNs from Rangiya (NF Railway) for Dhandari Kalan (N.Railway) District Ludhiana. 20 BCNs were meant for the applicant. 1 BCN was detached enroute earlier to

Laksar. Therefore, 19 BCNs reached the destination along with the rake. On 14.6.1998, said M/s Bharat Coal Depot loaded another rake of coal in 38 BCNs from Rangiya to Dhandari Kalan out of which 6 were meant for applicant. Both the rakes reached the destination on 22.6.1998 and 23.6.1998 with 19 BCNs and 6 BCNs respectively meant for the applicant. It is stated that both the rakes were weighed enroute at Laksar Weigh Bridge of the Railway on 21.6.1998 and 22.6.1998 respectively by the Vigilance Staff of Baroda House, New Delhi and it was alleged that the wagons were overweight. Due to alleged overweight, the chief Goods Supervisor imposed heavy penalty towards freight at penal rate. The applicant requested the Railway for re-weighment of goods in his presence as the applicant was not satisfied with the weighment done at Laksar. But the same was declined. The Chief Goods Supervisor, Dhandari Kalan, however, refused to forward the request of the applicant for weighment to Senior Divisional Commercial Manager, Ferozepur with the proposal for re-weighment unless book delivery was taken by the applicant after depositing the penal freight charges. The applicant accordingly, paid the penal freight charges of Rs.5,10,987/- on 24.6.1998. The senior Divisional Commercial Manager, Ferozepur disallowed the re-weighment on 25.6.1998. The penal action by the Railway adversely affected the reputation of the applicant. Therefore, the applicant requested the Consignor M/s Bharat Coal Depot, Guwahati to take legal action on their behalf. M/s Bharat Coal Depot filed a petition in the Guwahati High Court for weighment of both the rakes. The High Court allowed the said petition on

10.7.1998 and directed the Railway to re-weigh the coal lying at Ludhiana Railway Station at the nearest government approved weigh bridge as per choice of the Railways for which all expenses were to be borne by the petitioner. Railway filed appeal before the Division Bench of the Guwahati High Court against the judgment of the Single Bench. The same was dismissed on 7.8.1998 with the modification that re-weighment should be done on the same weigh bridge at Laksar after thorough testing by the competent person not inferior in rank to that of the Weigh Bridge Inspector of Mechanical Department under the supervision of higher officer and a certificate to this effect was required to be furnished to the petitioner before starting re-weighment. Railway was still not satisfied with the order by the Division Bench and filed Special Leave Petition in the Hon'ble Supreme Court of India which was dismissed on 11.12.1998. The Chief Goods Supervisor, Dhandari Kalan informed the applicant on 19.12.1998 that in compliance with the order of Guwahati High Court, re-weighment of the coal was permitted for which entire cost of haulage to and from Laksar, cost of re-weighment was to be borne by the petitioner and these dues were ordered to be paid in advance as per Railway Rules. Accordingly, the applicant paid Rs.2,35,928/- in cash on 19.12.1998 with Chief Goods Supervisor, Dhandari Kalan against receipt No.393553. The Consignor accordingly reported to the Station Superintendent Laksar on 20.12.1998 and requested to take effective testing of weigh bridge as per directions of the Guwahati High Court before undertaking re-weighment of rakes.

