IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on 28th of October, 2024
Pronounced on 16th January, 2025

1. FAO-1177-1996
2. FAO-1172-1996 (O&M)
3. FAO-1173-1996 (O&M)
4. FAO-1178-1996
5. FAO-1179-1996
6. FAO-1180-1996
7. FAO-1181-1996
8. FAO-1478-1996

Punjab Small Ind. & Exprt. Corp., Chandigarh ....Appellant

Versus

Union of India etc ....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sanjeev Sharma, Advocate
for the appellant(s).

Mr. Sudhir Nar, Sr. Panel Counsel
for respondent No.1-UOI.

Mr. Sandeep Punchhi, Advocate
for respondent No.2.

PANKAJ JAIN, J.

This is a bunch of 8 appeals preferred by the consignee against the orders passed by Railway Claims Tribunal, Chandigarh Bench rejecting their claim raised on account of loss of the consignment assigned to the Railways, in transit.

Deepak Kumar
2025.01.16 18:11
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2. For convenience, the facts are being culled out from FAO No.1172 of 1996.

3. As per the case of the appellants pig iron was purchased by them from respondent No.2 i.e. Rashtriya Ispat Nigam Limited. The consignments were loaded in wagons. Necessary freight was paid to the railway administration. The consignment was booked at ex-Vishakhapatnam to Goraya, District Jalandhar. Though, consignment was to be delivered within 6 to 8 days, however, the same remained in transit for about 29 days. The applicant suspected pilferage. Request was made to Railway Authorities on 17.09.1991 for reweighment of the goods in the wagons. The same was rejected by Sr. Divisional Commercial Superintendent, Northern Railways on 19.09.1991. The appellant in order to avoid payment of demurrage charge, got the goods retired by depositing RR and approached the independent surveyor M/s. Taneja Enterprises, Ludhiana. Station Superintendent, Northern Railways, Goraya was requested vide letter No.24.09.1991 to witness reweighment, which was also declined. Surveyor found considerable shortage. Copies of reweighment documents were submitted to the railway administration. Notice under Section 78-B of the Railways Act was served in accordance with law. Railways failed to settle the claim.

4. Claim was contested by the Railways. It was admitted that RR was issued to the extent of booking particulars. However, the valuation of the consignment was denied. It was claimed that the consignment was

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2025.01.16 18:11
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loaded by the sender itself in private siding without the supervision of the railway staff. The consignment arrived at destination in wagons with its doors closed and in sound condition. It was further claimed that surveyor had no legal authority to conduct reweighment.

5. Tribunal decided the issue of proper authorization against the appellant and further held that statutory notice also could not be proved by the appellant. On merits, Tribunal held that admittedly the applicant got reweighment done after issuance of Gate passes No.9701, 9702, 9703, 9704, 9705, 9707, 9710, 9711, 9712, 9713, 9697, 9698 and 9699. From sequence of the gate passes, it was found that three gate passes were conspicuously missing and original gate passes having not been produced, adverse inference was drawn against the applicant. Tribunal thus held that the applicant failed to prove loss of the consignment and rejected the claim of the applicant.

6. Ld. Counsel appearing for the appellant(s) while assailing the impugned order passed by the Tribunal submits that it is not denied by the Railways that freight was charged as per description. Railway administration being carrier of goods, was fully responsible to account for the same. Consignee had a right of a reweighment of the consignment. Request was made, yet the same was declined. The report of surveyor has been rejected without assigning any cogent reason. He submits that the appellant being a consignee, is legally entitled to claim compensation.

Deepak Kumar
2025.01.16 18:11
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7. Per contra, counsel for the Railways refers to provision as contained under Section 94(1) of the Railways Act to submit that where the goods are loaded at the siding not belonging to the railway administration for carriage by railway, the railway administration cannot be held to be responsible for any loss, destruction, damage or deterioration. He, thus, submits that the Tribunal has rightly dismissed the claim of the appellant.

8. I have heard counsel for the parties and have gone through records of the case.

9. For the purpose of instant case, the relevant provisions of Railways Act read as under :

> **79. Weighment of consignment on request of the consignee or endorsee.**—A railway administration may, on the request made by the consignee or endorsee, allow weighment of the consignment subject to such conditions and on payment of such charges as may be prescribed and the demurrage charges if any:
>
> Provided that except in cases where a railway servant authorised in this behalf considers it necessary so to do, no weighment shall be allowed of goods booked at owner's risk rate or goods which are perishable and are likely to lose weight in transit:
>
> Provided further that no request for weighment of consignment in wagon-load or train-load shall be allowed if the weighment is not feasible due to congestion in the yard or such other circumstances as may be prescribed.
>
> **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

Deepak Kumar
2025.01.16 18:11
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any consignment, arising from any cause except the following, namely:—

(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 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.

