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

% *Decided on 12.01.2018*

\+ **FAO 249/2016**

UNION OF INDIA ..... Appellant
Through: Mr. A. S. Dateer, Advocate

Versus

M/S STEEL AUTHORITY OF INDIA LIMITED ..... Respondent
Through: Mr. Sharat Kapoor and Ms. Manpreet Kaur, Advocates.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the Award of the Railways Claims Tribunal dated 24.09.2015 which has granted the respondent's claim of Rs.9,63,050/- alongwith simple interest @ 6% *per annum* from the date of filing of the claim petition till 24.09.2015 and thereafter @ 9% *per annum* till its realization.

2. For the purpose of convenience, the parties are referred by the terms 'applicant' and 'respondent', as was referred by the Tribunal.

3. The applicant had handed over eight packets of Hot Rolled Sheets (HR Sheets) loaded in box wagon No. SE 120960, which was booked under Railway Receipt (RR) No.212024881 dated 18.11.2008 with the respondent from its Bokaro Steel Plant for delivery to the consignee at Tughlakabad Mineral Goods Siding, New Delhi. The applicant states that the HR Sheets, made of steel cannot be easily shifted and can be visually identified and

counted. The goods were loaded in the Railway Wagon after proper weighment; the details of the product as well as the total weight was mentioned in the invoice which tallied with the weight shown in the Railway Receipt. However, upon arrival at the destination on 28.11.2008, the consignee informed the applicant that instead of eight packets only five packets of HR Sheets had reached, therefore, they refused to accept the consignment. On their request, the consignment was re-weighed by the Railways on 01.12.2008 and a certificate was issued to the consignee showing a shortage of 23.480 MT/3 packets of HR Sheets against corresponding RR weight of 66.520 MT. The short consignment was unloaded at Tughlakabad Mineral Siding on 02.12.2008 after re-weighment and was taken away to the warehouse of the consignee. The wharfage charges and the demurrage charges totalling to an amount of Rs.9,63,050/-, on account of the delay in unloading, and for the wagons occupying the siding were also claimed by the applicant alongwith the cost of the deficient three packets of HR Sheets, in terms of Annexure-1 to the claim petition, which included some statutory charges and re-weighment charges.

4. The six issues were framed by the Claims Tribunal were:-

> *"1) Whether the claim application has been signed, verified and filed by a duly authorized person on behalf of the applicant-Company?*
>
> *2) Whether the applicant has no locus standi to file the present claim application?*
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> *3) Whether the claim is bad for want of statutory notice u/s 106 of the Railways Act?*
>
> *4) Whether the claim is barred by limitation?*

5) Whether the respondent-railways are protected u/s 93(f), 94 and 98 of the Railways Act as the consignment was booked on 'said to contain', basis by the applicant without supervision of the railway staff?

5) Whether the applicant is entitled to recover a sum of Rs.9, 63,050/- as claimed?

6) To what relief?"

5. Each of the aforesaid issues were returned in favour of the applicant. The substantive relief is covered in issues nos. 5 and 6, apropos which the Tribunal reasoned as under:-

> *"11. The case of the applicant is that they had handed over eight packets of Hot Rolled Sheets (HR Sheets) loaded in box wagon no. SE 120960 which was booked under Railway Receipt (RR) No.212024881 dated 18.11.2008 with the respondent-Railway from Bokaro Steel Plant, Bokaro for delivery at Tughlakabad Mineral Goods Siding, New Delhi. It is stated that HR Sheets are items that can be easily counted as they are packed in packets/coils and the goods were loaded in the Railway Wagon after proper weighment and the details and the total weight was mentioned in the invoice and tallies with the weight shown in the Railway Receipt. It is stated that the said wagon arrived at destination Tughlakabad Mineral Siding on 28.11.2008 and on arrival, the applicant's customer M/s. Indian Steel Corporation informed the Branch Manager (FT), New Delhi of the applicant on 28.11.2008 itself that the wagon contains only five packets whereas the invoice shows eight packets and therefore, refused to accept the consignment. It is stated that apprehending shortage of goods, the applicant immediately requested the respondent for re-weighment on 28.11.2008 but instead of deciding the application, the railway requested for original RR which was submitted on 30.11.2008. The respondent Railway accepted the request for re-weighment and after carrying out re-weighment on EWB/TKD at applicant's cost, issued shortage certificate to the applicant*

showing shortage of 23.480 MT/ 3 packets of HR Sheets against corresponding RR weight of 66.520 MT. It is stated that due to non-receipt of 23.480 MT comprised in three packets of HR Sheet bearing packet nos. R35844A, R354565A, R352105C weighing 8.890 MT, 9.350 MT and 3.540 MT respectively, the applicant suffered a loss of Rs.9,63,050/- which was on account of negligence on the part of the respondent while the consignment was in transit. Admittedly AW-1 was riot present at the time of loading. However, the copy of the forwarding note filed by the applicant with the rejoinder to written statement and the Railway Receipt, ExJl-3 show that eight bundles of HR Sheet weighing 66.52 MT were loaded in BOXN wagon no. SE 120960. The Tax Invoice cum Consignment Note, Ex.A-3 and the Test Certificate, Ex.A-8 also show dispatch of eight packets. The shortage certificate, Ex.A-12 shows that only 5 packets of HR Sheet were unloaded and 3 packets HR Sheet weighing 23.48 MT were delivered short.

