

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO no.4127 of 2014
Decided on:24.01.2019.

Indian Oil Corporation Ltd.

.....Appellant

versus

Union of India through the General Manager, Northern Railway, Baroda
House, New Delhi.

....Respondent

CORAM : HON'BLE MR.JUSTICE DR.RAVI RANJAN

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

Mr.Sanyam Malhotra, Advocate,
for the respondent-Railways.

DR.RAVI RANJAN, J. (Oral)

The appellant-Indian Oil Corporation Limited (hereinafter to be referred as 'IOCL' or 'Corporation') has assailed the judgment dated 27.11.2013 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh, in case no.OA-I/01/2009 by which the claim case for compensation filed by the appellant-IOCL has been dismissed.

1. The appellant-Corporation claimed that the company despatched about 46 numbers of wagon containing Superior Kerosine Oil ((hereafter to be referred to as 'SKO') from IOC KRIR to its depot at IOC SCPD, Jalandhar. 46 Wagons were received but one of the wagons being Wagon No.WR-966867 was not received which would be apparent from the non-delivery certificate granted by the Northern Railway, Suchipind dated 07.09.2006. It is stated in the claim

application that a claim notice in this regard dated 26.10.2006 was given to the respondent which was duly received, thereafter, the said wagon was placed on applicant's siding at Suchipind, Jalandhar on 26.10.2006 in leaking condition due to which the appellant-Corporation suffered a loss of 4160 litres of SKO. The seals put up over the tank wagon by the Indian Oil Corporation Limited(IOCL) were found missing at the destination station as per the joint dip certificate dated 26.10.2006.

Again a notice dated 08.11.2006 was issued by the applicant-Corporation to the Railway Authorities, which the Corporation claimed to have duly been received by the respondent-Railways. It is further claimed that due to the aforesaid shortage which stands reflected in the joint dip certificate also, the applicant-Corporation suffered a loss of 4160 litres of SKO at the rate of Rs.35,412.30 per Kilo Litre and in this background of the matter the claim for making good a loss of about Rs.1,47,315.17 alongwith 18% per annum interest was claimed.

2. The respondent-Railways Authority appeared and filed a written statement taking diverse objections including one regarding maintainability of the case and other technical issues. On merit, the claim was denied, valuation of consignment was also denied. In paragraph no.7(i) of the written statement it has been stated that contents of the claim application are wrong and false, hence, denied and the applicant should be put to strict proof of the same. It is further stated that there is no question of negligence on the part of the respondent-Railways as the loss, if any, suffered by the applicant-Corporation is not because of Railways but due to the negligent act of applicant itself.

However, very importantly, it is stated that, since the matter was still under investigation, the respondent-Railways reserves its right to amend the written statement in future. The written statement does not talk about any joint dip certificate issued by the IOCL and the Railways. It further discloses that everything, which was being stated in the written statement, was without any proper investigation as the respondent-Railways has categorically stated that the matter was still under investigation and had reserved the right to amend the written statement, after completion of enquiry/investigation. This fact has to be noted for the reason that later on many things have been stated by the witnesses who have been examined by the respondent-Railways, on the basis of certain inquiry done by the Railways during the pendency of the claim application. However, surprisingly, though such stand has been taken by the witnesses, no effort to get the written statement amended was made by the respondent.

3. Upon consideration of rival pleadings, the Tribunal framed following issues:

- 1. Whether the notice under Section 106 of the Railways Act has been issued by the claimant?*
- 2. Whether claimant has suffered any loss?*
- 3. To what amount of compensation claimant is entitled to?*
- 4. Relief.*

4. In order to prove its case, the applicant/appellant-Corporation tendered affidavit of Sh.S.Qamar Ahmed, Assistant Manager (Law) as AW1 and tendered in evidence various documents.

The respondent-Railways in its evidence tendered the affidavit

of Sh.Amrit Lal Hans, CGS HQR, Suchipind) as Ex.RW1 and Sh. Rizwan Ahmed Siddiqui as RW-II.