Railway authorities with their senior officer and the representative of

the consignor and an expert on weigh bridge tried their best to make the Laksar weigh bridge functional with their hectic activities on 29.12.1998 and 30.12.1998 but it could not be made functional. Therefore, Railway and other representatives jointly agreed to adjourn the proceedings sine die and it was agreed that Railway would intimate the next date to the parties for effective testing of the weigh bridge at Laksar. The Station Superintendent Laksar in letter dated 30.12.1998 informed the petitioner that rakes could not be re-weighed at Laksar as the testing of the weigh bridge could not be completed. The Chief Goods Supervisor, Dhandari Kalan on the instructions of his superior officers intimated the consignor on 4.1.1999 that Railway weigh bridge at Laksar being out of order the re-weighment of rakes would be done at Bathinda. It was at this stage that it came out that the weigh bridge is defective. Therefore the venue for re-weighment was changed to weigh bridge of M/s National Fertilizer Limited Nangal Dam by the railway authorities. Railway authorities brought the rakes from Laksar to NFL Nangal Dam and re-weighment was done on 20.1.1999 and 21.1.1999 in the presence of Senior Railway Officers including Chief Vigilance Inspector Baroda House, New Delhi wherein no over-weight was found. Rather shortage of 105.500 MT coal was noticed in both the rakes whereas the defective weigh bridge at Laksar had shown excess weight for which penalty of Rs.5,72,008/- had been demanded by the Railways. The cost of shortage of coal works out to Rs.2,26,825/-. Both the rakes were unloaded at Dhandari Kalan on 23.1.1999 and the delivery was offered by the Railways which was

accepted by the applicant. It is further stated that coal remained closed in the wagons for six months and its calorific content deteriorated to a great extent and it had been sold at meager rates which was Rs.350/- per M.T. Less than even the cost price. Therefore, the applicant suffered a loss of Rs.4,94,795/- on the consignment of 1413=700 M.T. Coal. The applicant wrote to the General Manager, New Delhi on 12.7.1999 for refund of Rs.5,10,987/- paid on 24.6.1998 towards penal rate of freight on the alleged over. Railways refunded Rs.4,40,751/- on 28.5.2001. A sum of Rs.70,236/- was disallowed including Rs.26,415/- on account of demurrage charges of 25 BCNs. The deduction of balance amount of Rs.43,821/- was erroneous and did not pertain to any demand of the applicant. Therefore, the said amount is also required to be refunded. Interest on Rs.4,40,751/- from 24.8.1998 to 27.5.2001 and interest on the balance of Rs.43,821/- for the period from 24.6.1998 till date may also be paid to the applicant. Further a sum of Rs.2,35,928/- was paid to the Railways on 19.12.1998 towards re-weighment and haulage charges. Applicant requested the General Manager Northern Railway, New Delhi through letter dated 12.7.1999 to refund the amount. The same has not been refunded so far. The same may also be refunded to the applicant along with the interest from 19.12.1998 till its payment. It was further pleaded that the capital of the applicant to the extent of Rs.32.60 lacs remained blocked for a period of seven months for which they suffered loss of Rs.3,42,959/- (@ 18% per annum interest). The applicant had to rotate their funds for at least four cycles then they would have made

profit of Rs.150 per MT for 1599 MT, therefore, they would have made profit of Rs.9,11,400/-. The applicant suffered legal and miscellaneous expenses to the tune of Rs.1,90,000/- in fighting legal battle at Guwahati High Court and Supreme Court. The applicant also suffered mental strain, agony, defamation and humiliation on account of penalty. The applicant sought compensation to the tune of Rs.24,45,728/- plus interest besides compensation for suffering mental strain, agony, defamation, humiliation and goodwill.

The Railways in the written statement took the objection that the applicant is not a registered firm and application is barred under Section 69 of the Indian Partnership Act. The action of respondent in weighing the consignment is authorized under Section 78 of the Railways Act read with the provisions of Indian Railways Commercial Manual and the RR containing a stipulation for weighment enroute or at forwarding station before delivery. Therefore, the Tribunal has no jurisdiction to decide the application. It was stated that the applicant is not entitled to compensation of Rs.24,45,728/- on account of mental strain, agony, defamation and humiliation as claimed. It was stated that the penalty as admissible under the Rule was charged. The weigh bridge of Laksar was perfectly in order at the time of re-weighment. From the pleadings, following issues were framed:-

- 1. Whether claim application has been filed by legally authorized and competent person?*
- 2. Whether no cause of action arose as alleged by respondents?*

3. *Whether no valid notice u/s 106 of the Railways Act was served?*
4. *Whether penal were rightly recovered by respondents?*
5. *To what amount of compensation applicant is entitled?*
6. *Relief.”*

Before the Railway Tribunal, applicant filed an affidavit of Rakesh Dhir (AW1) making the above noted claims whereas the respondent filed the affidavit of M.L.Gautam, Head Goods Clerk, Railway station Laksar (RW1) and affidavit of Ram Nath, Head Goods Clerk, Hadki (RW2).

