

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

FAO No.2035 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.1,49,010.40 as compensation alongwith interest and costs was dismissed, the appellant filed the instant appeal.

In precise, the facts are that the appellant company booked 58.300 M.Ts. of Steel Channels 125 x 65 mm. from Barakra KMCEL Siding to Jalandhar Cantt. vide railway receipt No.351990 dated 23.03.1988. The consignment was booked at railways risk and was loaded

in Wagon No.CR Box 86206. The consignment arrived at the destination station i.e. Jalandhar Cantt. on 05.04.1988. Since the material was lying in disturbed condition, the appellant suspected heavy shortage and on the same day i.e. 05.04.1988 requested the railway authorities for reweighment of the goods but its request was declined by the railways on 07.04.1988.

The appellant submitted that having been left with no alternative, the appellant took the delivery of the consignment under protest on 08.04.1988. The railways were also informed at the time of taking delivery that the applicant shall get the goods reweighed from an approved surveyor. The applicant approached the approved surveyor, Shri S.L. Passi on 08.04.1988. The surveyor conducted the reweighment and found shortage of 13.120 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 under Section 80 of the Code of Civil Procedure and there being no response to the same filed the claim application before the Tribunal for recovery of Rs.1,49,010.40 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 raised various preliminary objections and submitted that the consignment was delivered to the appellant under clear receipt and signatures. They also submitted that the R.R. was issued on the basis of 'said to contain'. The consignment was loaded by the sender itself at 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 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.

Learned counsel for the appellant argued that it could not be denied by the respondents-railways that the consignment was booked at the railways risk. The consignment was in loose disturbed condition when it reached the destination station. The appellant requested the railway authorities to get the consignment reweighed but they arbitrarily declined the request. The appellant took delivery under protest and then after due intimation to the railway authorities got the reweighment done by an

approved surveyor. The railway authorities did not join the reweighment process at their own risk and therefore were estopped from challenging the shortage indicated by the surveyor in his report. It was for them to remain associated with the appellant till the reweighment was done to ensure that there was no pilferage. Since the respondents had failed to take care of the consignment at every stage, therefore, are liable to pay the value of shortage alongwith interest.

The arguments of learned counsel for the appellant were controverted with vehemence by learned counsel for the respondents. He pointed out that from the original railway receipt, it is proved that 589 pieces of 125 x 65 mm channels were booked under the consignment in question. On the contrary, in the affidavit of A.K. Bhandari, constituted attorney of the appellant and the affidavit of I.D. Khanna, Stockyard Incharge of the appellant it was mentioned that 509 pieces of steel channels of 125 x 65 mm were booked under the consignment in question. The report of the independent surveyor and the weighment slips produced by the appellant did not indicate the number of pieces weighed. The consignment remained in custody of the appellant from 05.04.1988 to 07.04.1988 without association of the independent surveyor. In said circumstances, it is clear that there was no shortage in the consignment when it was delivered to the appellant.

Indeed, it is proved from the affidavit of Satish Kumar, Chief Goods Clerk, Jalandhar Cantt that the booked delivery of the consignment was taken by the appellant on 05.04.1988 and the concerned wagon was

placed on the siding of the appellant on the same day. In case the railway authorities had declined the request of the appellant for reweighment of the consignment at the time of delivery, it was open to the appellant to get reweighment done by an independent surveyor. However, the process of reweighment and association of independent surveyor must have been ensured from the date and time the consignment had come into the possession of the appellant and should have continued till the process of reweighment was completed. No evidence substantive or ocular could be produced by the appellant to prove the association of the independent surveyor from the date and time delivery of the consignment had been taken from the railway authorities. It means that the consignment was weighed by the surveyor after it remained in exclusive possession of the appellant w.e.f. 05.04.1988 to 07.04.1988. During that period the consignment was neither under the supervision of the railway authorities nor the independent surveyor. Thus, 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 to him for weighment. 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.

Importantly, the case of the appellant is that 589 pieces of 125 x 65 mm of steel channels were booked under the consignment in question. It was also so mentioned in the original railway receipt. In variance to the number of pieces indicated in the railway receipt and the claim application of the appellant, the constituted attorney and the stockyard incharge of the

appellant stated in their respective affidavits that 509 pieces of steel channels of 125 x 65 mm were booked under the consignment in question. The number of pieces weighed is missing in the report of the independent surveyor as also the weighment slips produced by the appellant. The weighment slips were also not signed by the surveyor. The contention of the Railways that the consignment was loaded by the sender itself and the loading was not supervised by the railway could not be controverted by the appellant. The R.R. was issued on the basis of 'said to contain'.

Thus, in view of the discrepancy in the number of steel channels actually booked under the consignment in question and there being no proof of the number of channels received and get weighed by the appellant, it can be said without hesitation that the appellant had failed to prove that there was any shortage in the consignment when the delivery was taken by it. 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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