5. In the background of aforesaid factual matrix, I have heard learned counsel for the parties and perused the records of this case.

6. It is apparent from the aforesaid that the first and foremost issue was a techical one as to whether notice under Section 106 of the Railways Act, 1989 (hereinafter to be referred to as 'Act') was ever issued by the claimant? Though the issue framed does not indicate regarding service of notice on the Railways rather it speaks about issuance only, however, it has to be understood that issuance would mean actual service upon the recipient.

The respondent-Railways has categorically stated in paragraph no.6 of the written statement that no valid notice under Section 106 of the Act was ever served upon the respondent. The Tribunal, after finding that though several copies of notices issued at various point of time are on record but there is no proof of service of same upon the recipient, i.e. any the postal receipts or registered service or the registered AD or by even other means of service, i.e. by hand etc. Though in the claim application as well as in the affidavit of Sh.S.Qamar Ahmed, it has repeatedly been stated that notice was given to the respondent-Railways which was duly received by it but nothing appears to have been stated regarding effective service upon the recipient.

It is the claim of the applicant that first notice regarding the claim of compensation was given on 26.10.2006 which is available on

record having reference No.SCPD-1945-2006, however, admittedly there is nothing on record to show that in what manner this was served upon the Railways. The case of the applicant is that when the wagon was put on the IOCL siding at Suchipind then, finding the shortage, immediately such claim was made on the same date. Further, the claim of the applicant/appellant-Corporation is that the second notice having reference No.SCPD-8-2006 dated 08.11.2006 was also issued and served upon the Railway Authorities regarding claim for compensation under registered-AD, which finds mentioned on both the notices. However, no postal receipt or registered AD with respect to both the notices could be brought on record.

Section 106 of Act stipulates consideration of the claim compensation against the railway administration for the loss, destruction, damage, deterioration or non-delivery of goods carried by the Railways but not unless a notice is served by the claimant upon the Railways within a period of six months from the date of entrustment of goods.

Now the question would be whether for proving service, it will always be necessary to lead evidence by bringing on record the registered-AD receipt or other sort of evidence by the claimant even if the service of same stands admitted and reflected in the documents of the other side? The answer has to be in negative. The real purpose of issuance of notice would be that the matter has effectively come within the knowledge of the recipient.

7. There are two important letters which appear to have been

written by the Railway Authorities to the IOCL with respect to the claim of the applicant-IOCL, First is dated 25th October, 2007. This letter has been written by the Assistant Commercial Manager/Claims, Northern Railways, Headquarters Office, Claims Branch, NDCR Building, New Delhi, and has been addressed to the Indian Oil Corporation Ltd, Marketing Division, Northern Region, New Delhi. The content shows that there was a request to the Corporation to “arrange to send the DGS&D rate of specific RR at the earliest for further process in this case.” The RR number is also given in the subject matter in Railways, which tally with the RR receipt issued by the respondent-Railways with respect to the receipt of the 46 wagon to be transported to Suchipind dated 26.10.2006. Not only that, a reference no SCPD/08/06 is also written by hand on that letter. The respondent-Railways has not claimed anywhere that this handwritten thing is any manipulation. SCPD/08/06 is the letter reference number of the claim compensation made by the applicant-Corporation vide letter dated 08.11.2006 addressed to the Chief Claims Manager, Northern Railway, New Delhi. This document definitely suggests two things-first is that the Railway Authority had the knowledge of atleast the claim compensation dated 08.11.2006 as the reference number has been written on the letter itself and also that they were dealing with the matter for payment of compensation to the applicant-Corporation, therefore, they had asked about the DGS&D rate of specific RR. The second letter is dated 23.11.2007, which is also available on record and has been written by the IOCL to the Chief Claim Officer, Northern Railways, New Delhi for supplying the DGS&D rate of

