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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 29 November 2023**
Judgment pronounced on : 21 December 2023

+ **FAO 65/2017**

**M/S SOUTHERN PETROCHEMICAL INDUSTRIES
CORPORATION LTD** Appellant

Through: Mr. Satish Kumar and Mr.
Sanjay Gupta, Adv. along with
Mr. R. Venkata Krishnan, AR
of the appellant.

versus

UNION OF INDIA AND ANR. Respondents

Through: Mr. Bhagwan Swaroop Shukla,
CGSC with Mr. Sawan Kumar,
Adv. for UOI.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

FACTUAL BACKGROUND:

1. This Judgment shall decide a Statutory Appeal preferred by the appellant Company under Section 23 of the Railway Claims Tribunal Act, 1987¹ for setting aside the judgment/order dated 07.10.2016 passed by the Principal Bench, Railway Claims Tribunal-1, Delhi,² whereby the claim of the appellant seeking damages for a sum of Rs 37,25,380/- for alleged loss caused by the Railway Administration on account of negligence in protecting the goods was dismissed in Claim Petition No. TA-1/1993 titled 'M/s Southern Petrochemical Industries Corporation Ltd. Vs. Union of India.'

¹ RCTA

² RCT



BRIEF FACTS:

2. The broad facts of this case are not in dispute. Briefly stated, the appellant on 03.06.1991 and 04.06.1991 booked 42,704 bags of DAP³, each weighing 50 Kg, *vide* R.R. No. 054558 to 051562 from Windmill to Tohana (Haryana) for carriage by Rail.
3. Needless to state that the applicant was the owner of the consignment and the transportation of the goods had been booked under 'Railway Risk Rate' and the goods were booked on an 'L/U basis', which in railway business parlance would mean that the liability of loading and unloading was upon the applicant Company.
4. It is an admitted fact that the consignment of goods was brought by the Railways and unloaded at Tohana railway station on 09.06.1991 at 12:50 P.M. On the same day, the appellant cleared and carried 280 metric tons of goods before 10:00 P.M.
5. The grievance of the appellant was that the consignment was kept in the open and unprotected ground. Unfortunate as it may appear, there was torrential rain accompanied with gale at around 3:30 A.M in the morning of 10.06.1991 and the remaining consignment / stock of goods weighing approximately 1855.200 metric tons lay in the open as the shed where the goods were stored was exposed to the rain.
6. It was also the grievance of the appellant that the Railway Administration did not take reasonable care as a bailee of the goods as the Administration did not cover the same with tarpaulins and due to stagnation of water between the railway lines, the goods were



damaged. The appellant requested for a joint survey but the same was refused by the Railways. Therefore, the appellant was constrained to appoint its own special surveyor, who after assessment of the loss provided the salvage value of Rs 35,55,255/-.

7. The claim petition was filed by the appellant on 29.03.1993 and the main plank of the case of the appellant was that as per Rule 134(1) (a)(ii) of IRCA⁴, transit for the purposes of Railway's Liability terminates only on the expiry of free time allowed for removal of goods from the Railway premises. It was stated that since rainfall is a natural phenomenon in Tohana during the month of June, the Railways miserably failed to take or use reasonable foresight and care in protecting the consignment. Therefore, a claim for damages to the extent of Rs.37,25,380/- for the loss of the value of the consignment of the goods was lodged.

8. The claim petition was contested by the respondents / Railways primarily stating that the goods were transported to Tohana well within time and delivered to the applicant on 09.06.1991, and there was no further responsibility of the Railway Administration to take any further measures for protection of consignment from exposure to rain.

9. The learned RCT framed the following issues to adjudicate upon the claims:—

- “1. Whether the application is not maintainable against respondent No. 2? OPR
2. Whether the application has been signed and verified by a

³ Diammonium Phosphate

⁴ Goods Tariff No.34, Part-I, Volume-I,



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competent person?

