

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.01.2018

Pronounced on: 28-03-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

Civil Miscellaneous Appeal No. 2222 of 2014
Cross Objection No. 95 of 2014
and
C.M.P. No. 1470 of 2018

C.M.A. No. 2222 of 2014

1. Union of India
Owning Southern Railway
represented by its General Manager
Park Town, Chennai - 600 003
2. Union of India
Owning East Central Railway
represented by its General Manager
Hajipur, Bihar .. Appellants/Respondents

Versus

M/s. Thiru Arooran Sugars Limited
represented by its Executive Director G. Rajagopal
No.112, Uthamar Gandhi Salai
'Eldarodo' - 5th Floor
Nungambakkam, Chennai - 600 034 .. Respondent/Applicant

Cross Objection No. 95 of 2014

M/s. Thiru Arooran Sugars Limited
represented by its Executive Director G. Rajagopal
No.112, Uthamar Gandhi Salai
'Eldarodo' - 5th Floor
Nungambakkam, Chennai - 600 034 . Cross Objector

Versus

1. Union of India
Owning Southern Railway
represented by its General Manager
Park Town, Chennai - 600 003
2. Union of India
Owning East Central Railway
represented by its General Manager
Hajipur, Bihar .. Respondents

CMA No. 2222 of 2014:- Appeal filed under Section 23 of the Railway Claims Tribunal Act against the Order dated 07.04.2014 made in O.A. No. (1) 2 of 2010 on the file of the Railway Claims Tribunal, Chennai Bench.

Cross Objection No. 95 of 2014:- Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure read with Section 23 of the Railway Claims Tribunal Act 54 of 1987, against the Order dated 07.04.2014 made in O.A. No. (1) 2 of 2010 on the file of the Railway Claims Tribunal, Chennai Bench.

CMA No. 2222 of 2014

For Appellants : Mr. G. Rajagopal
Additional Solicitor General
for Mr. P.T. Ramkumar

For Respondent : Mr. P.S. Raman, Senior Advocate
for Mr. T. Rajamohan

Cross Objection No. 95 of 2014

For Cross Objector : Mr. P.S. Raman, Senior Advocate
for Mr. T. Rajamohan

For Respondents : Mr. G. Rajagopal
Additional Solicitor General
for Mr. P.T. Ramkumar

COMMON JUDGMENT

R. Subbiah, J

Aggrieved by the Order dated 07.04.2014 made in O.A. No. (1) 2 of 2010 on the file of the Railway Claims Tribunal, Chennai Bench, directing Union of India, Owing Southern Railway and East Central Railway, both represented by their respective General Managers, to pay the compensation amount claimed by the claimant, the present Civil Miscellaneous Appeal No. 2222 of 2014 has been filed under Section 23 of the Railway Claims Tribunal Act.

2. While directing the appellants to pay the compensation amount of Rs.9,36,59,624/- to the respondent, the Tribunal has awarded interest at the rate of 6% per annum for the period from 22.09.2010 to 23.01.2014 and at the rate of 12% per annum from 23.01.2014 to till the date of order viz., 07.04.2014 and future interest at the rate of 7.5% per annum for the period from 07.04.2014 till the date of payment. Therefore, questioning the rate of interest awarded by the Tribunal at 6.5% and 7.5%, Cross Objection has been filed by the respondent stating that the Tribunal ought to have directed the appellants to pay uniform rate of interest of 12% per annum from the date of filing the Claim Petition till the date of disbursement.

3. As the appeal and the cross objection arise out of the very same order dated 07.04.2014 passed in O.A. No. (1) 2 of 2010 on the file of the Railway Claims Tribunal, Chennai Bench, they are taken up for hearing together and are disposed of by this common judgment. For the sake of convenience, parties to this appeal as well as cross objection are referred to as they are arrayed in the Civil Miscellaneous Appeal as 'appellants' and 'respondent'.

4. For the purpose of disposal of the appeal as well as cross objection, certain facts, which are germane and necessary are succinctly stated as follows:-

5. The respondent company is engaged in manufacture of white crystal sugar having factories at Thirumanthankudi Village, Papanasam Taluk, Thanjavur District and also at A. Chittur Village, Vridachalam Taluk, Cuddalore District. In the course of their business, the respondent used to sell free sugar in Northern Indian markets consisting of West Bengal, Assam, Bihar and Delhi by transporting the consignments of sugar in rakes through the services provided by the appellants/Railways. As per the prevailing business practice, the respondent company will sell sugar to Dealers based on sale orders. Upon loading of the consignment through Railways, Railway receipts will be issued by the appellant/ railways showing the consignee as "self" and as soon as the sale price is paid, it will be endorsed by the respondent in favour of the consignee. The endorsed consignee/buyer takes delivery on payment of the sale price at the respective destination by surrendering the Railway receipts so endorsed in their favour. In such a fashion, during the course of their business, the respondent company got an order placed by a dealer by name M/s. Subham Sugar Agencies, Kolkatta for purchase of 27000 quintal of free sugar. As regards the payment, it was agreed that the endorsed railway receipt will be released on receipt of the entire sale consideration by the respondent. After agreeing and undertaking to fulfil the above payment condition by the dealer, the respondent booked the consignments of sugar on 01.02.2010 from Kumbakonam, Tamil Nadu which comes within the jurisdiction of the first appellant/Railways namely Southern Railway and the consignment was to be delivered at Fatuha, which falls within the jurisdiction of the second appellant/East Central Railway. As agreed between the respondent and the dealer - Subham Sugar Agencies, the railway receipts were drawn as "self" and retained in the custody of the respondent. The dealer was expected to remit the sale price and to get the railway receipts endorsed in their favour. However, the dealer namely Subham Sugar Agencies, for the reasons best known, did not fulfil the payment obligation and delayed in remitting the amount. According to the respondent, in the meantime, the consignment that had reached the destination point was kept in the Railway yard/godown at Fatuha and was incurring wharfage charges. At this stage, with a view to avoid recurring storage charges, the respondent sent a letter dated 23.04.2010 to the Senior Divisional Commercial Manager, Southern Railway, Trichy, specifically informing that

the original railway receipts are in their custody and sought to know the status of the goods. Such a letter was written by the respondent to ensure that the consignment should neither be shifted to any other destination nor should it be sent back to Kumbakonam. In the said letter, inter alia the respondent requested them to intimate the storage charges payable by them. As there was no response, the respondent sent another letter dated 28.04.2010 to the Senior Divisional Commercial Manager, Southern Railway, Trichy with a view to safeguard the interest of the respondent.