Issue No.1 was decided against the appellant holding that no valid notice under Section 106 of the Act was served upon the respondent. Issue Nos.2 and 3 were taken up together and decided against the applicant. Issue Nos.4 and 5 were also taken up together and decided in favour of the respondent. Accordingly, the application was dismissed.

I have heard learned counsel for the parties and have also carefully gone through the file.

In this case, the admitted facts are that 35 rakes of coal meant for the applicant were dispatched to him by M/s Bharat Coal Depot Guwahati. These reached the destination on 22.6.1998 and 23.6.1998. In the meanwhile, these rakes were weighed enroute at Laksar weigh bridge of the railway on 21.6.1998 and 22.6.1998 respectively by the Vigilance Staff of Baroda House, New Delhi and it was found that the wagons are overweight. Consequently, on arriving at the destination, penal freight charges of Rs.5,10,987/-

were charged from the appellant on 24.6.1998 which were paid by the appellant under protest and appellant also demanded the re-weighment. The re-weighment was refused by the Senior Divisional Commercial Manager, Ferozepur on 25.6.1998. Consequently, the consigner approached the High Court. A Single Bench of the Guwahati High Court on 10.7.1998 directed the railway to re-weigh the coal lying at Ludhiana Railway Station at the nearest government approved weigh bridge as per the choice of the railway for which the expenses were to be borne by the petitioner. Railway authorities approached the Division Bench of the High Court, which dismissed the appeal with modification that re-weighment should be done at the same weigh bridge at Laksar after thorough testing by the competent person not inferior to rank of that weigh bridge Inspector Mechanical Department under the supervision of higher officers and a certificate in this regard was required to be furnished to the petitioner before starting re-weighment. Still not satisfied, railway approached the Supreme Court by way of Special Leave Petition which was dismissed on 11.12.1998. It shows that the railway was not ready for re-weighment of the rakes. However, under the Court orders, they were required to re-weigh the rakes. Still railway demanded and obtained a sum of Rs.2,35,928/- from the appellant on 19.12.1998 as haulage charges to and from Laksar. It is also clear that railway weigh bridge at Laksar was not in order and re-weighment could not be done and consequently it was decided vide letter dated 4.1.1998 that re-weighment will be done at Bathinda which was later on changed to M/s National Fertilizer Limited Nangal Dam. Re-

weighment was accordingly done at NFL Dam on 20.1.1999 and 21.1.1999 and there no overweight was found rather shortage of 105.500 MT coal was found.

Now the question would arise as to whether the appellant is to be blamed for the entire mess and is not entitled to compensation or whether the railway is to be blamed for the same and liable to pay the compensation?

It is clear that weigh bridge at Laksar belonging to the railway department was defective and a defective weighment was done. When the goods reached the destination and the appellant wanted re-weighment for its satisfaction, in place of being fair and agreeing with re-weighment, the railway refused the re-weighment. Even when the Single Bench of the Guwahati High Court directed the re-weighment, they approached the Division Bench and thereafter the Supreme Court. It is only after the losing upto the Supreme Court that they decided the re-weighment. When the re-weighment was sought to be done at Laksar, weigh bridge of the railway, it was found to be defective and re-weighment could not be carried out there. Ultimately, when the re-weighment was done at NFL Dam on 20.1.1999 and 21.1.1999, no overweight was found and rather shortage of 105.500 MT coal was found. It follows that on 24.8.1998 penal freight charges of Rs.5,10,987/- were illegally charged and same are liable to be refunded. Out of the said amount, a sum of Rs.4,40,751/- was refunded only on 28.5.2001 and the remaining amount has not been refunded so far. The railway is to be blamed for the defective weighment at Laksar and then delay in re-

weighment at NFL Dam and consequent detention of the goods till its final delivery on 23.1.1999. It would follow that appellant will be entitled to interest on Rs.4,40,751/- from 24.6.1998 to 27.5.2001. This Court feels that interest @ 7.5% per annum for the said period will meet the ends of justice. For the balance amount, out of Rs.5,10,987/-, i.e. Rs.70,236/- the said amount is liable to be refunded with interest @ 7.5% per annum from 24.6.1998 till repayment.

