

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO No.225/2013**

% **24th August, 2017**

STEEL AUTHORITY OF INDIA LIMITED Appellant

Through: Mr. S. Srivastava, Advocate.

versus

UNION OF INDIA Respondent

Through: Mr. J.K. Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed under Section 23 of the Railway Claims Tribunal Act, 1987 impugning the judgment of the Railway Claims Tribunal dated 12.11.2008 by which the Railway Claims Tribunal has dismissed the claim petition filed by the appellant/applicant for recovery of a sum of Rs.2,64,214/-, being the loss caused on account of shortage in the delivery.

2. The facts of the case are that the appellant loaded at its private siding at the Bokaro Steel Plant eight consignments of C.R.

sheets of different description. The consignment was loaded in wagon no. SC-64429 and the consignment was bound for the Sail Stock Yard at Tuglakabad, New Delhi. The case of the appellant was that it suspected shortage of the consignment enroute and therefore a request was made for taking open delivery vide letters dated 25.6.1992 and 26.6.1992. When re-weighment was done of the consignment, shortage to the extent of 18.410 MTs was found. The shortage was found in the Railways Report and the Joint Survey Report of the Railways dated 29.6.1992 and 23.7.1992 respectively. Appellant after serving the statutory notice under Section 106 of the Railways Act, 1989 filed the subject claim petition.

3. The respondent pleaded that it is not liable because the railway receipt in question was issued on the basis of 'Senders Weight Accepted' (SWA) i.e the railway receipt was not an unconditional receipt but was only the conditional receipt that what is the weight of the consignment has not been checked by the respondent/railways but the weight as given by the consignor/appellant has been accepted. Respondent relies upon Sections 65 and 94 of the Railways Act for dismissing of the claim petition.

4. It is not disputed in the facts of the present case that railway receipt shows that the same was as per SWA basis. Once the railway receipt is as per SWA basis, then, the respondent is protected by Section 94 of the Railways Act and which provides that there is no liability of the respondent/railways unless at the point of interchange to the railway wagon from the private siding a railway servant duly authorized is present, i.e the railway servant is present at the time of loading of the consignment, and therefore the railways is responsible for the weight of the consignment. Once the railway receipt is on SWA basis, then, there would be no liability in law of the respondent in terms of Section 94 of the Railways Act. Even Section 65 of the Railways Act only states that the railway receipt is only a *prima facie* proof of its contents and which expression of *prima facie* so found because of the procedure in the respondent/railways for taking SWA consignments and which is done because railways does not have provision for weighing of those consignments which are extremely heavy/bulky or those consignments because of their nature or for some other reason cannot weighed at the point of handing over of the consignment by the consignor to the railways.

Sections 65 and 94 of the Railways Act are reproduced as under:-

“Section 65. Railway receipt.-(1) A railway administration shall,--

(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 or, as the case may be, the number of packages stated therein, shall lie on the consignor, the consignee or the endorsee.

Section 94. Goods to be loaded or delivered at a siding not belonging to a railway administration.-(1) Where goods are required to be loaded at a siding not belonging to a railway administration for carriage by railway, the railway administration shall not be responsible for any loss, destruction, damage or deterioration of such goods from whatever cause arising, until the wagon containing the goods has been placed at the specified point of interchange of wagons between the siding and the railway administration and a railway servant authorised in this behalf has been informed in writing accordingly by the owner of the siding.

(2) Where any consignment is required to be delivered by a railway administration at a siding not belonging to a railway administration, the railway administration shall not be responsible for any loss, destruction, damage or deterioration or non-delivery of such consignment from whatever cause arising after the wagon containing the consignment has been placed at the specified point of interchange of wagons between the railway and the siding and the owner of the siding has been informed in writing accordingly by a railway servant authorised in this behalf.”

5. In view of the facts of the present case as stated above and the law as applicable, it is held that the Railway Claims Tribunal has committed no illegality in dismissing the claim petition because the respondent/railways is protected by Sections 65 and 94 of the

Railways Act inasmuch as the railway receipt was a conditional receipt of the consignment being accepted only on SWA basis.

6. There is no merit in the appeal. Dismissed.

AUGUST 24, 2017
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VALMIKI J. MEHTA, J

