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

**FAO No.1006-2011.**
**Date of Decision: 04.04.2016.**

M/s Ratan Coal Traders ....Appellant.

VERSUS

Union of India ....Respondent.

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**CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.**

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**Present:** Mr. Rajesh Gupta, Advocate for the appellant.

Mr. Karamjit Verma, Advocate and
Mr. Banni Thomas, Advocate for the respondent.

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**SNEH PRASHAR, J.**

Assailing the order dated 08.09.2010 passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh, (for short, "the Tribunal") by virtue of which an application filed by the appellant under Section 16 of the Railway Claims Tribunal Act, 1987 (for short, "the Act of 1987") claiming a sum of Rs.13,19,227/- as compensation alongwith interest and costs was dismissed, the appellant filed the instant appeal.

In the application filed by Ram Chander Gupta son of Shri Ram Ratan Gupta, Partner of M/s Ratan Coal Traders, Pura Mohalla, Bassi Pathana (Punjab) on behalf of the said firm, it was averred that the appellant purchased 2344.800 MT (metric tone) coal from Arunachal Pradesh Mineral Development and Trading Corporation Ltd. through coal handling agent M/s Gurmeet Singh and Company. For transportation of the said coal from Charalie (Andhra Pradesh) to Dhandari Kalan, Ludhiana (Punjab) 40 BCNs (wagons) of respondent-railways were booked on the same day i.e. 25.11.2001 vide RR No.657301 to 657308 and freight of Rs.34,93,296/- was paid. The weight declared by the sender was accepted by the railways. The wagons were weighed by the railways at Chanehti (a station in between Charalie and Dhandari Kalan, Ludhiana) on 02.12.2001 in the absence of the appellant and the total weight of the coal as per the railways was found to be 1814.990 MT. Meaning thereby that before the wagons reached the destination i.e. Dhandari Kalan, Ludhiana the consignment of coal was misappropriated in between Charalie and Chanehti. Alleging that the delivery of consignment of coal was short by 529.810 MT of coal which caused loss amounting to Rs.13,19,227/- i.e. cost of coal Rs.5,82,791/- and freight Rs.7,36,436/- (paid in advance), the claim petition was filed by the appellant.

The petition filed by the appellant was contested by the respondent-railways. In the written statement filed by the respondent it denied that the appellant is a registered firm under Section 69 of the Indian Partnership Act. Though it admitted that the consignment was booked under the supervision of 'consignee' but mentioned that the receipts were issued with remarks 'SWA' (senders weight accepted), as such, railway administration was protected under Section 65 of the Railways Act. Value of the claim as well as liability of the railways to pay any compensation was denied and it was submitted that loading of the consignment was done by the sender and was not witnessed by the railway staff. The appellant received delivery under clear receipt and no mention of shortage was made.

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 finding no ground for awarding compensation or for refund of freight to the appellant dismissed the application vide order dated 08.09.2010.

Feeling aggrieved, the appellant preferred the instant appeal.

The submissions made by Mr. Rajesh Gupta, learned counsel for appellant and Mr. Karamjit Verma and Mr. Banni Thomas, learned counsels for the respondent have been heard and record perused.

Learned counsel for the appellant argued with vehemence that it is proved from the bill dated 25.11.2001 Ex.A16 that the appellant purchased 2344.800 MT of coal from the Arunachal Pradesh Mineral Development and Trading Corporation Ltd. which is a State government undertaking company. The appellant then booked 40 BCNs (wagons) of respondent-railways on the same day i.e. 25.11.2001 in respect of which RR No.657301 to 657308 Ex.A7 to Ex.A14 were issued by the railways. The freight charges being Rs.1490/- per metric tone, total freight of Rs.34,93,296/- was paid in advance by the appellant to the railways. In the receipt Ex.A7 to Ex.A14 the weight of the coal being 2344.800 MT was mentioned. The total quantity of coal purchased was loaded in the wagons, however at the destination the delivery of the consignment was short by

529.810 MT coal and there was no explanation for the shortage by the respondent-railways.

Learned counsel contended that according to the respondent-railways the wagons loaded with the coal were weighed at Chanehti and Dhandari Kalan on 02.12.2001 and the total weight of the coal as per railways was 1814.990 MT. It is improbable that the appellant had loaded goods lesser in weight and value and had paid excessive freight in advance. When the freight was charged as per the weight declared by the appellant, it appears unnatural that the appellant would declare higher weight and pay more freight and then ultimately lodge a claim for short delivery of goods and for refund of the excessive freight paid. At the time of delivery the appellant lodged protest for shortage of goods but it was not accepted by the local office of the respondent-railways at the destination station. There being documentary proof of the weight of the goods loaded in the wagons booked by the appellant, the respondent-railways is liable for payment of compensation on account of short delivery of the goods.