Coming to the haulage charges of Rs.2,35,928/- charged on 19.12.1998, I am of the view that these were charged for carrying the wagons to Laksar and back. The necessity for said re-weighment arose on account of the defective re-weighment done at Laksar weigh bridge of the railway authorities and appellant cannot be blamed for causing the re-weighment. Therefore, this amount is also entitled to be refunded with interest @ 7.5% from 19.12.1998 till repayment.

Since the shortage of 105.500 MT coal was found, the railway also cannot escape the liability as according to the railway, weighment was done at Laksar bridge where certain overweight was found. Even if the consignment was booked with the remarks SWA i.e. 'sender way accepted' but the fact remains that re-weighment was done at Laksar, where certain weight was found and on re-weighment, a shortage was found. Therefore, the benefit of SWA clause cannot be obtained by the railway. Therefore, appellant shall be entitled to the cost of 105.500 MT coal which, as per appellant, comes to Rs.2,26,825/-.

Appellant has also claimed certain compensation under some heads. According to the claimant, his reputation suffered on account of the penalty. His capital to the extent of Rs.32.60 lacs remained blocked for the period of seven months for which he claimed a sum of Rs.3,42,959/- @ 18% per annum interest. He also claimed loss of profit which he would have made from the sale of 1599 MT coal which he calculated at Rs.9,11,400/-.

He also claimed Rs.1,90,000/- in fighting the legal battle at Guwahati High Court and Supreme Court. He also claimed compensation of Rs.24,45,728/- plus interest for mental strain, agony, defamation, humiliation and loss of goodwill.

I am of the view that only that much compensation is to be allowed which is the direct result of wrongful act of the railway. No remote compensation is to be awarded. For blockade of money, the interest has been awarded. Therefore, no separate compensation for loss of profit is to be granted. The plea of the appellant that he was to rotate the funds for atleast four cycles in these seven months and would have earned profit is speculative and is not to be allowed. Such kind of disputes are ordinary in the business transactions. Therefore, no compensation for mental agony, alleged defamation and alleged humiliation and alleged loss of goodwill are to be allowed. It is common in the business circles that sometime disputes arise with one or the other authority and it is taken as a part of the business and therefore, no defamation, humiliation or loss of goodwill is involved. The appellant has claimed legal and miscellaneous expenses to the tune of Rs.1,90,000/- for fighting the legal battle at

Guwahati High Court and Supreme Court. In this regard, except the affidavit of the appellant, there is no other evidence in the form of receipt of the advocates. However, it comes out that the writ petition before the Guwahati High Court was filed by M/s Bharat Coal Depot, Guwahati at the instance of the appellant. Then against the order of the Single Bench, the matter was taken to the Division Bench and then to the Supreme Court. Therefore, by way of guess work, a consolidated compensation of Rs.one lac is awarded for legal expenses.

I do not agree with the view taken by the Railway Claims Tribunal that the wagons of the respondent also remained idle for a long period and the railway also loss the revenue. Railway is to blame itself for the mess. When at the destination, appellant had contested the re-weighment at Laksar weigh bridge and had sought re-weighment, there was no reason to disallow the re-weighment. The instant re-weighment could have quickly disposed of the controversy. The railway showed an obstinate attitude. Re-weighment was not allowed by the officials of the railway and when a writ petition was filed in Guwahati High Court, in place of being fair and consenting for re-weighment, they contested the matter upto the Supreme Court. Therefore, losing revenue on account of detention of the wagons is on account of the fault on the part of the railway authorities.

Learned counsel for the respondent has further argued that book delivery was taken on 24.6.1998. However, the book delivery is not actual delivery. Penal freight charges were claimed

and the appellant was made to pay the said charges and when he asked the re-weighment on the said date, before accepting delivery, same was refused. Therefore, no actual delivery could be taken.