3. Whether respondents are protected under Section 93(f) and (i) of the Railways Act, 1989 and Rule 13 of the Goods Tariff? OPR

4. Whether the goods were booked at railways risk rate? OPA

5. Whether the applicant is entitled to any compensation, if so, how much?

6. Relief?"

10. Suffice to state that the issue Nos. 1, 2 and 4 were decided in favour of the appellant. However issue nos. 3 & 5 were decided against the appellant. This Court shall advert to the reasoning given by the learned RCT later on in this judgment.

ANALYSIS AND DECISION:

11. I have given my thoughtful consideration to the submissions advanced by learned counsels for the rival parties and I have perused the record including the digitized record of the RCT.

12. It would be relevant to go through the provisions of Section 93 of The Railways Act, 1989⁵ which reads as under:-

“93. General responsibility of a railway administration as carrier of goods-

Save as otherwise provided in this Act, a railway administration shall be responsible for the loss, destruction, damage, or deterioration in transit or non-delivery of any consignment, arising from any cause except the following-

- (a) act of God;
- (b) act of war;
- (c) act of public enemies;
- (d) arrest, restraint or seizure under legal process;
- (e) orders or restrictions imposed by the Central Government or a State Government or by an officer or authority subordinate to the Central Government or a State Government authorised by it in this behalf;
- (f) act or omission or negligence of the consignor or the consignee or the endorsee or the agent or servant of the consignor or the consignee or the endorsee;
- (g) natural deterioration or wastage in bulk or weight due to

⁵ Railways Act



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inherent defect, quality or vice of the goods;

(h) latent defects;

(i) fire, explosion or any unforeseen risk:

Provided that even where such loss, destruction, damage, deterioration or non-delivery is proved to have arisen from any one or more of the aforesaid causes, the railway administration shall not be relieved of its responsibility for the loss, destruction, damage, deterioration or non-delivery unless the railway administration further proves that it has used reasonable foresight and care in the carriage of the goods.”

13. A careful perusal of the aforesaid provision would show that Section 93 provides for a general responsibility of the railways for loss, damage, deterioration in transit or for non-delivery of any consignment arising from any causes specified therein. Clause (f) however, makes an exception where such loss, damage or deterioration of the consignment has resulted on account of act, omission or negligence on account of consigner or consignee but at the same time the entire provision is controlled by the proviso to the effect even where such loss, destruction, damage, deterioration has arisen from anyone or more of the aforesaid clauses, the Railway Administration is still not relieved of its responsibility for loss, destruction etc., unless the Railway Administration proves that it has used reasonable foresight and care in the carriage of the goods.

14. The term ‘carriage in the goods’ is not defined under the Railways Act except that Section 2 (2) defines ‘carriage’ to mean carriage of passengers or goods by Railway Administration. It would also be expedient to refer to Section 99 of the Railways Act which provides as under:-

“99. Responsibility of a railway administration after termination of transit. - (1) A railway administration shall be responsible as a bailee under sections 151, 152 and 161 of the





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Indian Contract Act, 1872, for the loss, destruction, damage, deterioration or non-delivery of any consignment up to a period of seven days after the termination of transit Provided that where the consignment is at owner's risk rate, the railway administration shall not be responsible as a bailee of such loss, destruction, damage, deterioration or non-delivery, except on proof of negligence or misconduct on the part of railway administration or on any of its servants.

(2) The railway administration shall not be responsible in any case for the loss, destruction, damage, deterioration or non-delivery of any consignment arising after the expiry of a period of seven days after the termination of transit.

(3) Notwithstanding anything contained in the foregoing provisions of this section, a railway administration shall not be responsible for the loss, destruction, damage, deterioration or non-delivery of perishable goods, animals, explosives and such dangerous or other goods as may be prescribed, after the termination of transit.

(4) Nothing in the foregoing provisions of this section shall affect the liability of any person to pay any demurrage or wharfage, as the case may be, for so long as the consignment is not unloaded from the railway wagons or removed from the railway premises.”

15. A careful perusal of the provision would show that the Railway Administration is responsible as a bailee in respect of any goods in carriage as provided under Section 151, 152 and 161 of the Indian Contract Act, 1872 for loss, destruction, damage or deterioration up to a period of seven days after termination of the transit. However, the proviso states where the consignment is at owner's risk and that the Railway Administration shall be not responsible for any loss, destruction, damage or deterioration.