6. According to the respondent, while the facts are so as stated above, by a reply dated 04.05.2010 received from Senior Divisional Commercial Manager, Southern Railway, Trichy, the respondent was informed that the consignments were delivered at Fatuha on 10.02.2010 itself on the strength of an indemnity bond. However, the said letter did not disclose as to whom and under what authority the consignments were delivered to a third party when the original railway receipts were not surrendered and retained by the respondent. On enquiry, the respondent came to know that the consignments have been delivered unlawfully without following the conventional or established procedures for delivery of the goods. The respondent also came to know that action has been initiated against the Station authorities of Fatuha. Thus, the respondent came to know that the consignments were delivered to a third party without the surrender of Railway Receipts and that the delivery was made to a wrong person. According to the respondent, they have neither authorised nor endorsed the Railway receipts in favour of any one, as required, much less to a third party and the consignments have been booked only as 'self'. The delivery of the goods to a third party amounts to negligence and misconduct on the part of the appellants/ Railways and thereby the respondent was put to monetary loss. In such circumstances, seeking payment of compensation for wrongful delivery of the consignment, the respondent has filed O.A. No. (1) 2 of 2010 on the file of the Railway Claims Tribunal, Chennai Bench, claiming a compensation of Rs.9,46,85,726/- together with interest at the rate of 12% per annum from the date of claim application till the date of payment and for costs.

7. The Original Application filed by the respondent was resisted by the second appellant by filing a Reply Statement contending inter alia that respondent has not approached the Tribunal with clean hands. According to the second appellant, the consignment reached the destination namely Fatuha on 10.02.2010 and it was delivered to Shree Shyam Agency of Muzzafarpur on the basis of a written application made by them together with an indemnity bond, a cheque in favour of the respondent as security, loading statement sent by the respondent through e-mail to their business conduit. Thus, it is on the basis of the aforesaid documents submitted by Shree Shyam Agency for establishing that they are entitled to receive the consignment, the consignment was delivered to them. The deliverer aforesaid also established that they had usual and regular business transaction with the consignor/respondent and

that they have earlier taken delivery of so many consignments sent by the respondent. In order to prove such earlier transaction, 4 copies of Railway receipts endorsed by the respondent in their favour was also produced. Further, a letter dated 20.07.2010 was also written by Shree Shyam Agency addressed to the Goods Supervisor, Fatuha stating that they have filed a criminal case on 24.05.2010 as against the respondent for the offences under Section 406 and 420 of IPC read with Section 34 of IPC for their failure to handover the railway receipt to them. Above all, Shree Shyam Agency has also furnished an affidavit to the effect that it had taken the delivery of the consignment and paid a sum of Rs.7,30,22,052.40 to the respondent and M/s. Ambika Sugars Limited, a subsidiary company of the respondent. Further, the business conduit had also furnished the bank statements showing the transaction they had with the respondent and M/s. Ambika Sugars Limited maintained with Punjab National Bank, Patna Branch for the period from 18.12.2009 to 31.12.2009 which would show that Shree Shyam Agencies had transferred a sum of Rs.6 Crores to the respondent, but the respondent/claimant did not disclose this fact in the pleadings that they had already received a major sum of payment in consideration of the contractual amount from the business conduit. Thus, the non-disclosure of the amount received by the respondent/claimant would amount to fraud and concealment of the material facts and therefore, no fault could be attributed against the second appellant.

8. It is further contended in the Reply statement of the second appellant that the respondent, in the Original Application, has failed to indicate the amount received by them from Shree Shyam Agency, but harped upon saying that they did not endorse the Railway Receipts and the original Railway Receipt is in their custody. Furthermore, the respondent did not make any claim for more than 80 days from the date on which the consignment reached the destination point and the prolonged silence on the part of the respondent in asserting their right over the consignment merits the original application only to be dismissed. The respondent also did not issue any 'stop delivery' intimation either to the first appellant or the second appellant within a reasonable time, however, for the first time, the respondent had written a letter dated 23.04.2010 to the Senior Divisional Commercial Manager, Southern Railway, Trichy followed by remainder dated 28.04.2010 seeking to ascertain the status of the consignment for which the Senior Divisional Commercial Manager, Southern Railway, Trichy sent a reply dated 04.05.2010. Thereafter, the respondent has approached the appellants/ Railways through their letter dated 09.06.2010 after 130 days of the consignment reaching the destination point on 10.02.2010. Further, on enquiry, the appellants obtained the copy of the sale order No.65/2009 under reference and came to know that there is a dispute between the respondent and Shree Shyam Agency with respect to the agreed price for the consignment and after negotiation, there was an agreement reached between the respondent and Shree Shyam Agency on 21.12.2009 and on 29.01.2010 with respect to the rate of the Sugar than the one

agreed between them on 12.12.2009. Such orders relating to negotiation of the price were issued by the respondent in the name of M/s. Shubham Sugar Agency, Kolkatta, which is a commission agent. Thus, there was a contractual dispute between the respondent and Shree Shyam Agencies regarding payment of differential amount of the consignment in which the appellants were unnecessarily roped in. The present claim petition has been filed by the respondent to gain unlawfully without disclosing the amount received by the respondent towards the subject consignment. Furthermore, in order to have a binding adjudication of the dispute, the respondent ought to have impleaded Shree Shyam Agency as a party respondent and unless they are impleaded, the dispute involved in this application cannot be resolved. Therefore, the respondent would contend that the non-impleading of Shree Shyam Agency as a party to the Original Application is fatal to the claim petition. The respondent also prayed before the Tribunal for keeping the original application pending till such time an order is passed in the Criminal case filed by Shree Shyam agency against the respondent herein on the file of Chief Judicial Magistrate, Muzzafarpur, Bihar and inter alia prayed for dismissal of the original application.

9. Before the Tribunal, in order to prove the averments contained in the claim petition, on behalf of the respondent, Mr. R. Palaniappan, Senior General Manager (Marketing) was examined as AW-1 and Exs. A-1 to A-21 were marked. On behalf of the appellants/Railways Mr. Umesh Choudhary, Goods Shed Supervisor, Fatuha was examined as RW1, Mr. Subodh Kumar, ACM/Goods/Eastern Railway/Danapur was examined as RW2, Mr. Mahesh Choudhary, Manager of M/s. Subham Sugar Agencies was examined as RW3 and one Mr. Rakesh Kumar Agarwal, representative of M/s. Shree Shyam Agencies, was examined as RW4 besides Exs. R1 to R-25 were marked. The Tribunal, on analysing the oral and documentary evidence, allowed the Claim Petition filed by the respondent by issuing a direction to the appellants herein to pay a sum of Rs.9,36,59,624/- to the respondent with interest at the rate of 6% per annum from the date of filing of application till 23.01.2014 and at 12% per annum from 23.01.2014 till the date of Order viz., 07.04.2014 and future interest at the rate of 7.5% per annum from the date of the order till the date of payment together with costs of the proceedings. Aggrieved by the aforesaid order, the appellants have filed the Civil Miscellaneous Appeal and the respondent has filed the Cross Objection in so far as it relates to rate at which interest was ordered by the Claims Tribunal.

10. During the pendency of this appeal, the second appellant has filed C.M.P. No. 1470 of 2018 for reception of additional document. The document sought to be marked by the second appellant is an e-mail dated 06.04.2010 sent by the respondent addressed to Mahesh Choudhary, Manager of M/s. Subham Sugar Agencies, who was examined as RW3 before the Tribunal. According to the second appellant, the contents of the e-mail would reveal the payment details regarding the sale

order No.65 which is the subject matter of the Original Application before the Tribunal. According to the second appellant, in the said e-mail sent by the respondent, they have confirmed receipt of Rs.2,31,20,965/- as on 06.04.2010 towards sale order No.65 and shown a balance sum of Rs.7,15,38,659/- to be received by them. Thus, the second appellant would contend that the contents of the e-mail would establish that the respondent is fully aware of the delivery of the consignment to Shree Shyam Agencies pertaining to sale order No.65 and they have also received a sum of Rs.2,31,20,965/-. But, the respondent had deliberately suppressed to produce the e-mail dated 06.04.2010 before the Railway Claims Tribunal. If the e-mail dated 06.04.2010 had been brought to the notice of the Railway Claims Tribunal, the Tribunal would have taken note of the contents of the e-mail and there would have been a possibility for the claim petition filed by the respondent being dismissed by the Tribunal. But, the second appellant came to know about the e-mail dated 06.04.2010 only after receiving the letter dated 08.09.2014 sent through one Mr. Nawal Kishore, Proprietor of M/s. Shree Shyam Agencies. Therefore, the second appellant would contend that the e-mail dated 06.04.2010 sent by the respondent may be received and marked as an additional document in the present appeal so as to enable the appellant to disprove the claim made by the respondent in the claim petition.

11. The respondent has filed a counter affidavit opposing the prayer sought for in MP No. 1470 of 2018. According to the respondent, the claim petition has been filed seeking compensation for having delivered the consignment to a third party without production of the original railway receipt with the endorsement by the consignor/respondent herein. Such delivery of the goods were made in collusion with the officials of the second appellant/Railways which led to wrong delivery of the consignment and thereby the respondent was put to monetary loss. In fact, the original contract for the subject matter of consignment was entered into by the respondent only with M/s. Subham Sugar Agencies, who in turn offered the consignment to M/s. Shree Shyam Agency. As per the contract, vide Sale Order No.65, an advance of Rs.10,00,000/- was paid to the respondent and the balance sale consideration of Rs.9,36,59,624/- was to be paid to the respondent and only upon receipt of such amount, the original Railway receipt will be endorsed by the respondent in favour of M/s. Subham Sugar Agencies or its nominee/purchaser. Admittedly, there were 21 bargains between the parties which were assigned separate sale order number between the respondent and its sister concern M/s. Shree Ambiga Sugars Limited and the said M/s. Subham Sugar Agencies. So far as sale order No.65 is concerned, in the said e-mail, only a sum of Rs.10,00,000/- received by the respondent for the subject consignment as advance is indicated. While so, the e-mail dated 06.04.2010, which is sought to be marked as a document at the appellate stage, will not be of any significance for the second appellant to prove their defence. In fact, even as per the alleged e-mail dated 06.04.2010, only a sum of Rs.10,00,000/- was paid to the respondent as advance

and all other payments referred to therein relates to some other Sale orders which are prior to the instant sale order No.65 dated 12.12.2009. Those payments made to the respondent prior to the instant sale transaction will be of no use and significance for the purpose of adjudicating this appeal. The consignment has been mis-delivered or wrongly delivered to M/s. Shree Shyam Agency in collusion with Goods Shed Supervisor Mr. Umesh Choudhary against whom a complaint has been registered by the second appellant and subsequently he was dismissed from service. This would only prove that the respondent has been deprived of their legitimate payment in respect of the consignment in question due to the collusion between the officials of the second appellant Railways with M/s. Shree Shyam Agency and therefore, no fault could be attributed as against the respondent. In any event, in the absence of any pleadings relating to the alleged e-mail dated 06.04.2010 in the reply statement before the Tribunal, the present petition for reception of additional document cannot be sustained. Therefore, the respondent prayed for dismissal of the petition for reception of additional document.

12. The learned Additional Solicitor General appearing for the appellants would vehemently contend that a consignment of 26034 quintals of Sugar was despatched by the respondent from Kumbakonam to Fatuha Railway Station on 01.02.2010 vide Railway Receipt Nos. 21200375 and 21200376 dated 01.02.2010. The said consignment reached the point of destination namely Fatuha Railway Station on 10.02.2010 and it was delivered to M/s. Shree Shyam Agency on the strength of e-mail Ex.R14 produced by them which contains the list of wagons pertaining to Sale Order No.65 sent by M/s. Subham Sugar Agency, agent of the respondent. Even though the respondent claims that the value of the consignment was not paid to them by the consignee, they have not chosen to take any action thereof for 81 days till 23.04.2010. There is no reason assigned by the respondent for remaining silent for 81 days and the delay on the part of the respondent had widened the scope of the dispute with respect to delivery of the consignment. If really the respondent had not received the value of the consignment as contended by them, they would not have waited for more than two months without taking any action especially when the value of the consignment is worth crores of rupees. The Tribunal, while allowing the claim petition filed by the respondent did not take note of the fact that Mr. Rakesh Kumar Agarwal, authorised representative of M/s. Shyam Agency (RW4) admitted in his evidence that the said consignment has been despatched on the basis of the sale order placed by them and they have taken delivery of the consignment on the basis of e-mail sent by M/s. Subham Sugar Agency containing the list of wagon and it has also been stated therein that payments have been made to the respondent for the said consignment. Further, it was admitted by RW4 that the same procedure has been adopted in the matter of taking delivery in respect of 9 earlier consignments despatched by the respondent. It was further admitted by RW4 that they have made part payment in respect of the sale order and they are required to pay some more amount. This is evident from the affidavit

filed by Proprietor of M/s. Shyam Agency confirming that they have taken delivery of the consignment on 10.02.2010 despatched by the respondent after executing indemnity bond (Ex.R9 and R10). It was also not disputed by the respondent that certain consignments were earlier delivered on the basis of indemnity bond, while so, the appellants cannot be fastened with any liability in this case. Under such circumstances, the Tribunal ought not to have mulcted the liability on the appellants in order to make them to pay the price of the consignment on the ground that the consignment was wrongly delivered by them. The Tribunal also failed to take note of the fact that there was a contractual dispute between respondent and M/s. Shyam Agencies and M/s. Subham Sugar Agencies with respect to remittance of payment towards the sale order. When admittedly the consignment was taken delivery by M/s. Shyam Agencies, it cannot be said that the respondent had sustained loss on account of alleged misdelivery of the consignment. Admittedly, the respondent has not taken any action either against M/s. Shyam Agencies or M/s. Subham Sugar Agencies for recovering the amount due and payable to them for taking delivery of the consignment in question. The Tribunal also failed to take note of the fact that the Railway Administration has delivered the goods by following the procedures contemplated under Sec.76 of the Railways Act and Rule 3 (2) of The Railways (Manner of Delivery of Consignments and Sale Proceeds in the Absence of Railway Receipt) Rules, 1990 which says "where the Railway Receipt is not forthcoming, the consignment may be delivered to the person, who in the opinion of the Railway Administration is entitled to receive the goods and who shall receive the same on execution of indemnity bond as specified in Form I" In the instant case, delivery of the goods were made based on indemnity bond issued by M/s. Shyam Agency and therefore, the delivery cannot be termed as a wrongful delivery as held by the Railway Claims Tribunal. According to the Additional Solicitor General appearing for the appellants, endorsing the Railway Receipts after receipt of the payment and production of such Railway Receipts alone is not a condition precedent for taking delivery of the goods and the goods can be delivered even in the absence of Railway Receipts, which was rightly adhered to in the present case. In such circumstances, the respondent cannot be heard to contend that the consignment has been wrongly delivered to a person to whom the consignment was intended to and to seek for compensation from the appellants.

13. The learned Additional Solicitor General appearing for the appellants would further contend that the Tribunal has completely brushed aside the evidence of Mr. R. Palaniappan, Senior General Manager (Marketing) of the respondent company (AW1), who has admitted that the respondent did not take any action for a period of more than 2 months with respect to deliverance of consignment till they have sent a letter dated 23.04.2010. The respondent had wantonly withheld the Railway Receipt with them and now they are projecting a case for non-payment of the consignment price and in that process, they are trying to secure price, one by receipt of payment from M/s. Shyam Agency and again payment by way of compensation from the

Railway Administration. This is evident from the letter dated 08.09.2014 sent by M/s. Shyam Agency to M/s. Subham Sugar Agencies enclosing a copy of the e-mail dated 06.04.2010 sent by the respondent. The communication emanated from the respondent would clearly confirm the payment of Rs.2,31,20,965/- received by the respondent with respect to Sale Order No.65. It was also mentioned in the communication that the balance amount to be received by the respondent is Rs.7,15,38,659/-. While so, the respondent has claimed in the claim petition a sum of Rs.9,36,59,624/- even after receipt of a partial payment of Rs.2,31,20,965/- from M/s. Subham Sugar Agencies for the consignment in question. Thus, the respondent has not approached the Tribunal with clean hands and suppressed the material particulars with respect to receipt of payment from M/s. Subham Sugar Agencies. The e-mail dated 06.04.2010 came to light only after the impugned order passed by the Tribunal and therefore, the appellants have filed CMP No. 1470 of 2018 for reception of e-mail dated 06.04.2010 as an additional document. Even otherwise, the respondent ought to have impleaded M/s. Shyam Agencies or M/s. Subham Sugar Agencies as a party to the claim petition and non-impleadment of the aforesaid firms is fatal to the case projected by the respondent herein.

14. The learned Additional Solicitor General would further contend that the e-mail dated 06.04.2010 shows that the respondent had received various amounts as advance pursuant to sale orders placed in their favour, including the disputed sale order No.65. Had the respondent produced the e-mail dated 06.04.2010 before the Tribunal, the Tribunal would not have entertained the claim petition filed by the respondent or atleast the Tribunal would have taken note of the partial sale advance received by the respondent without mulcting the appellants to pay the entire amount of Rs.9,36,59,624/- as compensation together with interest. Above all, it was contended by the learned Additional Solicitor General appearing for the appellants that the Tribunal, in the impugned order, observed that investigation by Central Bureau of Investigation (CBI) is essential in this case and directed the Additional Registrar of the Tribunal to forward the copies of the Judgment to Central Vigilance Commissioner as well as Chairman, Railway Board and Director of Central Bureau of Investigation, New Delhi for necessary action. When the Tribunal had reservation over the manner in which the investigation has been conducted in this case with respect to the alleged lapses committed by the officials of the second appellant, the Tribunal ought to have waited for completion of investigation by the investigating agency, instead of hastily allowing the Claim Petition filed by the respondent. In this context, the learned Additional Solicitor General appearing for the appellants relied on the decision of the Honourable Supreme Court in the case of (Union of India vs. K.V. Lakshmanan and others) reported in 2016 (4) CTC 533 to contend that the e-mail dated 06.04.2010 sent by the respondent is a document which will be helpful to determine the real controversy in the case and therefore, the learned Additional Solicitor would pray for

allowing CMP No. 1470 of 2018 and to set aside the order of the Tribunal.

15. On the contrary, the learned Senior counsel appearing for the respondent would vehemently contend that before the Tribunal, it was established that the consignment sent by the respondent reached the destination point on 10.02.2010 and on the same day, without waiting for the consignee to produce the Railway Receipt, the goods were delivered on the same day namely 10.02.2010 to M/s. Shree Shyam Agency, Muzaffarpur, Bihar solely on the basis of indemnity bond (Exs. R9 and R10) produced by the consignee. As per the prevailing practice, the Railway Administration would insist for production of the Railway Receipts with endorsement by the consignor for having received the payment towards the consignment. As regards the agreed sale price, as on the date of despatch of consignment, the price of Sugar per quintal was Rs.3,850/- which could be evident from invoices dated 29.01.2010 and 30.01.2010 (Ex.A-19 series). Subsequently the price was increased to Rs.3,900/- per quintal during January and February 2010 as monitored by the Ministry of Consumer Affairs, Food and Public Administration, which is evident from Ex.A-20. Thereafter, the price of per quintal of Sugar was further enhanced to Rs.3,950/-, which is evident from Ex.A21, Market-wise daily report of sugar as on 29.01.2012. Thus, there was amendment made with respect to the agreed price of the sugar under Ex.A-13 and A-14 prior to the loading of the consignment at Kumbakonam and it was also not disputed by M/s. Subham Sugar Agencies or M/s. Shree Shyam Agencies. However, after despatch of the consignment, the respondent had sent an e-mail to M/s. Subham Sugar Agencies furnishing the details of the consignment and also taken follow up action for receipt of the payment and the consignment reached Fatuah, Bihar on 10.02.2010. While so, pending receipt of the payment, the second appellant delivered the goods on 10.02.2010 itself to M/s. Shree Shyam Agency, Muzaffarpur purportedly on the strength of the e-mail dated 02.02.2010 sent by the respondent to M/s. Subham Sugar Agencies which in turn was forwarded to M/s. Shree Shyam Agency. Further the officials of the second appellant had also received indemnity bond executed by M/s. Shyam Agency in favour of the second appellant as a condition precedent for delivering the goods which is not a procedure contemplated for deliverance of the goods.

16. Before the Railway Claims Tribunal, I.A. No. 3 of 2011 was filed by M/s. Shree Shyam Agency, Muzaffarpur to implead themselves as a party to the claim petition. The second appellant also filed I.A. No. 4 of 2011 seeking to implead M/s. Shree Shyam Agency, Muzaffarpur who took delivery of the consignment and also to implead Mr. Umesh Chowdhary, Goods Shed Supervisor who was incharge of the shed at the time of deliverance of the goods. Both the applications for impleadment was dismissed by the Tribunal on 15.04.2011. Aggrieved by the same, M/s. Shree Shyam Agency and the second appellant filed CRP Nos. 1713, 2152 and 2153 of 2011 before this Court and they were also dismissed on 09.09.2011. As

against the order of dismissal, a further appeal was filed by Shree Shyam Agency in Civil Appeal No. 7589 of 2012 before the Honourable Supreme Court and it was also dismissed on 18.10.2012. Further, during the pendency of the Claim Petition, the second appellant filed a suit - Money Suit No. 14 of 2013 on the file of Sub Judge, Patna against M/s. Shree Shyam Agency, represented by its Proprietors and others claiming a sum of Rs.9,46,85,726/- together with interest and cost.

17. The learned Senior Counsel appearing for the respondent would further contend that as per Section 65 of The Railways Act, 1989, the Railway Receipt shall be the prima facie evidence of the weight, number and description of the goods to be delivered in favour of the consignee. Section 74 of the said The Railways Act provides for passing of the property in the goods covered by the Railway Receipt and as per the said Act, the property in the consignment covered by a railway receipt shall pass to the consignee or to the endorsee as the case may be on the delivery of such railway receipt to him and he shall have all the rights and liabilities of the consignor. Further, Section 76 of the said Act provides that the Railway administration shall deliver the consignment under a Railway Receipt on surrender of such Railway Receipt and the proviso stipulates that in case the Railway Receipt is not forthcoming, the consignment may be delivered to the person, entitled, in the opinion of the Railway Administration, to receive the goods, in such manner as may be prescribed. Thus, any delivery of goods, which contravenes the procedure laid down under the aforesaid Rule would only result in fastening of the liability on the part of the Railways to make good the loss caused to the consignor. Further, under Rule 3 (2) of The Railways (Manner of Delivery of Consignments and Sale Proceeds in the Absence of Railway Receipt) Rules, 1990 relied on by the learned Senior counsel for the appellants, it is categorically stipulated that in case the Railway Receipt is not forthcoming and the consignment is addressed by the sender to 'self', the delivery shall not be made unless indemnity bond executed in Forms 1A and 1B are produced by the person claiming delivery of the consignment. In the present case, both the forms are to be executed in the prescribed forms annexed to the said Rules. In other words, it is mandatory that Form 1-A has to be signed by the consignor, confirming that he is the bonafide owner of the goods and Form 1B has to be signed by the consignor, authorising a person to take delivery of the goods. Such Form 1-A has to be countersigned by the Station Master of the forwarding Station and form 1B by the Station Master of the Destination station. In the present case, all the aforesaid procedures contemplated under the Rules have not been followed while delivering the consignment to a third party. Thus, there is sheer negligence exhibited by the appellants in the matter of delivery of the consignment to the third party, much to the detriment of the respondent. This is fortified by the admission of RW1, Mr. Umesh Choudhary that the consignments reached the destination point on 10.02.2010 and he had permitted the delivery of the consignment on the same day much

prior to the free time of 6 hours allowed for unloading and free time of 12 hours for delivery. He also admitted that he permitted deliverance of the goods on the strength of indemnity bond, cheque for Rs.2,16,37,572/- in the name of the respondent as security (Ex.R17) and a letter (Ex.R16) given by M/s. Shyam Agency alleging payment of Rs.7,30,22,052/-. RW1 also admitted in his cross-examination that in the indemnity bonds (Exs. R9 and R10) no amount has been mentioned and therefore it cannot be construed to be a valid indemnity bond and it could not be enforced under law. RW1 also admitted that he did not consult the higher officials before permitting delivery of the goods based on Exs. R7, R9 and R10 and thus, the consignment was wrongly delivered without following the procedures contemplated under The Railways (Manner of Delivery of Consignments and Sale Proceeds in the Absence of Railway Receipt) Rules, 1990. RW1 also admitted that as a Goods Supervisor, he has power only for deliverance of goods having value upto Rs.1 lakhs and not exceeding such amount. Admittedly, RW1 was suspended and eventually dismissed from service because of the wrong delivery of consignment effected by him and this itself is sufficient to hold that the second appellant was guilty of delivery of the consignment to a third party and therefore, the Tribunal is wholly justified in fastening the liability on the appellants. Further, RW2, Assistant Commercial Manager, East Central Railway also admitted that the consignment ought not to have been delivered on the strength of Exs. R9 and R10, indemnity bonds and it was not in accordance with the prescribed procedure contemplated under the Rules or it was not an established procedure contemplated under law. Therefore, the Tribunal, on the basis of the aforesaid evidence has rightly directed the appellants to pay the value of the consignment to the respondent. This is more so that under Rule 3 (1) (iii) of the Railways (Extent of Monetary Liability and Prescription of Percentage Charges) Rules, 1990, it is specifically contemplated that where any consignment is entrusted to Railways for carriage and where the consignor has declared the value of such consignment at the time of entrustment, the liability of the Railways, in the event of non-delivery of the consignment, shall not exceed the value so declared. In the present case, the Tribunal find that the consignment was wrongly delivered and therefore, on the basis of the value declared by the respondent at the time of entrustment, the Tribunal has directed the appellants to pay the value of the consignment as compensation.