specific RR in response to the aforesaid letter dated 25.10.2007 and the enclosures to the aforesaid letter dated 23.11.2007 is the DGS&D rate which has been provided by the applicant-IOCL. Now the question arises, if the Railways is not in possession of the claim letter for compensation dated 08.11.2006, what was the occasion for the Railways to write such a letter to the Corporation for supplying the DGS&D rate of specific RR, i.e. RR dated 03.07.2007 and why the reference of that letter was written by hand in the aforesaid letter? Unfortunately, this aspect of the matter has not been considered at all by the Tribunal and the Tribunal, only on the basis of the fact that no registered-AD receipt or other evidence has been brought on record by the applicant-Corporation, has non-suited the applicant. In my considered opinion, gross error has been committed by the Tribunal in recording such finding. It is well established principle of law, that if a matter stands admitted by any document of the other side itself, that would not be required to be separately proved.

The respondent-Railways has not denied the aforesaid letter and even the letter written by the Railways to the appellant-Corporation with respect to the claim for compensation vide reference No.SCPD/08/06. In such a situation respondent was not at all entitled to raise the objection regarding non-service of claim letter for compensation.

Accordingly, it is held that there was sufficient service of notice upon the respondent-Railways regarding the claim as, even if, the period is counted from 03.07.2006, i.e. the date of Railway Receipt

(RR) issued by the Railways while accepting the consignment, six months period would lapse in January, 2017 and the claim notice vide reference No.SCPD/08/ 06 is dated 08.11.2006, i.e. well within six months.

8. The second point which has been discussed by the Tribunal is with respect to issues no.2 and 3 which has been considered together for the reason that these issues are interconnected.

The Tribunal has noticed the contention of the respondent-Railways that the said tank wagon was received at Gandhi Dham in leaking condition alongwith other 46 BTPN containing SKO booked under specific RR, hence, the same was detached from the load and sent back to the IOCL siding at Kandla on the same day. It was again received back on 21.10.2006 and was despatched with another rake load to Ludhiana but on the way again it was found in leakage condition and TXR staff repaired it first at Palanpur and again at Ludhiana to minimise the leakage but the wagon continued leaking due to mechanical fault and as such they could not do much to rectify the same fully. Thus, it is the claim of the respondent-Railways that, for 114 days, the wagon remained in possession of IOCL siding Kandla and then it was again sent back to the Railways Authorities and it was despatched with another wagon rake. Now a question would be- had they stated anywhere in the pleading or evidence that the wagon was again received in leaking condition? The answer would be in negative, as it is nowhere stated that when the railway authority received back the wagon it was again found in leaking condition. They have categorically stated that,

when it was first received on 03.07.2006, it was found to be in leaking condition, therefore, it was returned back. However, it is nowhere stated that it was again found in leaking condition when the wagon was received back from IOCL rather the case of Railways is that the wagon was sent with another rake load and in way it was again found in leaking condition at Palanpur and Ludiana where they made effort to minimise it by applying soap etc. So, the story that it was agains sent back in leaking condition is not supported by any cogent pleading and evidence. So far as the story made out to claim that the wagon was found in leaking condition at Palampur and applying soap and other materials effort was made to minimise the leakage but no rectification could be achieved due to the mechanical fault in the railway wagon is concerned, the question would be how they can make such a claim without anything there in the pleading? Question would be if some inquiry was conducted during the judicial or *quasi* judicial proceeding, what would be the value of the evidence created during the pendency of the same? Secondly, if such inquiry was conducted and something important came up which was required to be brought to the notice of by the Tribunal, whether the Railways amended their written statement? Answer would be in negative for both the questions. Though Railway Authority reserved a right to amend the written statement because the inquiry was still going on, they never tried to amend the same and they have adduced the evidence without there being such material in their pleading. That apart, the value of evidence created during a litigation would be also of a minimal value. The Tribunal completely overlooked this aspect of the

matter.

