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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 4483 of 2008 (O/M)
Date of decision : 8.3.2017

M/s Indian Oil Corporation Limited Appellant (s)

Versus

Union of India Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Ashish Kapoor, Advocate, for the appellant.

Mr. Rohit Suri, Advocate, for respondent.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

This is first appeal against the judgment dated 31.1.2008, passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh, vide which the claim of the Indian Oil Corporation Limited (in short 'IOCL') for compensation of Rs. 1,14,996-84 on account of short delivery of 3603 litres of MS.

The short facts of the case are that IOCL booked several wagons numbering 15 (including the one wagon in question), vide Railway Receipt No. 585623, dated 10.10.2004 from IOC Tinsukia (Assam) to the depot of IOC Ambala. The said wagons reached two months later on 13.12.2004, at depot of IOCL Ambala in an open condition i.e. without top and bottom seals and one bottom flange plate was found missing. On 13.12.2004, joint dip was undertaken and it was found that there is shortage of 3603 litres of MS. However, the railways repudiated the claim. A

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certificate of joint checking dated 13.12.2004 is annexed as Annexure-A-2, prepared at Ambala Cantt. station, showing the condition of wagon as reached at Ambala Cantt. station.

The railways, in the reply, took the plea that the loading was done at the siding of the IOCL without the supervision of railway staff. The weight claimed by the sender was accepted by the railways. Therefore, the railways is protected from liability under Section 65 of the Railways Act, 1989. It was stated that the railway receipt was qualified with remarks as '15 Fifteen BITPNS T/Wagons Loaded with MS as per the forwarding note. It was further remarked that 'the wagon loaded, sealed, labeled and dip measured by IOCL, was not supervised by railway staff. Therefore, it cannot be said that there was a shortage.

The Tribunal took the view that the loading was not done in the presence of railway staff. Therefore, it cannot be said that there was a shortage due to fault of railways. It was further observed that the wagons reached within the normal time.

I have heard the learned counsels for the parties, carefully gone through the file and also examined the original file.

The perusal of the original file shows that as per the railway receipt (Annexure-A-1), 15 different wagons were booked by the IOCL and the weight of all the wagons is given. There are remarks on the railway receipt (Annexure-A-1) that the wagons were loaded, sealed and dip measured by the IOC Limited and not supervised by the railway staff. The wagons were booked on 10.10.2004 from Tinsukia (Assam) and reached IOCL Ambala depot two months later i.e. on 13.12.2004, which is not normal journey period from Tinsukia (Assam) to IOCL Ambala depot. It

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was not claimed by either party that regarding 14 wagons also, any shortage was detected. The dispute is only regarding one wagon. The joint checking of wagon shows that top and bottom seals were missing, one bottom flange plate was missing and shortage of 3603 litres MS was detected. The missing of top and bottom seals and one bottom flange plate goes to show that out of 15 wagons, one wagon was tampered with en-route to Tinsukia (Assam) to IOC Ambala when the wagons were in the custody of the railways. Therefore, it is for the railways to explain as to how this tampering has taken place. The IOCL did not claim that there was shortage in other wagons wherein the seals were found intact. Therefore, it cannot be said that the IOCL is making false claim.

Regarding the plea that the dipping was done at the site of IOCL without the supervision of railway staff, I am of the view that the position would have been different if the wagon had been received with all the seals intact. In that case, the railways could claim whatever the quantity was mentioned in the railway receipt was delivered without any tampering. Once the tampering is found, the burden of proof shifts on the railways to disprove the shortage, as claimed by the claimant. The claimant is otherwise a Government owned corporation and is unlikely to make a dishonest claim. It is further noted that the appellant produced the affidavit of its witness Sanjeev Dawar, Deputy Manager (Law). However, he was not cross examined by the railways to rebut the claim made by him.

It being so, keeping in view the fact that the top and bottom seals of one of wagons were found missing and one bottom flange plate was also found missing, I am of the view that the claim made by the appellant has to be accepted and respondent is not entitled to the protection of Section

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65 of the Railways Act, 1989. The matter was considered by a Single Bench of this Court in RSA No. 2295 of 1986, titled as M/s Indian Oil Corporation Ltd. Versus Union of India representing Northern Railways, decided on 14.9.2011, wherein the following observations were made :-

“12. Learned counsel for the respondent, on the other hand, has submitted that the loading of motor spirit was done at the siding of the plaintiff. According to him, the loading was not done in the presence or supervision of any official of the defendant. He has submitted that even railway receipt had been issued on the basis of the representation of the officials of the plaintiff for the purpose of freight. He has referred me in this regard to Exhibit D2 where it is mentioned that the wagon is said to contain the motor spirit as claimed by the officials of the plaintiff. In this view of the matter, it cannot be held proved that the wagon had 27200 litres of motor spirit and that there had been any loss of motor spirit in transit. It is also argued that the factum of presence of the bottom seal is also not verified by the officials of the defendant and that this was also on the representation of the officials of the plaintiff.

13. If the factum of presence of seals on the top and bottom of the wagon is not even verified by the booking persons of the defendant, then the negligence in handling the consignment appears to have started from day one. It cannot be allowed to be argued on behalf of the defendant-respondent that the bottom seal was not there at the time of dispatch. The fact of missing of bottom seal is mentioned in the joint dip certificate executed at the time of delivery by the officials of the parties. So, the defendant-respondent can not claim that there was no bottom seal on the wagon at the time of booking and that the missing of bottom seal is not on account of carelessness or negligence of the employees of the defendant.”

The learned counsel for respondent has relied upon the authority of Andhra Pradesh High Court in Union of India Versus M/s

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I.B.P. Co. Ltd., Chennai, AIR 2005 Andhra Pradesh 179. The perusal of the said authority shows that in that case, only top seal was found missing and the bottom seal was found intact. In that case, none was examined on behalf of claimant also. Therefore, in these circumstances, the claim was declined. The facts of the present case are clearly distinguishable from the said authority of Andhra Pradesh High Court in Union of India's case (supra).

It being so, I am of the view that the appellant has proved its claim. Accordingly, the impugned judgment dated 31.1.2008 is hereby set aside. The claim application is allowed. Respondents are ordered to pay the compensation to the tune of Rs. 1,14,996-84, say Rs. 1,14,997/-, towards the cost of short delivery of 3603 litres of MS alongwith interest at the rate of 9% per annum from the date of filing the claim petition i.e. 28.7.2005 till the actual date of payment.

Accordingly, the present appeal is allowed.

(KULDIP SINGH)
JUDGE

8.3.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes