

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.03.2018

CORAM :

THE HON'BLE MR. JUSTICE N.KIRUBAKARAN

C.M.A.No.3356 of 2017

Against

I.A.No.43 of 2017

In

Diary No.106 of 2017

JSW Steel Limited
Rep by Mr.P.Boopalan
Vice President (Finance & Accounts)
Pottaneri, Mecheri-636 453
Mettur Taluk, Salem District.

...Appellant

Vs.

Union of India
Owning Southern Railway
Rep by its General Manager
Park Town, Chennai-600 003.

...Respondent

Payer: Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987, the order dated 29.08.2017 passed by the Railway claims Tribunal, Chennai Bench in I.A.No.43/2017 in Diary No.106/2017 be set aside and the delay in filing the claim application be condoned and the claim application be registered.

For Appellant : Mr.T.Rajamohan
For Respondent : Mr.M.T.Arunan

O R D E R

The civil miscellaneous appeal has been preferred by the claimant against the dismissal of the petition filed to condone the delay in filing the claim petition before the Railway Claims Tribunal.

2.According to the appellant, they booked consignment from Karaikal Port to Macheri Road, Salem, through the respondent Railways on 20.09.2011.

3. However, the consignment was not delivered to the appellant. Therefore, the appellant issued notice under Section 106 (1) of the Railways Act, 1989 [hereinafter called as "the Act"]. Since the notice of claim issued under Section 106(1) was neither replied nor there was an investigation by the Railways, the claimant made claim on 31.10.2011 under Section 106(2) of the Railways Act seeking an enquiry. Even after the receipt of the notice of claim under Section 106(2) no enquiry was conducted nor reply was given. Hence, the appellant filed the claim petition before the Railway Claims Tribunal. Since there was a delay in filing the claim petition under Section 17(2) of the Railway Claims Tribunal Act, 1987, the condone delay petition was filed. After enquiry, the said petition was dismissed by the Railway Claims Tribunal. The said order is being challenged before this court.

4. Heard Mr. T. Raja Mohan, learned counsel appearing for the appellant and Mr. M. T. Arunan, learned counsel appearing for the respondent.

5. There is no dispute with regard to the booking of the consignment on 22.09.2011. The problem arose only with regard to the non-delivery of the consignment as claimed by the appellant. According to the appellant, the goods were not delivered at Mecheri Road, Salem. Since the goods were not delivered, the appellant issued notice under Section 106(2) of the Railway Claims Tribunal Act.

6. According to Mr. T. Raja Mohan, learned counsel for the appellant, notice of claim was made only as per 106(2) of the Railways Act, calling for an inspection which is virtually a claim as per Section 106(2) of the Railway Claims Tribunal Act. Therefore, the notice of claim given under Section 106(2) of the Railway Claims Tribunal Act, cannot be treated as notice issued under Section 106(1) from the date of the claim. As per Section 17(1) (a) of the Railway Claims Tribunal Act, the appellant has got 3 years time to file the claim petition. The three years time has got expired. The appellant did not want to antagonize, since he is a regular customer of the respondent/ Railways. Therefore, his claim was very belatedly made. He would refer to the reasoning given in paragraph 17 of the affidavit filed before the Railway Claims Tribunal, which states that the appellant has availed continuous transport from the respondent/Railways and therefore, not in a position to file the claim petition within a period of 3 years and more over, negotiations were being held for processing the claim petition. Therefore, the delay, if any, was not willful. However, the Tribunal without going into the reasonings given by the appellant dismissed the application going into the merits of the case and therefore, he seeks to set aside the order of dismissal

of the condone delay petition filed by the appellant.

7. On the other hand, the learned counsel appearing for the respondent would submit that the notice of claim either under Section 106(1) or under Section 106(2) has not been given to the designated officer namely, the General Manager of a Zonal Railways, whereas, it has been given to the Chief Goods Supervisor and thereafter, to the Senior Divisional Commercial Manager. When the statute speaks about 3 years limitation period and when the claim petition has been filed beyond the period of 3 years, the Tribunal was right in dismissing the condone delay petition.

8. Heard the parties and perused the records.

9. As stated above, the consignment was booked on 22.09.2011. According to the appellant, the consignment or parts of consignment was not delivered in the destination point, namely, Mecheri Road, Salem. If there is non-delivery of goods booked with the Railways, the claim petition can be filed after issuing a notice under Section 106 of the Railway Act, 1987.

Section 106 is extracted as follows:

"106. Notice of claim for compensation and refund of overcharge.-

(1) A person shall not be entitled to claim compensation against a railway administration for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway, unless a notice thereof is served by him or on his behalf,--

(a) to the railway administration to which the goods are entrusted for carriage; or

(b) to the railway administration on whose railway the destination station lies, or the loss, destruction, damage or deterioration occurs, within a period of six months from the date of entrustment of the goods.

(2) Any information demanded or enquiry made in writing from, or any complaint made in writing to, any of the railway administrations mentioned in sub-section (1) by or on behalf of the person within the said period of six months regarding the non-delivery or delayed delivery of the goods with particulars sufficient to identify the goods shall, for the purpose of this section, be deemed to be a notice of claim for compensation.

(3) A person shall not be entitled to a refund of an overcharge in respect of goods carried by railway unless a notice therefor has been served by him or on his behalf to the railway administration to which the

overcharge has been paid within six months from the date of such payment or the date of delivery of such goods at the destination station, whichever is later."

Section 106(1) speaks about 'Pre-claim' notice for filing claim before the Railway Claims Tribunal.

Section 106(2) speaks about 'demand of information' regarding non-delivery of goods.

10.Both sections speak about only issuance of notice to the 'Railway Administration'.

Section 2(32) defines "Railway Administration", which is usefully extracted as follows:-

(32) "railway administration", in relation to--

(a) a Government railway, means the General Manager of a Zonal Railway; and

(b) a non-Government railway, means the person who is the owner or lessee of the railway or the person working the railway under an agreement;

11.From Section 2 (32) (a), it is evident that 'Railway Administration' means the General Manager of a Zonal Railway. In this case, it is the General Manager of Southern Railways. When the Act defines, under Section 2(32)(a) what is meant by 'Railway Administration' and under Section 106(1) or Section 106 (2) notice has to be given only to the Chief General Manager Railways and not to any other person and if any notice is given to any other authority, it cannot be called as a notice under Sections 106(1) or 106(2) of the Act.

12.In this case, admittedly, the appellant issued the alleged claim notice dated 31.10.2011 only to the Chief Goods Supervisor, Mecheri, Salem, that too in-person and to the Senior Divisional Commercial Manager, Salem Division, which is also in person.

13.Therefore, the alleged notice dated 31.10.2011 given to any other authority other than Chief General Manager as per Section 2(32)(a) of the Act, cannot be called as a valid claim notice. All feeble attempt has been made by Mr.T.Raja Mohan by stating that Section 192 of the Act names, the authority to be served notice is either the General Manager of a Zonal Railways or any of the Railway Servant authorized by the General Manager. Therefore, there should be delegation of powers to some other officer, he would submit. If the appellant wants to rely upon any delegation of powers given to any officer, it is the bounden duty of the appellant to produce proceedings or documents to show such power has been delegated either to the Chief Goods Supervisor or to the Senior Divisional Commercial Manager. No such document has been produced. Therefore, this court holds

that there is no valid notice as contemplated under Section 106 of the Act.

14. Section 17 of the Railway Claims Tribunal Act, deals with the limitation for making any claim, which reads as follows:--

"17. Limitation: (1) The claims Tribunal shall not admit an application for any claim--

(a) under sub-clause (i) of clause (a) of sub-section (1) of section 13 unless the application is made within three years from the date on which the goods in question were entrusted to the railway administration for carriage by railway; (b)

under sub-clause (ii) of clause (a) of sub-section (1) [or, as the case may be, sub-section (1-A) of section 13 unless the application is made within one year of occurrence of the accident;"]

(c) under clause (b) of sub-section (1) of section 13 unless the application is made within three years from the date on which the fare or freight is paid to the railway administration:

Provided that no application for any claim referred to in sub-clause (i) of clause (a) of sub-section (1) of section 13 shall be preferred to the Claims Tribunal until the expiration of three months next after the date on which the intimation of the claim has been preferred under Section 78-B of the Railways Act.