12. The respondent railway, on the other hand, has contended that they are protected under Sections 93(f), 94 and 98 of the Railways Act as the consignment was, loaded by the sender at their private siding and was booked on 'said to contain basis without the supervision of railway staff and reached the destination station within time. It is averred that the packing condition was not complied with and the consignment is a crane consignment and it is not possible to remove the consignment without the help of the crane from the box wagon. The respondent therefore, contends that it is a case of short loading and the party has failed to produce copy of the stock register to show the actual loading at forwarding railway station which was not witnessed by the railway staff. The Railway Receipt, Ex.R-3 bears the remark 'loading done in siding, not supervised by railway staff, sender's weight accepted, said to contain, packing condition not compliant showing that the consignment was loaded in private siding of the applicant, loading was not supervised by the railway: staff and 'said to contain' RR was issued. AW-1 has also accepted the same in his evidence. However, extract of Seal Book, Ex.R-

6 would show that at the originating point, wagon no. SE 120960 BOXN was brought to Out/yard BKSC from the loading point on 19.11.08 as part of BVIOTKD train consisting of 10 BRN+12 B0XNM8 BOST wagons loaded with HWCR coil and HR plate and sheet. The contents of the wagons were recorded by the RPF staff and 8 bundles of HR Sheet have loaded in the subject wagon. The train load containing this wagon remained in the railway yard up to 24.11.2008 and the contents were re-checked by the RPF staff on 24.11.2008 as recorded in Ex.R-6. The report of Senior Divisional Security Commissioner, Delhi, Ex.R-5 records that this train load was handed over to the railway by Bokaro Steel Plant at 2.30 hours on 19.11.2008 and seven BRN wagons of this train were shuttled between the Steel Plant and the Yard three times. Ex.R-6 also records that seven BRN wagons were returned to the steel plant, but the remaining wagons including the wagon in question remained in BKSC Yard in the custody .of the respondent Rail way throughout. The Seal Book, Ex.R-6 clearly shows that eight bundles of HR Sheet had been loaded in the subject wagon and handed over to the respondent Railway. In the light of the railway's own record of Seal Book, the respondent cannot take protection under 'said to contain' RR as the contents were checked by RPF staff at the originating point when the wagons were handed over to the railway by the applicant Company and goods as recorded in the Railway Receipt were found loaded in the wagon.

13. Ex.R-5 shows that the subject wagon left BKSC yard at 14.15 hours on 24.11.2008 and reached Tughlakabad yard at 4.00 hours on 28.11.2008 and was placed in the Mineral Siding Tughlakabad for unloading at 6.00 hours. This is Railway's own siding and on duty Head Goods Clerk Tughlakabad on checking the wagon reported that there are only five packets of HR sheet instead of 8 packets shown on the card label and informed the RPF staff, who after checking the wagon prepared a joint note. Thus, Ex. R-5 and Ex.R-6 would clearly show that eight packets of HR sheets were handed over to the Railway at Bokaro exchange yard but only five packets arrived at Tughlakabad Mineral Siding establishing that the *loss of three packets occurred when the consignment was in the custody of the railway.*

14. The report of CCI/Claims, Ex.R-1 mentions that as per report of Sr.DSC, RPF, Northern Railway, Ex.R-5 rake was thrice drawn out and placed in siding, the circumstances for which needs to be thoroughly investigated from Bokaro as there appears some foul play done by M/s. SAIL and there may be short loading of consignment or the consignment may have been unloaded after re-placement in SAIL siding Bokaro. However, Ex. R-5 and Ex.R-6 show that the subject wagon remained in the custody of the railway after it was handed over on 19.11.2008 and was not taken back to the plant. Therefore, there can be no foul play by the applicant Company with this wagon. RPF staff checked this wagon on 19.11.2008 and again on 24.11.2008 and recorded that it contained eight bundles of HR Sheet. Therefore, contention of the respondent regarding short loading by the applicant is not acceptable. At the destination .point, shortage was noticed by the railway staff and was also reported by the applicant and on re-weighment of the wagon, shortage of 23.48 MT consisting of three packets of HR Sheet was found and DDPC message, Ex.R-4 and shortage certificate, Ex.A-12 were issued by the railway staff.

15. The respondent has claimed protection under Section 94 of the Railways Act, which provides that for goods loaded or delivered at a siding not belonging to a railway administration, the responsibility of the railway is limited from the time it takes over the wagon at the specified point of inter-change to the point when it hands over the wagon to the consignee at the specified point of inter-change. In this case, Ex.R-5 and Ex.R-6 would show that eight bundles of HR Sheet loaded in -the subject wagon were handed over to the respondent Railway but only five bundles reached at destination station which establishes that the loss of consignment was in transit when the wagon was in the custody of the railway administration and the respondent-railway cannot take protection under Section 94 of the Railways Act.