Learned counsel for the respondent controverted the arguments of learned counsel for the appellant and submitted that the weight in the receipts was mentioned as declared by the sender. The respondent-railways did not supervise the loading of the goods in the wagons. The consignment was weighed en-route at Chanehti and the net weight was found to be 1814.990 MT. No objection of short delivery was lodged by the appellant while taking delivery of the goods and therefore by no stretch of imagination the railway can be held liable for short delivery.

Indeed, the railway receipts Ex.A7 to A14 bear remark "SWA" (sender's weight accepted) as regards the weight of the goods shown in the receipts. It supports the contention of the respondent-railways that the freight was charged as per the weight of the goods declared by the sender. The consignment was comprised of 40 BCNs (wagons). It is not the plea of the appellant that the wagons were loaded under the supervision of railway authorities or weighment was done at the forwarding station. Rather, as stated by AW1 Ram Chander Gupta loading was done under the supervision of M/s Gurmeet Singh and Company, coal handling agent. In said set of facts, the burden of proving the weight of the goods loaded was on the sender-appellant. Section 65 of the Act of 1989 postulates as under:-

> *"(1) A railway administration shall,—*
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> *(a) in a case where the goods are to be loaded by a person entrusting such goods, on the completion of such loading; or*
>
> *(b) in any other case, on the acceptance of the goods by it, issue a railway receipt in such form as may be specified by the Central Government.*
>
> *(2) A railway receipt shall be prima facie evidence of the weight and the number, of packages stated therein.:*
>
> *Provided that in the case of a consignment in wagon-load or train-load and the weight or the number of packages is not checked by a railway servant authorised in this behalf, and a statement to that effect is recorded in such railway receipt by him, the burden of proving the weight o; as the case may be, the number of packages stated therein, shall lie on the consignor, the consignee or the endorsee."*

Admittedly, in the case in hand, the booking done by the appellant was consignment under 'wagon load and train load facility' as mentioned in the receipts Ex.A7 to Ex.A14. Therefore, notwithstanding the issue of receipt by the railways the burden of proving the weight of the consignment at the forwarding station was on the appellant. The receipts Ex.A15 on which the appellant has relied upon was signed by the representative of M/s Gumeet Singh and Company, a coal handling agent. No document was produced by the appellant that the seller namely Arunachal Pradesh Mineral Development and Trading Corporation Ltd. had sold/supplied coal weighing 2344.800 MT to the appellant or its agent and the same quantity was loaded in the train. Ex.P15 is not with regard to the weight of goods loaded in wagons.

Admittedly, the weighment of the consignment was done by the respondent-railways at Chanehti and as shown in Ex.P19 the net weight of the consignment was found to be 1814.990 MT. It is not the allegation of the appellant that the weight of the consignment at the time of delivery was not as shown by the respondent-railways in Ex.A19. No document could be produced by the appellant to prove that the weight of the coal mentioned in Ex.A15 or in the receipts Ex.A7 to Ex.A14 was accepted by the railway as the actual weight of the goods loaded in the train. The receipts stated that the weighment was to be done en-route or at destination station.

The matter does not end here. The appellant took delivery at the destination station under a clear receipt. There is no document to support the contention of the appellant that it had lodged protest regarding short delivery with the railway authorities. AW1 Ram Chander Gupta stated that he made protest but the local office did not accept the same. In the next breath he stated that he cannot recall whether or not he had made protest petition in writing to the higher authorities of the railways. From his own statement, it is clear that no step was taken by him to make a written protest to the concerned railway authorities when the delivery was taken. It does not appeal to a prudent mind that in case the consignment was found to be so short the appellant would have taken delivery without lodging a protest in due process and would have issued a clear receipt accepting the delivery. AW1 could not disclose the date on which the delivery was taken by him. As per his version, after taking delivery from the railways he had distributed the coal material to the parties within a period of 5-6 days. He did not mention the details of description/ allocation to the parties either in his claim application or when he stepped into the witness box. Since there was no document of proof of protest and demand for weighment at the destination station as envisaged under Section 79 of the Act of 1989 the allegation of shortage in delivery of goods is completely devoid of merit. In the above premise, the finding of learned Tribunal that the consignment was delivered at destination station as it was loaded and handed over to railways at the originating railway station 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**

**04.04.2016.**
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