(2) Notwithstanding anything contained in sub-section (1), an application may be entertained after the period specified in sub-section (1) if the applicant satisfies the Claims Tribunal that he had sufficient cause for not making the application within such period."

15. A reading of the above section would reveal that the claimant would not be competent to make any claim beyond three years, that is, three years and 6 months of the alleged demand notice. No doubt, Section 17(2) of the Railway Claims Tribunal Act, speaks about the powers of the Tribunal, to condone the delay, if sufficient cause is shown for delay, in filing the application. Assuming for a moment that the application has been filed and that notice under Section 106 has been served in time as per law and that after a delay of beyond three years, an application has been filed by the appellant before the Tribunal, this Court has to see whether sufficient reasoning has been given to condone the delay in filing the claim petition. A perusal of the affidavit filed before the Tribunal only speaks about the continuous availing of transport services by the appellant from the respondent/railways and alleged negotiations having been taken place for processing the same. Paragraph Nos.

17,18,19 (page 38) of the affidavit are extracted as follows:-

"17.I state that the Applicant being a revenue provider to the Respondent and having to avail continuous transport service from the Respondent was not in a position to file claim application within the prescribed period of 3 years as the claim was kept pending and was repudiated only on 26.08.2016.

18.I state that there is no inaction or negligence on the part of the Applicant in filing the claim application and the delay was only due to the fact that the claim was repudiated only on 26.08.2016.

19.I state that the Applicant being a regular customer of the respondent did not approach this Hon'ble Tribunal as the claim was kept pending and negotiations were being held for processing the same."

16.The reasonings given by the appellant were rightly rejected by the Tribunal. Even this court concurs with the Tribunal for the following reasons:-

(1)The appellant is not an ordinary layman and he has been sending the goods for years together as per his own admitted averments in the condone delay petition.

(2)The appellant should have been well versed with the claims against the Railways as he is continuously availing the services of the Railways.

(3)No prudent man will keep quiet beyond three years that too contrary to the Act and file a claim with delay.

(4)Being a regular customer the appellant is supposed to know to whom the notice under Section 106 (1) or 106(2) of the Act has to be served upon.

17.Therefore, this court holds that the appellant is aware of the proceedings and well-versed in the proceedings under the Act and therefore there is no justification for the appellant for filing the claim application with delay. No doubt, the condonation of delay has to be dealt with very liberally as per the judgment of the Hon'ble Supreme Court but it depends upon the facts of the case. Each and every case has to be independently analysed and the discretion rests with the judiciary. The Tribunal was right in its discretion in dismissing the condone delay petition. More over, the Tribunal observed that the application for condonation of delay is not drafted with consciousness and each one of them has to be prepared in a serious manner and no seriousness has been exhibited by the appellant. Further, the Tribunal found that the appellant took a conscious decision not to approach the adjudicating authority, seeking consideration of their claim and hence dismissed it. Therefore, this court confirms the

reasonings given by the Tribunal for dismissing the application. Though it may be superfluous to add that the Notice issued under Section 106 of the Railways Act is not in consonance with the Act and not served on the officers as per Section 2(32) of the Railways Act, this court is compelled to state to show the conduct of the appellant as the appellant had deliberately served on the wrong persons, that too by hand delivery. There are many cases of dubious claims regarding the loss of goods in Railways. It is reported in media that officers in collusion with some of the unions are incurring loss by this kind of bogus claims and therefore, any notice regarding the claim should be received only through RPAD or through fax that too, to the designated authority and if any other person receives such claim petition or notices, departmental action should be initiated against such officials and action should be initiated against such officials under the provisions of law or otherwise, the loss suffered by the Railways department could not be curtailed or prevented.

18. With the above observation, the appeal fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar (CS VIII)

//True copy//

Sub Assistant Registrar

may a

To

The General Manager
Southern Railway
Park Town, Chennai-600 003.

+1cc to Mr.T.Raja Mohan, Advocate SR.No.21896

+1cc to Mr.M.T.Arunan, Advocate SR.No.22922

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C.M.A.No. 3356 of 2017

RJI (CO)
GN(08/06/2018)