Further it is a case of complete loss of three packets of HR Sheet for which non-compliance of the outer packing condition is immaterial and as such, provisions of Section 98 are not applicable to this case. Finally, Section 93(f) relates to act of omission or negligence of the consignor/consignee, but no negligence on the part of the consignor/consignee leading to the loss of three bundles during transit has either been established or is apparent.

16. It is admitted position that the consignment Was booked on 18.11.2008 and reached destination on 28.11.2008, i.e. after ten days. The average transit time has been certified by Chief Goods Supervisor, Tughlakabad as five days (certificate enclosed with Ex.R4). The wagon reached destination in 10 days and there is delay in transit. But the wage was detained for six days up to 24.11.08 at BKSC Yard and it may be because 7 BRN wagons were returned to the steel plant. The reason for the same is not on record. However, it does not affect the merits of this case as shortage is established when the goods were in transit. The respondent has contended that the packet of HR Sheets could not have been unloaded without the help of .crane while the applicant pleads that the packet contains sheets weighing 50 to 100 kg and can be handled manually. It is in the evidence of AW-l that the packet comprised of loose sheets which are bundled and strapped and sheets can be removed after cutting the stripes open. Therefore, the contention of the respondent that the packets, could not have been removed without the crane is not acceptable. Since the loss of three packets was during transit when the consignment was in the custody of the respondent Railway, the respondent cannot escape responsibility for the same. The shortage certificate, Ex.A-12 shows three packets of HR Sheet weighing 23.48 Ml were delivered short. In view of the above discussion, it stands proved that the consignment in question was-delivered short to the extent of 23.480 MT of HR Sheet at the destination station and the respondent-railway are not absolved of their liability for such short delivery of the consignment and are not protected under the provisions of the Railways Act mentioned ibid. The issue is answered *accordingly.*

Issue no. 6

17. The applicant has claimed Rs. 9,63,050/- towards loss suffered by them due to non-receipt of 23.480 MT comprised in three packets of HR Sheet bearing packet nos. R35844A, R354565A, R352:i05C weighing 8.890 MT, 9.350 MT and 3.540 MT respectively. It is stated that the applicant had to pay re-weighment charges of Rs.3620/- and after re-weighment, the short consignment was unloaded at Tughlakabad Mineral Siding on 2.12.2008 and was received by the applicant at their warehouse on the same day but the applicant was made to pay wharfage charges of Rs.20,775.00 and demurrage charges of Rs.69,300/- which was not justified as the delay in re-weighment was on account of the respondent. Ex.A-4, Ex.A-5 and Ex.A-6 are copy of receipts showing payment of re-weighment charges, wharfage charges and demurrage charges respectively. The shortage certificate, Ex.A-12 issued by Chief' Goods Supervisor, Tughlakabad Mineral Siding shows shortage of 23.48 MT which is also recorded in Ex.R-2, Ex.R-4 and Ex. R-5. Basic rate for the three packages found short has been shown as Rs.33100/- in the Tax Invoice-cum-Consignment note, Ex.A-3. The respondent-Railway has not been able to dispute this rate of the commodity. Also since the shortage occurred when the consignment was in the custody of the railway, the applicant cannot be penalized by levy of re-weightment charges, demurrage charges and the wharfage charges for no fault on their part. Calculating at the aforesaid basic rate and including the excise duty. Cess, freight, re-weighment, wharfage and demurrage charges, the amount of compensation works out to Rs.963050/-, details of which are given in the claim notice served on the respondent arid the applicant is held entitled to this much amount of compensation for short delivery of the consignment. The issue is answered accordingly."

6. The learned counsel for the appellant submits that the wagon after

being loaded was taken back inside the Bokaro Steel Plant before it started its journey, therefore, there is some suspicion about the quantum of the load. He contends that the doubt about the correct weight of the despatched consignment was never cleared. Instead, the consignor capitalized on the short-loading in a trumped-up claim petition. However, the Court would note that this contention has been dealt with fully and rejected in terms of para 14 of the impugned order. The Tribunal noted that after it was handed over to the railway on 19.11.2008, the wagon remained in their custody "and was not taken back to the plant. Therefore, there can be no foul play by the applicant Company with this wagon. RPF staff checked this wagon on 19.11.2008 and again on 24.11.2008 and recorded that it contained eight bundles of HR Sheet. Therefore, contention of the respondent regarding short loading by the applicant is not acceptable. At the destination .point, shortage was noticed by the railway staff and was also reported by the applicant and on re-weighment of the wagon, shortage of 23.48 MT consisting of three packets of HR Sheet was found and DDPC message, Ex.R-4 and shortage certificate, Ex.A-12 were issued by the railway staff". Except for the appellant's suspicion of short-loading, there is no evidence brought on record by them or an error shown in the reasoning or the conclusion arrived at to warrant interference in this appeal.

7. The appeal lacks merit and is accordingly dismissed.

NAJMI WAZIRI, J.

JANUARY 12, 2018
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