94. Goods to be loaded or delivered at a siding not belonging to a railway administration.— (1) Where goods are required to be loaded at a siding not belonging to a railway administration for carriage by railway, the railway administration shall not be responsible for any loss, destruction, damage or deterioration of such goods from whatever cause arising, until the wagon containing the goods has been placed at the specified point of interchange of wagons between the siding and the railway administration and a railway servant authorised in this behalf has been informed in writing accordingly by the owner of the siding.

Deepak Kumar
2025.01.16 18:11
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(2) Where any consignment is required to be delivered by a railway administration at a siding not belonging to a railway administration, the railway administration shall not be responsible for any loss, destruction, damage or deterioration or non-delivery of such consignment from whatever cause arising after the wagon containing the consignment has been placed at the specified point of interchange of wagons between the railway and the siding and the owner of the siding has been informed in writing accordingly by a railway by a railway servant authorised in this behalf.

97.Goods carried at owner's risk rate.—Notwithstanding anything contained in section 93, a railway administration shall not be responsible for any loss, destruction, damage, deterioration or nondelivery in transit, of any consignment carried at owner's risk rate, from whatever cause arising, except upon proof, that such loss, destruction, damage, deterioration or non-delivery was due to negligence or misconduct on its part or on the part of any of its servants:

Provided that,—

(a) where the whole of such consignment or the whole of any package forming part of such consignment is not delivered to the consignee or the endorsee and such non-delivery is not proved by the railway administration to have been due to fire or to any accident to the train; or

(b) where in respect of any such consignment or of any package forming part of such consignment which had been so covered or protected that the covering or protection was not readily removable by hand, it is pointed out to the railway administration on or before delivery that any part of that consignment or package had been pilfered in transit,

the railway administration shall be bound to disclose to the consignor, the consignee or the endorsee how the consignment or the package was dealt with throughout the time it was in its possession or control, but if negligence or misconduct on the part

Deepak Kumar
2025.01.16 18:11
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of the railway administration or of any of its servants cannot be fairly inferred from such disclosure, the burden of proving such negligence or misconduct shall lie on the consignor, the consignee or the endorsee.

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 Indian Contract Act, 1872 (9 of 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 for such loss, destruction, damage, deterioration or non-delivery except on proof of negligence or misconduct on the part of the railway administration or of 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.

103. Extent of monetary liability in respect of any consignment.—(1) Where any consignment is entrusted to a railway administration for carriage by railway and the value of such consignment has not been declared as required under sub-

Deepak Kumar
2025.01.16 18:11
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section (2) by the consignor, the amount of liability of the railway administration for the loss, destruction, damage, deterioration or non-delivery of the consignment shall in no case exceed such amount calculated with reference to the weight of the consignment as may be prescribed, and where such consignment consists of an animal, the liability shall not exceed such amount as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), where the consignor declares the value of any consignment at the time of its entrustment to a railway administration for carriage by railway, and pays such percentage charge as may be prescribed on so much of the value of such consignment as is in excess of the liability of the railway administration as calculated or specified, as the case may be, under sub-section (1), the liability of the railway administration for the loss, destruction, damage, deterioration or non-delivery of such consignment shall not exceed the value so declared.

(3) The Central Government may, from time to time, by notification, direct that such goods as may be specified in the notification shall not be accepted for carriage by railway unless the value of such goods is declared and percentage charge is paid as required under sub-section (2).

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

Deepak Kumar
2025.01.16 18:11
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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.

110. Burden of proof.—In an application before the Claims Tribunal for compensation for loss, destruction, damage, deterioration or non-delivery of any goods, the burden of proving—

(a) the monetary loss actually sustained; or

(b) where the value has been declared under sub-section (2) of section 103 in respect of any consignment that the value so declared is its true value,

shall lie on the person claiming compensation, but subject to the other provisions contained in this Act, it shall not be necessary for him to prove how the loss, destruction, damage, deterioration or non-delivery was caused.

