

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

FAO No.2454 of 1997.

Date of Decision: 13.05.2016.

Punjab Small Industries & Export Corporation Limited

....Appellant.

VERSUS

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

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Vineet Sehgal, Advocate for
Mr. Sanjeev Bansal, Advocate for the appellant.

Mr. Karminder Singh, Standing Counsel for respondents-
Union of India.

SNEH PRASHAR, J.

Assailing the judgment dated 30.06.1997 passed by Railway
Claims Tribunal, Chandigarh Bench, Chandigarh (for short, “the Tribunal”)
by virtue of which an application filed by the appellant claiming a sum of
Rs.12,234/- as compensation alongwith interest and costs was dismissed,
the appellant filed the instant appeal.

Precisely, the facts are as under:-

The appellant booked 56.110 M.Ts. of pig iron
ex.Vishakhapatnam to Dhandarikalan (Ludhiana) against RR No.999160

dated 16.06.1991. The railways accepted the wagon in a sound and perfect condition, however, the consignment reached its destination after lapse of 19 days i.e. on 08.07.1991. The allegation of the appellant was that it reached in pilfered condition. Suspecting shortage in the consignment, the appellant requested the railways for delivery of the consignment after reweighment, but its prayer was rejected on 10.07.1991. The appellant fearing charging of demurrage by the railway administration, perforce surrendered the RR and took delivery of the consignment. On the same day, a letter was issued to the respondents to witness the reweighment of the goods to be conducted by the independent surveyor at M/s Kamla Weigh Bridge near Railway Station Dhandarikalan. The independent surveyor Shri Kulwant Singh Jolly on weighing the goods found the same to be 53.920 M.Ts. which proved that there was shortage of 2.1990 M.Ts. of the pig iron. The appellant served a notice to the railway administration for grant of compensation for the said shortage but to no response.

Ultimately, the claim application for recovery of Rs.10932.48; Rs.852/- as demurrage charges; and Rs.450/- as surveyor's fee i.e. total Rs.12,234/- was filed by the appellant.

The respondent-railways contested the petition raising various legal and factual objections. Although it was admitted that the consignment was booked by the appellant against RR No.99160 on 16.06.1991 but it was denied that the actual weight of the consignment was supervised by the railway staff. The consignment was said to have been loaded by the sender on its private siding. The allegation that the consignment reached

destination station in pilfered condition was also denied. It was submitted that the request of the appellant for reweighment being unjustified was rightly turned down by the competent authority and that the appellant did not take the delivery of goods on arrival and was obliged to pay the demurrage for the period exceeding the permissible limit. The assessment done by the private surveyor was denied as he was said to be not an independent person and no request was made to the railway authorities to witness the reweighment proceedings. The very factum of survey by the alleged private surveyor was denied.

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 respondent, learned Tribunal holding the appellant to have failed to prove the alleged shortage, dismissed the application vide judgment dated 30.06.1997.

Feeling aggrieved, the appellant-claimant preferred the instant appeal.

The submissions made by Mr. Vineet Sehgal, learned counsel for appellant and Mr. Karminder Singh, learned standing counsel for respondent-Union of India have been heard and record perused.

At the very outset, learned counsel for the appellant argued that the respondent-railways failed to deny that the consignment reached the destination after a delay of 19 days. It was in pilfered condition and the appellant immediately requested the respondent for reweighment of the

consignment before delivery but its prayer was rejected. Learned Tribunal also ignored the fact that despite intimation given by the appellant to the railway administration, its staff failed to attend the reweighment process carried out in the presence of independent surveyor at 'Dharam Kanda'. The original weighment slips issued by the Dharam Kanda namely 'Kamla Weigh Bridge' alongwith the report of the independent surveyor were placed on record alongwith affidavit of D.M. Singh, Senior Deputy General Manager of the appellant. The respondent-railways failed to rebut the said documents, yet learned Tribunal did not accept the same and rejected the claim of the appellants. If at all the respondent-railways wanted to cross-examine the independent surveyor, they should have moved an application to that effect and the independent surveyor would have stepped into the witness box. The place of survey/reweighment was mentioned by the independent surveyor in his report and therefore, it was wrongly held by learned Tribunal that the reweighment had not been done in the presence of the independent surveyor. Submitting that there was clear negligence on part of the railways because of which there was shortage in consignment when it reached the destination station, learned counsel contended that the respondent-railways is bound to pay compensation for the same.

To support its contention that reweighment of the consignment at the destination station indicated shortage in consignment, the evidence produced by the appellant consists of two affidavits of its functionaries namely S.P. Verma, Regional Manager (Legal), of D.M. Singh, Senior Deputy General Manager (Projects) and the eight original weighment slips

issued by Kamla Weigh Bridge, Ludhiana. Four of the slips relate to the weight of the trucks through which the goods were weighed and the other four indicate the gross weight of the goods plus the weight of the trucks. No doubt, the report of a private surveyor namely Kulwant Singh Jolly had also been tendered in evidence but for the reason best known to the appellant, the said private surveyor was not examined during evidence. It was not for the respondent-railways to call him in the witness box, rather it was for the appellant to produce him so that the opposite party could avail the opportunity of cross examining him. The appellant cannot take advantage of its own lapse. The report of the independent surveyor could be held proved and relied upon had he appeared in the witness box to own and prove the same and an opportunity had been given to the opposite party to cross examine him. Needless to say that the report of the independent surveyor was not persi admissible.

Apart from the fact that the independent surveyor did not appear in the witness box, it is also important to note that the reweighment slips of the 'Dharam Kanda' do not bear signatures of the independent surveyor. The person, who issued the said slips, was also not examined. In that manner, there is no ocular or documentary evidence to prove that the reweighment of the goods was carried out in the presence of the independent surveyor. Moreso, the testimony of none of the two witnesses examined by the appellant namely, S.P. Verma, Regional Manager (Legal) and D.M. Singh, Senior Deputy General Manager (Projects) is to the effect that they were personally present when the reweighment of the goods was

done at the 'Dharam Kanda' i.e. Kamla Weigh Bridge. There being virtually no substantive and reliable evidence to prove reweighment of the goods, the allegation of the appellant that on reweighment shortage in the consignment was detected was rightly rejected by learned Tribunal.

Thus, there being no merit in the appeal, it is dismissed.

(SNEH PRASHAR)
JUDGE

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destination station in pilfered condition was also denied. It was submitted that the request of the appellant for reweighment being unjustified was rightly turned down by the competent authority and that the appellant did not take the delivery of goods on arrival and was obliged to pay the demurrage for the period exceeding the permissible limit. The assessment done by the private surveyor was denied as he was said to be not an independent person and no request was made to the railway authorities to witness the reweighment proceedings. The very factum of survey by the alleged private surveyor was denied.

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