18. The learned Senior counsel for the respondent also invited the attention of this Court to the order passed by the Honourable Supreme Court on 18.10.2012 in Civil Appeal No. 7589 of 2012 filed by M/s. Shree Shyam Agency. By the said order, while dismissing the Civil Appeal filed by M/s. Shree Shyam Agency, it was held that in matters relating to non-delivery or mis delivery of goods, the Tribunal has jurisdiction to entertain the claim petition and that the Tribunal has to enquire into and determine the claim against the Railway Administration, that is whether the Railway Administration is at fault in discharging its responsibilities under the Railways

Act, Rules and Regulations and not the inter se dispute between the claimants and third parties.

19. As regards the submission of the learned Additional Solicitor General appearing for the appellants that part of the value of the consignment has been received by the respondent, but it was suppressed in the claim petition, it is contended by the learned Senior counsel for the respondent that RW4, Rakesh Kumar Agarwal, a representative of M/s. Shree Shyam Agency has produced Ex.R15, statement of account, but on perusal of Ex.R15, it was revealed that it relates to accounts of the respondent and M/s. Ambiga Sugars Limited. Both the respondent company and M/s. Ambiga Sugars Limited are different legal entities and a combined account statement furnished under Ex.R15 cannot be relied upon to determine the payment said to have been made to the respondent. Further, RW4 admitted that Ex.R15 is only a ledger extract for nine bargains and it has not been stated that advance has been paid towards the subject consignment. Even otherwise, Ex.R15 relates only for the period from 01.04.2009 to 31.01.2010 and the same does not cover the period during which the subject consignment was booked on 10.02.2010. Therefore, Ex.R15 cannot be relied on to substantiate that part of the sale price in respect of the subject consignment has been paid to the respondent leaving the balance amount unpaid. In any event, the payment made to the respondent will not curtail or restrict the loss caused to the respondent for misdelivery or non-delivery of the consignment and therefore, the learned Senior counsel for the respondent prayed for dismissal of the appeal.

20. As regards the claim for interest, it is contended by the learned Senior counsel for the respondent that the respondent claimed interest only at the rate as prevailing in the public sector banks. The respondent's huge capital amount has been blocked by reason of misdelivery or non-delivery of the goods by the appellants and therefore, the Tribunal ought to have directed the appellants to pay interest at the rate prayed for in the claim petition. In this context, the learned Senior counsel for the respondent placed reliance on Section 34 of the Code of Civil Procedure to contend that in a case of this nature, where the respondent sought for payment of compensation, the Tribunal ought to have awarded reasonable rate of interest, but in the present case, the Tribunal awarded lesser rate of interest than the one claimed, without any justification.

21. We have given our anxious consideration to the submissions made on behalf of both sides and perused the materials placed on record. In the light of the submissions made by the learned counsel on either side, the following questions emerge for our consideration in this appeal and Cross-objection and they are:-

1. Whether the delivery of consignment entrusted by the respondent at the destination point without the railway receipt with endorsement, would amount to wrong delivery of the consignment?

2. Whether the Tribunal ought to have directed the respondent to pay interest at the rate of 12% per annum as claimed by the respondent?

22. As we have dealt with the factual matrix of the case in detail, it would not be necessary for us to repeat the same any further. However, certain facts which are germane and necessary for the purpose of disposal of this appeal and cross objection are essential and they alone are referred.

23. The respondent, during the course of their business, had entrusted 27000 quintal of sugar consignment to be despatched to the consignor M/s. Subham Sugar Agencies, Kolkatta through the appellants/Railways. The consignment of sugar was booked on 01.02.2010 from Kumbakonam, Tamil Nadu to be delivered at Fatuha, Bihar, vide Railway Receipt Nos. 212000375 and 212000376 dated 01.02.2010. According to the respondent, in the Railway Receipts the name of the consignee was indicated as "self" and the original Railway Receipts were retained by the respondent. According to the respondent, it is the normal business practice that whenever the consignment or goods are despatched through the railways, the original Railway Receipts will be retained by the respondent until the consignee pays the price of the consignment and as soon as the sale price is paid, an endorsement will be made by the respondent authorising the railway to deliver the consignment in favour of the consignee. If for any reason, the consignee failed to pay the price of the consignment, the goods shall be returned back to the consignor and that is the reason why, the railway receipts are drawn with the name of the consignee as "self". This is to ensure that the goods are not delivered unless and until the consignor receives the payment for the goods so despatched, before delivery of the goods, to the consignee. This according to the respondent is one of the modes prescribed under The Railways (Manner of Delivery of Consignments and Sale Proceeds in the Absence of Railway Receipt) Rules, 1990. Rule 3 of The Railways (Manner of Delivery of Consignments and Sale Proceeds in the Absence of Railway Receipt) Rules, 1990 prescribes for delivery of the consignments when the Railway Receipt is not forthcoming. Sub-Rule (2) of Rule 3 clearly states that "Where the railway receipt is not forthcoming and the consignment is addressed by the sender to self, delivery shall not be made unless Indemnity Note duly executed in Forms 1A and 1B are produced by the persons claiming delivery of the consignment. In other words, according to the respondent, only if the original railway receipts are not received for a considerable period of time after the consignment reached the destination point, the goods shall be delivered after obtaining an indemnity bond as prescribed in the Rules. Further, Section 65 of The Railways Act, 1989 deals with the Railway Receipt which reads as under:-

<https://hcservices.ecourts.gov.in/hcservices/> "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 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."

24. Similarly, Section 74 of The Railways Act, 1989 contemplates the passing of the goods covered in the railway receipt and it reads as follows:-

"74. Passing of property in the goods covered by railway receipt:- The property in the consignment covered by a railway receipt shall pass to the consignee or the endorsee, as the case may be, on the delivery of such railway receipt to him and he shall have all the rights and liabilities of the consignor."