10. So far as the issue w.r.t. proper authorization is concerned, it has come on record that the claim was filed through Regional Manager Legal, who was authorized by Managing Director of the appellant/Corporation to

Deepak Kumar
2025.01.16 18:11
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file the claim application. Managing Director was duly authorized by resolution of Board of Directors of the Corporation to sub-deligate his powers to the other officers vide resolution dated 21.11.1981. Thus, the finding recorded by the Tribunal to the effect that Managing Director was not authorized by Board of Directors to sub-deligate his powers to the other officers, is evidently erroneous and needs to be set aside.

11. The finding recorded by the Tribunal w.r.t. non-compliance of Section 106 also cannot be sustained. In terms of Section 106(2) of the Railways Act, any information demanded or enquiry made in writing from, or any complaint made in writing to any of the railway administrations to which the goods were entrusted for carriage or was administrating the destination station, partakes the character of a notice or claim.

12. In para No.7(a) of the claim application, the claimant claimed that the claim was filed with the Railways. However, the same was responded to by the Railways only asserting that since the claim is not traceable thus lodging thereof is denied. Apart therefrom, the claimant appended copy of the notice sent to Railways by way of registered post on 11.12.1991. The pleading was supported by affidavit of Regional Manager Legal of the Corporation. No evidence was adduced to rebut the same.

13. In view of above, the finding w.r.t. non-compliance of provision as contained under Section 106 of the Railways Act also needs to be reversed.

Deepak Kumar
2025.01.16 18:11
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14. Coming on to the merits of the case, Railways does not dispute that original railway receipt was produced by the claimant. It is also not disputed that the claimant made request for reweighment of the consignment.

15. In para No.6 of the written statement, it has been claimed by the Railway Administration that the request of the party was unjustified and uncalled for and was rightly and correctly turned down by the competent authority. It needs to be noticed that Section 79 of the Railways Act deals with weighment of consignment on request of the consignee or endorsee. The statue itself facilitates allowing the request made by consignee though subject to such conditions and on payment of charges as may be prescribed. The provision itself provides for where the weighment has to be disallowed. The other plea raised by counsel for the railway administration w.r.t. Goods having been loaded at a siding not belonging to the railway administration also needs to be noticed and rejected.

16. Section 94(1) needs to be perused carefully.

17. Railway Administration will not be responsible for any loss, destruction, damage or deterioration of goods loaded at a siding not belonging to the railway administration only till the wagon containing the goods has been placed at the specified point of inter change of wagons between the siding and the railway administration. The only exception is where a railway servant authorized in this behalf has not been informed in writing accordingly by the owner of the siding. Admittedly, the wagon

Deepak Kumar
2025.01.16 18:11
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loaded in the siding belonging to respondent No.2 from whom appellant purchased the consignment was not only interchanged at the specified point but the same was carried by the railways up to the destination. In terms of Section 93, railway administration is generally responsible as carrier of goods and is required to account for any pilferage/loss. Even though in terms of Section 99 wherever the consignment is at owner's risk, the railway administration is not responsible as a bailee. However, by declining the request of the consignee for reweighment, the railway administration has not helped its cause and cannot escape its liability merely by claiming that the consignment was at owner's risk. Admittedly, railway administration charged RR as per the bill. Apprehending loss in transit, consignee requested for reweighment. After railway administration declined the request, consignee was left with no other choice but to appoint independent surveyor to get the consignment reweighed. Tribunal erred in rejecting the surveyor's report merely on the ground that three gate passes were missing. Gate passes were issued by railway administration and railway administration could have well proved the details thereof, in case they were disputing the same. There being no effort made at the end of Railways Department, this Court finds that the Tribunal erred in rejecting the surveyor's report.

18. Keeping in view the aforesaid facts, the findings recorded by the Tribunal cannot be sustained and are hereby set aside. The appellant is

Deepak Kumar
2025.01.16 18:11
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held entitled for monetary compensation in terms of the losses suffered on account of pilferage during transit.

19. As a sequel of the discussion held hereinabove, the present appeals are allowed.

20. Claim petitions filed by the claimants are allowed to the extent of loss of consignment suffered by them along with interest @ 7% per annum from the date of filing of the claim petition till the date of actual realization.

21. Ordered accordingly.

22. Pending application(s), if any, shall also stand disposed off.

23. A copy of this order be kept on the files of other connected cases.

January 16, 2025 **(Pankaj Jain)**
Dpr **Judge**

Whether speaking/reasoned : Yes
Whether reportable : Yes

Deepak Kumar
2025.01.16 18:11
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