Accordingly, the findings of the Tribunal on issue Nos.4 and 5 are reversed.

Coming to the findings on issue Nos.2 and 3, the Tribunal has held that no notice under Section 106 of the Act has been given. Section 106 of the Act provides as under:-

“106. Notice of claim for compensation and refund of overcharge.--(1) A person shall not be entitled to claim compensation against a railway administration for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway, unless a notice thereof is served by him or on his behalf,-

(a) to the railway administration to which the goods are entrusted for carriage; or

(b) to the railway administration on whose railway the destination station lies, or the loss, destruction, damage or deterioration occurs, within a period of six months from the date of entrustment of the goods.

(2) Any information demanded or enquiry made in writing from, or any complaint made in writing to, any of the railway administrations mentioned in sub-section (1) by or on behalf of the person within the said period of six months regarding the non-delivery or delayed delivery of the goods with particulars sufficient to identify the

goods shall, for the purpose of this section, be deemed to be a notice of claim for compensation.

(3) A person shall not be to a refund of an overcharge in respect of goods carried by railway unless a notice therefor has been served by him or on his behalf to the railway administration to which the overcharge has been paid within six months from the date of such payment or the date of delivery of such goods at the destination station, whichever is later. “

The perusal of the said section shows that it is applicable in case of loss, destruction, damage, deterioration or non-delivery of goods carried by the railways except when a notice is given under Section 106 of the Act. The said notice is to be given within six months from the date of non-delivery or delayed delivery.

In this case, the said provisions are not applicable. Here goods were available but dispute arose regarding the fact that according to the railway, the rakes were over-weight in view of the re-weighment enroute done at Laksar railway bridge by the Vigilance Staff of the railway, which was not acceptable to the appellant. The demand of the appellant for re-weighment in its presence was declined by the railway and it was only settled by the Court order, which was contested by the railway upto the Supreme Court. Sub-section 3 of Section 106 of the Act, talks of refund of over-charge in respect of goods carried by railway for which notice is to be given within six months from the date of payment of date of delivery of the goods. In this case, the goods were delivered on 23.1.1999.

Thereafter, the demand was made for refund of the penal freight charges and the haulage charges and railway took its own time to refund part of the penal freight charges. Part payment was made on 28.1.1998 and haulage charges were never refunded.

If the delivery had been taken by the appellant, the re-weighment was not possible and therefore, the appellant was justified in refusing the delivery of the goods unless the re-weighment is done.

Therefore, I am of the view that Section 106 of the Act is not attracted in the present case. Therefore, the present claim application is maintainable. Findings of the Tribunal on issues Nos.2 and 3 are also reversed.

Finding on issue No.1 was not challenged before this Court.

In view of the foregoing discussion, the appellant is entitled to the following compensation:-

- i) Appellant paid Rs.5,10,987/- on account of penal freight charges out of which Rs.4,40,751/- were refunded by the railway to the appellant on 28.5.2001. Therefore, interest @ 7.5% per annum on Rs.4,40,751/-, from 24.6.1998 to 27.5.2001 is allowed.
- ii) On the balance amount out of Rs.5,10,987/-, i.e. Rs.70,236/- not refunded, the appellant is also entitled said amount of Rs.70,236/- with interest @ 7.5% per annum from 24.6.1998 till repayment.
- iii) The amount of haulage charges of Rs.2,35,928/-

charged on 19.12.1998 is also ordered to be refunded to the appellant with interest @ 7.5% from 19.12.1998 till repayment.

iv) The appellant is also entitled to the cost of 105.500 MT coal i.e. Rs.2,26,825/- with interest @ 7.5% per annum from 23.6.1998 till repayment.

v) A consolidated compensation of Rs.one lac is awarded on account of legal charges with interest @ 7.5% per annum from 11.12.1998 till repayment.

Accordingly, the appeal is allowed with costs quantified at Rs.25,000/-. The judgment dated 28.3.2012 passed by Railway Claims Tribunal is set aside.

05.05.2015
gk

(Kuldip Singh)
Judge