

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

FAO No.1773 of 1996.

Date of Decision: 21.04.2016.

The Tata Iron & Steel Co. Ltd.

....Appellant.

VERSUS

Union of India through General Manager, Northern Railway, Baroda
House, New Delhi and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. A.K. Jaiswal, Advocate for the appellant.

Mr. Vikas Chatrath, Advocate and
Mr. Parveen Kumar, Advocate for the respondents.

SNEH PRASHAR, J.

Assailing the judgment dated 24.10.1995 passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh, (for short, “the Tribunal”) by virtue of which an application filed by the appellant under the provisions of the Railway Claims Tribunal Act, 1987 (for short, “the Act of 1987”) claiming a sum of Rs.1,70,114.88 as compensation alongwith interest and costs was dismissed, the appellant filed the instant appeal.

In precise, the facts are that the appellant company booked 56.300 M.Ts. of Steel Channels 75 x 40 mm. from ex.Barakra KMCEL Siding to Jalandhar Cantt. vide railway receipt No.B-35200 dated 03.04.1988. The consignment was booked at railways risk and was loaded

in Wagon No.ER BOX 10375. The consignment arrived at the destination station i.e. Jalandhar Cantt. on 20.04.1988. Since the material was lying in disturbed condition, the appellant suspected heavy shortage and on the same day i.e. 20.04.1988 requested the railway authorities for reweighment of the goods but its request was declined by the Senior Divisional Commercial Superintendent, Ferozepur. On a request in writing submitted in that behalf to the Divisional Railway Manager, Northern, Railway, Ferozepur on 21.04.1988 the Assistant Divisional Railway Manager deputed the Assistant Traffic Superintendent, Amritsar and other railway officers to inspect the actual condition of the wagon and submit their report. The wagon was checked by the railway staff on 22.04.1988 and on 23.04.1988 the appellant received communication rejecting its request for reweighment of the goods. Another request made on 02.05.1988 was also rejected and was communicated on 06.05.1988.

The appellant submitted that having been left with no alternative, the appellant took the delivery of the consignment under protest on 07.05.1988 in the presence of approved surveyor, Shri S.L. Passi. The intimation had already been given to the railways on 06.05.1988 to supervise the unloading and shortage of the goods. The surveyor conducted the reweighment on 07.05.1988 and found shortage of 15.940 MT and accordingly issued a shortage certificate. On the basis of the certificate of the surveyor, the appellant gave a notice to the railways under Section 78-B of the Indian Railways Act and there being no response to the same filed the claim application before the Tribunal for recovery of Rs.1,70,114.88 which

includes the particulars of short delivered goods and the interest amount at the rate of 18% per annum.

The respondents-railways contested the application and raised various objections. They submitted that the consignment was delivered to the appellant under clear receipt and signatures. They also sought protection under Section 76(C) of the Indian Railways Act and submitted that the R.R. was issued on the basis of 'said to contain'. The consignment was loaded by the consignor at the forwarding station in its own private siding and the loading was not supervised by the railway staff. The doors of the wagon were properly closed and there was no sign of disturbance enroute. The respondents denied that the consignment arrived at the destination station in a bad condition or that any shortage was suspected. Alleging that the request of the appellant for reweighment was rightly rejected keeping in view the guidelines incorporated under Rule 118 of the Goods Traffic and the reweighment, if any, got done by the appellant from the private surveyor was not binding on them, the respondents sought dismissal of the application.

On the pleadings of the parties, issues were framed. Both the parties led ocular and documentary evidence to discharge the onus of issues on them. Considering the submissions made on behalf of the appellant and that of the respondents, learned Tribunal holding that the appellant was not entitled to any compensation, dismissed the application of the appellant.

Feeling aggrieved with the judgment, the appellant preferred the instant appeal.

The submissions made by Mr. A.K. Jaiswal, learned counsel for appellant and Mr. Vikas Chatrath, learned counsel for the respondents have been heard and record perused.

Admittedly, the consignment arrived at the destination station on 20.04.1988. The entries in the delivery book and the wagon transfer register indicate that the delivery was taken on 20.04.1988 and the wagon was placed in the private siding of the appellant on 21.04.1988. Though the appellant alleged that the delivery of the consignment was taken under protest but no document could be produced in evidence to substantiate the said plea. According to the respondents, the delivery was taken by the appellant under clear receipt and signatures. Although there is a remark regarding request for reweighment of the consignment in the delivery book but there is nothing to show that the delivery was taken under protest. Simple request for reweighment would not mean that the appellant suspected shortage in the consignment and for that reason took the delivery under protest.

Moreso, it is the case of the appellant that the reweighment of the consignment was got done from the independent/ approved surveyor on 07.05.1988. Neither the surveyor stated in his affidavit nor any evidence could be led by the appellant to prove that the independent surveyor was associated from the time the delivery of the consignment had been taken. Since the consignment remained in the possession of the appellant from 21.04.1988 to 06.05.1988 i.e. for almost 16 days without supervision of the independent surveyor, the shortage, if any, was not to be attributed to the

respondents since the weight in the surveyor's report related to the material made available before him for weighment on 07.05.1988. His report was incompetent to prove the weight of the consignment on its arrival at the destination station and at the time of delivery of the same to the appellant.

It may be added here that admittedly the R.R. was issued by the railways on the basis of 'said to contain'. Loading of the goods was also not supervised by the railway staff. As regards reweighment by the independent surveyor, no letter dated 06.05.1988 allegedly written by the appellant to the railway authorities to participate in the reweighment process by independent surveyor on 07.05.1988 at 10:00 a.m. could be produced by the appellant alongwith its application or in evidence which means that the reweighment process was carried out without intimating the railway authorities about the same. In fact, it was not so mentioned in the pleadings also. In other words, no chance was given to the respondents-railways to participate in the reweighment process by the independent surveyor. In the above premise, the finding of learned Tribunal that the appellant was not entitled to any compensation calls for no intervention.

The claim application of the appellant was rightly dismissed and the appeal being devoid of merit is also hereby dismissed.

(SNEH PRASHAR)
JUDGE

21.04.2016.
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