16. It is pertinent to mention that Section 2 (21) of the Railways Act defines the expression 'in transit' as under:-

“Section 2. In this Act, unless the context otherwise requires,-

(21). “in transit”, in relation to the carriage of goods by railway, means the period between the commencement and the termination of transit of such goods, and unless otherwise previously determined-

(a) transit commences as soon as the railway receipt is issued or



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the consignment is loaded, whichever is earlier;

(b) transit terminates on the expiry of the free time allowed for unloading of consignment from any rolling stock and where such unloading has been completed within such free time, transit terminates on the expiry of the free time allowed, for the removal of the goods from the railway premises.”

17. In the light of the aforesaid statutory provisions, reverting to the instant case, it would be expedient to reproduce the decision taken by the learned RCT in issue Nos. 3 & 5 against the appellant which are as under:-

“3. Whether respondents are protected under Section 93(f) and (i) of the Railways Act, 1989 and Rule 13 of the Goods Tariff? OPR.

7. The issue pertains to a plea made that since the complaint of the applicant is that goods were spoiled by gale and rain, it should be taken as an unforeseen risk and they should be protected under Clause 93(f) of the Railways Act. It is the further plea that the damage occurred on account of all the omission of the applicant himself to protect his goods by tarpaulins and hence, the claim cannot be sustained in the light of s 93(i) of the Act.

8. I must observe at the outset that Section 93 provides for a general responsibility for loss, damage, deterioration **in transit** or for non-delivery of any consignment. This is not a case of the goods being in transit, for admittedly, the transit had come to an end and the goods had been made available for delivery at the destination station. There is no complaint that the delivery was not offered. On the other hand, the application itself makes reference to the fact that out of the total consignment, a portion, namely, 280 metric tons of goods were cleared at Tohana railway station before 10:00 PM on the same day when the goods arrived on 9.6.91. There is no meaning in invoking Section 93 under such a situation. I, therefore, hold that there is no scope for invoking Section 93 of the Railways Act. The issue is answered accordingly.

5. Whether the applicant is entitled to any compensation, if so, how much?

25. The extent of damage is clearly visible from the surveyor's report. I find the manner of calculation of the damage after segregating the urea bags, which could be sold in the market and the bags which had been damaged and which could be still sold as salvage, have been correctly provided and if there is a quantum of loss, which is determined I will take that to be merely relevant for



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the estimate of loss that has entailed by the sudden onslaught of rain. The assessment even if correct shall not be a ground for fastening the liability on the railway administration. I find that there is no scope for casting liability as assigned by the surveyor on the railway administration. In the light of the discussion already made, the assessment of actual damages has no relevance to fasten liability on the railways.”

18. First things first, the decision by the learned RCT on issue No. 4 to the effect that the consignment of goods was booked at ‘Railway’s Risk Rate’ is not challenged by the respondents/Railways. However, it is also evident from the record that the consignment had been booked under ‘L/U Basis’, which would mean that the responsibility of loading and unloading was to be undertaken by the consignee i.e., the appellant Company in this case. Admittedly, the consignment had arrived and was unloaded by the respondent/Railways at the railway yard Tohana, and the same had been made available for delivery to be taken by the appellant. It is also admitted that the appellant within the ‘free time or period’ available to it, took delivery of part of the consignment to the extent of 280 metric tons before 10:00 PM on 09.06.1991. There is no gain saying that whether risk in the consignment had passed over to the appellant/consignee is a question of fact. The facts brought on the record demonstrate that the delivery of consignment was accepted by the appellant and part of the consignment was then removed by 10:00 PM.