So far as mechanical fault is concerned, now it has to be determined as to whether there was actually any fault in the wagon? If yes, then the question would be, who would be responsible for that? The wagon belongs to the applicant-IOCL or wagon belongs to the respondent-Railways? Whether the wagon was constructed by the IOCL or it is the property of the Railway Authority? A direct question to that effect was put to the witness concerned, namely, Rizwan Ahmed Siddiqui, Inspector/RPF posted as Senior DSC/RPF, Ambala, as to who was the owner of the empty wagon. He first, denied any knowledge regarding that but again stated that normally wagons are owned by the Railways and are handed over to the Indian Oil Corporation for the purpose of loading. Now the question is, if there was any mechanical fault in the wagon, how IOCL could be held to be responsible for that? That apart, the witness has not stated in his affidavit anywhere that after receiving back the wagon again from IOCL, i.e., on second time also, the wagon was found in leaking condition. Even if, it is presumed that it was found in leaking condition, then why it was not returned again when the same was returned at the first instance on 03.07.2006 due to that reason? There is no answer to that.

In the cross-examination this witness has stated that the wagon was found in the leaking condition at the first instance at Gandhi Dham on 03.07.2006 and the same was returned back to the applicant-Corporation on 04.07.2006. On 21.10.2006, the wagon was despatched again which was found to be in leaking condition drop by drop when it

reached at Suchipind, but it is not stated whether it was received by the Railways in leaking condition on second occasion also? In my opinion, it has only been done to avoid the question as to why again it was not sent back to the IOCL siding and why it was accepted to be despatched even though it was in leaking condition.

In the cross-examination of Sh.S.Qamar Ahmed, Assistant Manager/Law of the Corporation, who appeared as witness of the Corporation, a question was put to him- as to whether he had any knowledge about the letter dated 04.07.2006 alongwith which the leaking wagon was returned back for repairing the leakage? He has denied any such knowledge on mechanical fault. Objection was raised by the counsel for the appellant-Corporation that, since it is not the part of the pleading such question could not be asked. Surprisingly, a copy of the alleged letter dated 04.07.2006 has not been brought on record by the Railways, which would have proved such action taken on their part.

9. Unfortunately, the aforesaid aspects of the matter have not been considered by the Tribunal at all and only on the basis of the statement of the witnesses of the respondent-Railways, it has been presumed that wagon was found in the leaking condition and was sent back and was again received whereas the report of the Northern Railways, Suchipind was that the wagon, which was booked on 03.07.2006, never reached the specific destination at that time. Even a certificate dated 07.09.2006 was granted in this regard. Thus, in my considered opinion, the aforesaid story propounded by the respondent-Railways without any cogent evidence is not acceptable at all and the

findings arrived at on the basis of such claim by the Tribunal are erroneous.

10. Now the next issue which has been raised before the Tribunal and has been raised before this Court also is whether the Railways are protected under Section 65 and 97 of the Railways Act, 1989, as the Railway Receipt also bears clear remark that the booking was at the owner's risk? *Prima facie* this limb of argument raised on behalf of the Railways appears to be attractive, but on deeper scrutiny this submission also requires to be rejected. The Railway Receipt is on record which of course has endorsement that the consignment has been accepted at the owner's risk if not checked by the Railways Authorities. This is also a fact that the Railway Authorities did not raise any objection regarding the weight of the wagon or the consignment as that there is another column also disclosing as to whether the same was weighed by the Railways or sender's weight was accepted. In my opinion, if that was not weighed by the Railways then it definitely mean that it has accepted the sender's weight.

11. Now coming to Section 65(2), it says that the Railway Receipt shall be *prima facie* evidence of the weight and the number of packages actually stated therein, however, the proviso discloses that in case the consignment in wagon-load or train-load and the weight and the number of packages not checked by the railway servant authorised in that behalf and the 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.

12. Section 93 of the Act provides that the Railways Administration shall be responsible for the loss, destruction, damage, deterioration in transit or non-delivery of any consignment arising from any cause except otherwise provided under the Act. Section 97 of the Act says that if the goods are carried at owner's risk then the Railway Administration shall not be responsible for any loss, destruction, damage, deterioration in transit or non-delivery of any consignment, save and except that there was a case of negligence or misconduct on its part or on the part of any of its servants.

