

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

FAO No.730 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 order dated 20.11.1995 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.64,852/- as compensation alongwith interest and costs was dismissed, the appellant filed the instant appeal.

The facts are that appellant booked 55.684 M.Ts. of Steel Channels 75 x 40 mm. from Ex. Barakra KMCEL Siding to Jalandhar Cantt. in Wagon No.SE 64104 vide railway receipt No.374935 dated 26.02.1989.

The consignment reached destination on 10.03.1989. The appellant seeing the consignment lying in loose and disturbed condition suspected heavy shortage and issued letter dated 10.03.1989 to Station Master, Jalandhar Cantt requesting him to weigh the consignment. On refusal by the respondents to accept the request, the appellant issued another letter dated 13.03.1989 intimating to the Station Superintendent that it intended to get reweighment done in the presence of an independent surveyor and requested that the same should be witnessed by the railway staff. On this, the appellant was asked to approach the Senior D.C.S./ Ferozepur.

Reweighment of the consignment was done by Shri S.K. Mittal, independent surveyor and the shortage of 5.624 MTs was found in the consignment. The value of the claim comprised of Rs.42,111.96 as cost of the material delivered short and interest of Rs.22,740.96, the total of which comes to Rs.64,852/-.

The petition filed by the appellant was contested by the respondent-railways. In their written statement, the respondents claimed that the consignment was delivered to the appellant under clear receipt and signatures. It was also submitted that the consignment was loaded by the sender itself and the railway receipt was issued on 'said to contain' basis. The request of the appellant for reweighment at the destination station was rightly rejected and there was no question of witnessing the reweighment, if any, got done by the appellant through an independent surveyor.

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 recover any loss/shortage arrived at through the independent surveyor report from the respondents, dismissed the application for compensation of the appellant.

Feeling aggrieved with the order, 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 once the independent surveyor, Shri S.K. Mittal, had appeared in the witness box and the respondents availed the opportunity of cross examining him, the authentication of his affidavit, correct or incorrect before the Oath Commissioner becomes irrelevant. He proved the report prepared by him and learned Tribunal erred in not taking the same into consideration. Learned counsel also asserted that the consignment was booked at railways risk. Since at the destination station it was found to be in loose and disturbed condition, the appellant lodged protest with the concerned railway authorities and requested them for reweighment of the consignment but its request was not accepted and the appellant had no option than to get the reweighment done by an independent/ approved surveyor and the respondents were requested in writing to join the proceedings of reweighment but they failed to do so. For the reason that the respondents

did not avail the chance given to them, the appellant was not to suffer. When the appellant was suspecting heavy shortage in the consignment and had given intimation of the same to the respondents and had taken the delivery under protest, it was for the railway authorities to remain associated with the appellant till the reweighment was done to ensure that there was no pilferage. It was the respondents, who failed to take care of the consignment at every stage and therefore are liable to pay the value of shortage alongwith interest.

On the other hand, learned counsel for the respondents argued that the wagon of the consignment remained in the custody of the appellant from 11.03.1989 to 14.03.1989. The report of the surveyor indicates that he visited the stockyard only on 14.03.1989. When the consignment was with the appellant for almost four days before the reweighment was done by the surveyor, the respondents could not be blamed for the shortage, if any, found in the consignment.

Indeed, it was noted by learned Tribunal that the wagon was placed in the siding of the appellant on 11.03.1989 at 6 hours. The wagon of the consignment remained in the custody of the appellant from 11.03.1989 to 14.03.1989 upto 10:30 a.m. i.e. the date and time when the surveyor visited the stockyard. No reason could be demonstrated by learned counsel for the appellant for not associating the independent surveyor immediately after taking delivery of the wagon on 11.03.1989. Since the wagon alongwith the consignment remained in custody of the appellant for a considerable long time before weighment was done by the surveyor, it can

at the most be said that the report of the surveyor indicating the weight of the consignment related to the material made available to him at the time of weighment. That would not mean that the weight of the consignment at the time of reweighment was the same as it was when the delivery was taken by the appellant. In other words, it is not proved that there was shortage in consignment when it reached the destination station and was delivered to the appellant.

In addition to the above, it is important to note that even the affidavit submitted by the surveyor was not worth reliance for not being authenticated in the presence of the Oath Commissioner. The surveyor Shri S.K. Mittal in his cross-examination admitted that the affidavit through which he had authenticated his survey report was not signed/verified by him in the presence of Oath Commissioner, Jalandhar. It was also not his version that he was in any manner associated with the consignment from the time the concerned wagon was placed in the siding of the appellant. In the above premise, the finding of learned Tribunal that the appellant was not entitled to recover any loss/shortage arrived at through the independent surveyor report from the respondents 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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