25. Thus, it is evident from Section 65 of the Railway Act that the railway receipt serves as a prima facie proof with respect to the weight of the goods entrusted, the package number and other pertinent details with respect to the consignment. In this case, admittedly, the consignment reached the destination point on Fatuha, Bihar. However, without waiting for the Railway Receipts to be received from the consignee with necessary endorsement, the goods were delivered to the consignee on receipt of indemnity bond and other documents on the same day on which the consignment reached the destination point. Thus, it is clear that indemnity bonds which were not in accordance with the format prescribed under the Rules were accepted by the officials of the second appellant without waiting for receipt of the original Railway Receipts even for a single day. As per Rule 3 (2) of The Railways (Manner of Delivery of Consignments and Sale Proceeds in the Absence of Railway Receipt) Rules, 1990, where the Railway Receipt is not forthcoming and the consignment is addressed by the sender to 'self', the Railway Administration shall not deliver the consignment unless Indemnity Bonds executed in the prescribed Forms 1A and 1B annexed to the Rules and produced by the person claiming delivery of the consignment. Further, it is mandatory that such Forms have to be signed by the consignor, confirming that he is the bonafide owner of the goods inter alia authorising the person to take delivery. In addition, Form 1-A has to be counter-signed by the Station Master of the Forwarding Station and form 1B by the Station Master of the Destination Station. Admittedly, in the present case, the Railway Receipts, Exs. A1 and A2 are booked

by the respondent to 'self' and the Indemnity Bonds executed by the third party M/s. Shree Shyam Agency, marked as Exs. R9 and R10 are neither signed by the respondent, as consignor, nor counter-signed by the Station Master of the Forwarding Station. Therefore, Exs. R9 and R10 are inadmissible for the reasons that they are not in the prescribed form as per the annexure to the Rules, they are not signed by the respondent, as consignor and attested by the Station Master of the forwarding station. This, in our opinion, would exhibit sheer negligence on the part of the authorities of the second appellant in delivering the goods to M/s. Shree Shyam Agency without even waiting for the Railway Receipt. Further, it is brought to our notice that Mr. Umesh Choudhary, Goods Shed Supervisor, Fatuha who was examined as RW1, during the course of his cross-examination, he has admitted that the consignments reached the destination point at 06.00 am on 10.02.2010 and he permitted delivery of the consignments at 10.00 am on the same day much prior to the free time of 6 hours allowed for unloading and free time of 12 hours for delivery. It is also brought to our notice that RW1 was suspended from service and ultimately he was dismissed from service. This would only fortify the fact that the goods were delivered in haste without even waiting for receipt of the original Railway Receipt and the misdemeanor on the part of RW1, an employee of the second appellant/Railways, would vicariously make the appellants liable to pay the compensation to the respondent. Further, the dismissal of Mr. Umesh Choudhary would only indicate that delivering the goods only on the basis of indemnity bond which is not in accordance with the format prescribed under the Rules besides that it is not an acceptable procedure contemplated under the Rules. In any event, such a mode of despatch of goods can be contemplated only if the Railway Receipts are not received from the consignee for a considerable period of time, of course, after enquiring from the consignor as to whether the goods can be delivered to the consignee or not.

26. Even though it is contended that the respondent did not contact the appellants for over a period of two months, we are of the view that such prolonged silence on the part of the respondent will not justify the act of the appellants in delivering the goods to a third party to whom the consignment was not addressed that too when the consignments were delivered on the same day on which they reached the destination point. Thus, having regard to the haste with which the goods were delivered by the officials of the second appellant on the same day when the consignment reached the destination point, we are of the view that the officials of the second appellant, could have taken some steps, before delivering the consignment, in the absence of original Railway Receipt with the endorsement by the consignor, either by contacting the consignor or intimating the consignor about the non receipt of the original receipt and their preparedness to deliver the goods to a third party. In the present case, such a course of action has not been resorted to by the officials of the second appellant. We also take judicial notice of the fact that even if the goods are kept in the warehouse of the second appellant without delivering it for

want of Railway Receipt, after they reached the destination point, it is the respondent who has to bear the ware house charges or other charges for the prolonged storage of the goods and therefore also, the officials of the second appellant ought not to have allowed the goods to be delivered before the Railway Receipt is sent by the respondent, instead they ought to have waited for the receipt of the railway receipt. In any event, we are of the view that the deliverance of the consignment solely on the basis of indemnity bond is neither in accordance with the format prescribed under Rule 3 of The Railways (Manner of Delivery of Consignments and Sale Proceeds in the Absence of Railway Receipt) Rules, 1990 nor is it a recognised mode of despatch of the goods especially when the respondent contends that they did not receive the entire sale price of the goods.

27. It is contended on behalf of the appellants that admittedly, a part of the price of the consignment was received by the respondent, while so, the Tribunal is not justified in directing the respondent to pay the entire cost of the consignment as compensation together with interest. We are not inclined to accept such submission made on behalf of the appellants. Chapter III of The Railway Claims Tribunal Act, 1987 deals with jurisdiction, powers and authority of Claims Tribunal. Section 13 (1) (a) (i) of the said Act deals with the powers of the Railways to entertain claims relating to compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a railway administration for carriage by railway. In this context, useful reference can also be made to Rule 3 of The Railways (Extent of Monetary Liability and Prescription of percentage charge) Rules, 1990, which reads as follows:-

"3. Monetary liability of a Railway Administration:- (1) Where a Railway Administration is responsible for loss, damage, destruction, deterioration or non-delivery of any consignment, the amount of liability of such Railway Administration in respect of such loss, damage, destruction, deterioration or non-delivery shall not, unless the consignor has declared its value and paid percentage charge or excess value of such consignment, exceed-

(i) in the case of any consignment consisting of animals, the amount specified in Schedule I; or

(ii) in the case of any consignment consisting of baggage, an amount calculated at rupees one hundred per kilogramme; or

(iii) in the case of any consignment other than those referred to in clauses (i) and (ii) above, an amount calculated at rupees fifty per kilogramme

(2) Where a Railway administration is responsible for loss, damage, destruction, deterioration or non-delivery of any consignment and the consignor has, at the time of entrustment of carriage, declared the value of such consignment and paid percentage charge on excess value at the rate declared the value of such consignment and paid

percentage charge or excess value at the rate specified in Part I or Part II, as the case may be, of Schedule II the amount of liability of a Railway Administration for loss, damage, destruction, deterioration or non-delivery of such consignment shall not exceed the value as declared.