13. Now the question is that whether the respondent-Railways has seriously doubted the weight and volume of consignment or they have merely put a formal question regarding that. After the leakage was found, even according to the Railways, at the first instance on 03.07.2006 when the consigned was booked, on 04.07.2006 it was returned back to the IOCL. In such a special and extraordinary circumstance when the wagon full of load was re-sent by the IOCL to the Railways for despatching it to Suchipind, Jalandhar, whether it was not the duty of the Railway Authorities to check the weight because the wagon was found in leaking condition on earlier occasion? Secondly, there was a joint inspection done by the Railways and the appellant/applicant-IOCL at Suchipind. Two remarkable things have been noted in the joint dip certificate, which is on record. First and foremost is that 4160 litres quantity was found short. Since the certificate was given jointly by the Railway Authority and IOCL, it has

to be deemed that the Railways is agreeable to the same. The fact that such joint inspection was done and joint dip certificate was issued has been accepted by the witness produced on behalf of the Railways Authority. It has categorically been stated by the Mr.Rizwan Ahmmed Siddiqui, the person who has conducted the inquiry and stood as witness for the Railways that the joint dip certificate is correct and as per the certificate the quantity was found short by 4160 litres. In such a situation, in my considered opinion, the respondent-Railways cannot put a question mark regarding the loss of weight or volume or even the loaded weight because unless the weight of load in wagon is accepted, no certificate specifically indicating loss of 4160 lts. could have been issued by the Railways alongwith IOCL.

14. Very importantly, the seals put by appellant/applicant-IOCL was found missing as mentioned in the dip certificate. Now the next question would be, who had removed the seals and who could be held responsible for the same. After the consignment was handed over to the Railways, the IOCL cannot put a watch upon it. If the leakage was due to mechanical fault that would be another aspect of the matter but if the seals were found removed then that may be indicative of not only negligence but also some mischief done during transit when the entire thing was totally under the control of the Railway Authorities. In such a situation the Railways would have to be held responsible for that. It is surprising that this aspect of the matter has also not been discussed in proper manner by the Tribunal. Thus, in my considered opinion, in this scenario, respondent-Railways cannot stand protected under the

provisions of Section 65 and 97 of the Act, as Section 97 clearly lays down that if negligence is on part of the Railway Authorities or if there is some misconduct then Railways would be responsible. Breaking of seals clearly indicates about the negligence as well as mischief.

15 Learned counsel for the appellant-Corporation has placed reliance upon a decision of the Single Bench of this Court rendered in **“M/s Indian Oil Corporation Limited vs. Union of India”** (FAO-4483 of 2008 decided on 08.03.2017) in which it has been held, while placing reliance upon another decision rendered in **“M/s Indian Oil Corporation Ltd. vs. Union of India representing Northern Railways,** (in RSA no.2295 of 1986 decided on 14.09.2011)” that in case the seals are found broken the liability would be of the Railways. This Court is also, in view of the discussion as above, is in respectful agreement with the views expressed by the learned Single Bench.

15. Accordingly, the findings recorded with respect to these issues by the Tribunal are quashed and set aside and it is held that in the above-mentioned facts and circumstances, the respondent-Railways would have a liability to indemnify the loss suffered by the appellant/applicant-IOCL.

The loss according to the joint dip certificate is admitted and the DGS&D rate has also been supplied. The respondent-Railways has never questioned the said rate, thus, in my considered opinion the IOCL is entitled to receive compensation to the extent of Rs.1,47,315.17/-, which has been calculated in view of the DGS&D the rate for the loss of 4160 litres of SKO.

Apart from the above, they would also be entitled for interest at the rate of 6% per annum to be calculated from the date of issue of joint dip certificate accepting such loss caused by the respondent-Railways till the date of its realisation.

In the result, this appeal is allowed, however, the parties would bear their own costs.

January, 24 2019

dharamvir

**DR. RAVI RANJAN)
JUDGE**

Whether speaking/reasoned : YES
Whether Reportable : YES