19. The said aspect would raise an inference that while part of the consignment was removed; the remaining was allowed to be kept in the railway yard for the remainder of the goods to be taken during free time/period up to 10:00 PM on the following day i.e., 10.06.1991. In



such a scenario, the risk in the goods had already passed or had been transferred to the appellant. It is evident that the appellant had an opportunity to take delivery of the consignment and remove the same for safe keeping/storage in their own establishment but they did not elect to do so. There are forthcoming no reasons as to why the entire lot could not be removed. There is no explanation by the appellant as to why they rushed at the eleventh hour, supposedly at 03:30 AM in the morning on 10.06.1991 when lightning struck that there was going to be heavy pouring with gale.

20. Presumably, the appellant was also well aware about the weather conditions in the area and there is no *iota* of whisper that they made any request to the respondents/Railways well in time to ensure protection of the consignment lying in the railway yard so as to get the same covered with tarpaulins. At the cost of repetition, since the risk in the consignment had passed on to the appellant, then in capacity of an ordinary prudent person, the appellant had the duty to ensure and take reasonable precautionary measures to protect the goods present in the railway yard. By operation of law, the appellant was the owner of goods having physical possession; the Railways only had a symbolic possession of those goods. The aforesaid view is demonstrated in a decision by the Allahabad High Court in the case of **M/s. Raymonds Cement Works v. Union of India**⁶, wherein on similar facts, goods were partially removed and remaining portion of the goods were damaged that were still at the railway station, it was observed as under:-



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“16...Removal of major part of the goods from railway station after unloading of the goods from the railway wagons clearly lead to the conclusion, especially in view of the fact that it was to be supervised by the owners themselves, that it was not a token but an actual delivery taken by the owners. There is neither any case of appellant of having taken personal delivery nor there is any partial delivery certificate. The owners removed major part of the consignment but after taking delivery left behind some part of the consignment which due to unusual rains got wet and damaged. The liability of the respondent ceased soon after actual delivery of goods was taken it was a duty of owner after taking delivery of goods to have taken all possible steps to avoid damage to the goods. It is also in the statement that there was facility of unloading the goods from the wagons to the truck also but this facility available at the railway station was not utilised by the owners. Shri J.R Yadav has stated that sufficient number of tarpaulins of the size which could cover the entire four wheelers are also available at the railway station and the same are provided to the owners on demand but the owner did not make any oral or written request for making the tarpaulins available to cover the goods left at the station. The appellant also could not produce any evidence to show that there was at all any request for supply of tarpaulin. The learned counsel for the respondent rightly argued that after delivery of the goods in good and sound condition the liability of the Railways as bailee came to an end under Section 160 of the Contract Act. Therefore, the onus being responsible for unloading after taking delivery and having not utilised the facility of unloading direct from the wagons to the truck for removing the entire consignment after unloading as also the lack on the part in demanding the tarpaulins to cover the consignment left over at the station, the owner and not railway administration is responsible for loss.”

21. As observed by the learned RCT, in the instant matter the tarpaulins were not even available. Be that as it may, the representatives of the appellant cannot escape from their primary responsibility to take reasonable care to protect their goods, especially on being aware of the weather conditions in Tohana, which lies in Haryana in the Northern Part of India. It would be relevant to observe

⁶ [LAWS (ALL)-2006-2-116 dated 07.02.2006]



that Sections 93 and 98 of Railways Act, have to be read harmoniously and at the same time there is no escape from concluding that Section 99 takes precedence over Section 93 of the Railways Act. The general liability of the Railways, for any loss, destruction, damage, deterioration in any goods could only be invoked where patent negligence is found on part of the Railways and they have been found to be wanting in taking reasonable care. Even assuming for the sake of convenience that there was lack of oversight and care, how could the appellant absolve themselves from such oversight and not taking measures to take the delivery of the goods overnight, thereby protecting its own goods.

22. In view of the foregoing discussion, it is a stark case where there was contributory negligence on the part of the appellant in protecting its own goods despite being aware of the ground realities and unforeseen weather conditions. Therefore, it is difficult to hold that the impugned judgment dated 07.10.2016 passed by the learned RCT suffers from any patent illegality, perversity or incorrect approach in law.

23. The appeal is accordingly dismissed.

DHARMESH SHARMA, J.

DECEMBER 21, 2023

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