28. In the present case, it is clearly proved that the goods were delivered, rather wrongly delivered, without receipt of the original railway receipt and therefore we are of the view that such delivery of the goods amount to a wrong delivery or non-delivery. In such event, it is futile on the part of the railway administration to contend that the respondent had received part of the sale price and therefore, the Tribunal ought not to have fastened the entire liability on their shoulders. Whenever compensation is determined, the Tribunal, in exercise of powers conferred under Rule 3 (2) of The Railways (Extent of Monetary Liability and Prescription of percentage charge) Rules, 1990, shall proceed to determine the value of the consignment at the rate declared by the consignor for the consignment. While determining such consignment, the Tribunal cannot go into the question as to whether the consignor has received the whole or part of the cost of the consignment. Therefore, we are of the view that the Tribunal has rightly determined the cost of the value of the consignment declared by the respondent at the time of entrustment and we see no reason to interfere with the same. Even otherwise, the appellants relied on an e-mail dated 06.04.2010 to show that the respondent has received a part of the sale price, but it was stoutly denied by the respondent by contending that they have only received a sum of Rs.10 lakhs towards advance and nothing more. The appellants have also filed MP No. 1470 of 2018 to mark the e-mail dated as an additional document to show that the respondent has received part of the sale price. Therefore, it is essential to look into the contents of the e-mail dated 06.04.2010 which reads as under:-

"We hereby confirm that all the payments as per your statement have been considered in our books. The detailed statement Sale Orderwise as per records is attached herewith in the form of a statement duly scanned for your reference:-

The net amount receivable against Sale order No.65 is given below

Sale Order No.65 - Amount Receivable

Particulars	Rs.
Rs.	
Quantity	26034
Rate	
3636	
Invoice	94659624
Advance received 16-Dec-09 128957	1000000
Advance S.O. No.30 14-Oct-09 128887	5000000
Advance S.O. NO.45 2-Nov-09 609445	1000000
Advance S.O. No.62 2-Nov-09 609445	1000000
Excess S.O. No.52	12561824

K.M.C. S.O.60/61/62 Excess	3047975	
SBM, Delhi Receivable S.O. No.34	-463824	
SBM, Delhi Receivable S.O. No.45	-25010	
Total amount Received	23120965	23120965
Balance amount Receivable	71538659"	

29. On perusal of the e-mail dated 06.04.2010, which was relied on by the respondent, it is evident that the transaction contained therein relates to payments made much prior to the instant consignment which was entrusted to the appellants Railways only on 01.02.2010 and it reached the destination point on 10.02.2010. In such view of the matter, it is not known as to how the communication dated 06.04.2010 in the form of e-mail, which contain the earlier transactions, would in any manner help the appellants to fortify their defence that a part of the sale price has already been received by the respondent from the consignee. Even otherwise, while determining the compensation payable in the cases relating to non-delivery of the goods, as contemplated under Rule 3 (2) of The Railways (Extent of Monetary Liability and Prescription of percentage charge) Rules, 1990, the Tribunal shall determine the compensation payable only on the basis of the value of the consignment declared by the respondent. In the present case, the respondent has declared the value of the consignment at the time of entrustment of the goods with the first appellant Railway and such value declared by the respondent alone would form the basis for determination of the compensation. The Tribunal is therefore right in determining the compensation as per the value declared by the respondent and it calls for no interference by us. In any event, as the goods were wrongly delivered by the appellants, at the best, it is open to the appellants to recover the value of the consignment from the third party M/s. Shree Shyam Agency, an agent of Shree Subham Agencies, to whom the consignment was wrongly delivered by them. Accordingly, we answer the question No.1 against the appellants and consequently the Petition filed by the appellants in CMP No. 1470 of 2018 for reception of additional documents shall stand dismissed.

30. Yet another contention raised on behalf of the appellants is that the consignment was delivered by the second appellant to Shree Shyam Agency, an agent of Shree Subham Agencies, to whom the consignment was delivered. When the respondent contends that the goods ought not to have been delivered to them and it amounts to non-delivery or wrong delivery, the respondent ought to have impleaded Shree Shyam Agency and Shree Subham Agencies as a party respondent. Therefore, the appellant would contend that the non-impleading of Shree Shyam Agency as a party to the respondent is fatal to the claim petition. This submission urged on behalf of the appellant cannot be countenanced because already the Tribunal negatived such a plea raised on behalf of the appellants by dismissing the impleading petition and it was also confirmed by this Court on 09.09.2011 in CRP Nos. 1713, 2152 and 2153 of

2011. Furthermore, the order passed by this Court on 09.09.2011 was also confirmed by the Honourable Supreme Court on 18.10.2012 in Civil Appeal No. 7589 of 2012. Therefore, the issue as regards the impleading of Shyam Agency in the claim petition has attained a finality and it cannot be gone into by us in these appeals.

31. As regards the percentage of interest claimed by the Cross Objector/ respondent in the cross objection, the Tribunal, on appreciation of the oral and documentary evidence and taking into consideration the over all circumstance of the case, directed the appellants to pay compensation with interest at the rate of 6% per annum for the period from 22.09.2010 to 23.01.2014 and at 7.5% per annum for the period from 07.04.2014 till the date of payment. This is questioned by the Cross Objector/respondent that in the given facts and circumstances, the Tribunal ought to have directed the respondent to pay the compensation amount with interest at the rate of 12% per annum. On the other hand, it is contended on behalf of the appellants that the rate of interest awarded by the Tribunal is onerous and it requires interference by this Court.

32. The issue relating to payment of pendente lite interest is governed by Section 34 of the Code of Civil Procedure. As per Section 34 of the Code, interest shall be awarded at a reasonable rate in the discretion of the Court, but such discretion has to be exercised by the Court on sound legal principles and not arbitrarily. Applying the above provisions of law to the facts and circumstances of this case, in the present case, the Tribunal awarded interest at the rate of 6% per annum for the period from 22.09.2010 to 23.01.2014 and at 7.5% per annum for the period from 07.04.2014 till the date of payment. We find that the rate at which interest was awarded by the Tribunal would secure the interest of justice and therefore, we are not inclined to accept the plea raised by the respondent in the Cross Objection to direct the appellant to pay the compensation amount to the respondent with interest at the rate of 12% per annum. Accordingly, we answer question No.2 against the respondent.

33. In the result, the Civil Miscellaneous Appeal filed by the appellants fail and they are dismissed. The Cross Objection filed by the Cross Objector also fails and accordingly it is dismissed. However, the parties are directed to bear their respective costs.

rsh

Sd/-
Assistant Registrar(CS V)

To

The Registrar
Railway Claims Tribunal
Chennai Bench.

+2cc to MR.T.Rajamohan, Advocate SR.No.23684

RSY (CO)
sm:19.4.2018

Common Judgment
in
CMA No. 2222 of 2014
and
Cross Obj No. 95 of 2014



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