

Court No. - 8

Case :- FIRST APPEAL FROM ORDER No. - 348 of 2011

Appellant :- Union Of India Through General Manager Northern Railway

Respondent :- M/S Acc Ltd. Cement House Mumbai Through Shri
A.K.Rajoria

Counsel for Appellant :- Brijesh Kumar Shukla

Counsel for Respondent :- Vinay Tripathi

Hon'ble Jaspreet Singh,J.

1. Heard Sri Vinay Tripathi, learned counsel for the appellant. None appears for the respondent.
2. The record indicates that instant appeal was admitted vide order dated 11.04.2011 and notices were issued to the respondent. As per office report, service on the sole respondent is sufficient. Since none has put in appearance and noticing that the appeal is of the year 2011, this Court has proceeded to hear learned counsel for appellant in absence of the respondent. It is also relevant to be noticed that on 02.07.2025 this Court had noticed in the order that none had put in appearance on behalf of the respondent, however, in case if none appears on behalf of respondent on the next date, the matter shall be heard in his absence.
3. Learned counsel for the appellant assails the award dated 24.12.2010 passed by the Railway Claims Tribunal at Lucknow in OA/I/5/08 whereby the claim petition preferred by the respondent was allowed and compensation of Rs.1,03,753/- along with 6% interest has been awarded in favour of respondent.
4. While attacking the award, learned counsel for the appellant has submitted that the entire contention and claim raised by the respondent is misconceived. It was alleged by the respondent that they had booked 57 wagons on 03.05.2006 with the Railway to carry cement from Kymore Siding (Jukehi) to ACC Tikaria Pvt Siding, Gauriganj. The respondent had alleged that out of the 57 Wagons so booked, they were delivered 56

Wagons, however, one Wagon box No.SC-415232 containing 62.7 MT Clinker did not reach to the destination. The claimant had made its claim and also issued demand notice to the Railways which was served upon the General Manager at New Delhi and second notice was also served upon Commercial Claim Manager/NR/Varanasi on 11.09.2006. It was further alleged that missing Wagon was an outcome of gross negligence and carelessness at the behest of the appellant, consequently the claim petition was filed before the Railway Claims Tribunal which was registered as OA/I/5/08.

5. The appellant contested the aforesaid claim petition by filing its written statement before the Tribunal. It was urged and pleaded that all 57 Wagons booked on 03.05.2006 were duly delivered at the destination station on 07.05.2006. It was also stated that the original railway receipt (hereinafter referred to as 'RR') was filed before the Tribunal along with copy of delivery book, memo issued to Sr. CMI/Varanasi & letter of Chief Goods Superintendent, Northern Railway, Gauriganj dated 27.08.2008 and on the basis of aforesaid documents, the defence as laid by Union of India was that the said wagon had been received by the respondent, accordingly no claim was maintainable apart from the fact that non delivery certificate which was claimed by the respondent to have been issued by the appellant was also bad as it was issued on 06.12.2008 almost after two and half years and the said delivery was made on 07.05.2006.

6. The Tribunal upon exchange of pleadings framed four issues. The claimant/respondent had examined the witness, however, apart from the documents as mentioned above, no other witness was examined by the Railways. In the aforesaid backdrop, noticing that the respondent had not led any evidence coupled with the fact that there was complete no denial of the non delivery certificate dated 06.12.2008, the Tribunal awarded a sum of Rs.1,03,753/-.

7. Contention of learned counsel for appellant is that in light of the evidence which was already furnished and placed on record by the Railways which clearly establish that all the 57 Wagons had been

delivered and the alleged non delivery certificate appears to be an afterthought and in light of the overwhelming evidence available and filed by the Railways, the claim has incorrectly been awarded, accordingly, the award deserves to be set aside.

8. This Court heard learned counsel for appellant and also perused the material on record in original which has been placed before this Court. This Court finds that apart from filing the document i.e. original RR, all other documents have been filed as photocopies. The said photocopies are not even accompanied by affidavit of any witness as evidence. The record further indicates that time was granted to the respondent to file their evidence but they did not avail of same.

9. Now in the aforesaid backdrop, the question whether the documents which are in the nature of photocopies and have been filed by the appellant could partake the nature of substantive evidence which could be taken into consideration to displace the case of the respondent who had examined the witness by filing an affidavit and stated on oath, the facts which were stated in the claim petition. Apparently from the provisions as contained in Railway Claims Tribunal Act 1987, the Claims Tribunal is not bound by the Rules of procedure as contemplated in Code of Civil Procedure or the Indian Evidence Act and rather the Claims Tribunal has been vested with the powers to formulate its own procedure.

10. Be that as it may, the fact i.e. before the Court is that it is the claimant who had filed claim petition with specific averments regarding non delivery of one particular wagon which was part of 57 wagons which were booked on 03.05.2006 out of which 56 were received and one particular box was not delivered. It is also stated by the witness of the claimant namely Samar Bahadur Singh, who was authorized officer on behalf of respondent company. He categorically stated and reiterated the contents of his claim. Significantly this witness was not even cross examined by the Railways that being so the statement of respondent witness almost remained uncontroverted.

11. Now in contra distinction to the aforesaid, the record indicates that apart from filing the written statement dated 14.11.2008 wherein paragraph 12 and 13 it had a vague plea regarding the booking and delivery of the consignment. The separate application dated 12.05.2010 under the signature of counsel for Railways was filed before the Tribunal which is captioned 'the application for taking following documents on record' as respondent's documentary evidence. It is along with this application that the original railway receipt was filed thereafter there are two copies which are described as certified copy of the extract of delivery book attested by the Station Superintendent which is annexure no.2 and the third was the information received from the officials at Varanasi.

12. From a perusal of said documents no.2 and 3 as annexed with the application dated 12.05.2010, it does not indicate who has certified the said copy of delivery book. It refers to an endorsement said to have been signed by some official/employee of respondent Corporation. The same is the situation in so far as the third document filed is concerned.

13. None appeared on behalf of the respondent to even make a statement on Oath in shape of affidavit and to connect the said documents especially when the said document if perused would not indicate any particular aspect of the matter. There is nothing on record to suggest that the Railways ever brought on record any fact regarding who had been given the delivery of 57 wagons as stated by the respondent.

14. At this stage, learned counsel for the appellant has drawn attention of the Court to certain photocopies indicating that there is an endorsement by the official of the respondent, however that is merely an incoherent signature/endorsement which can go either way, without there being any specific detail as to whose signature or endorsement is in it. There is no reply by the Railways regarding non delivery certificate said to have been issued on 06.12.2008. The railways did not bother even to respond as to whether the said non delivery certificate was genuine or not and even if so genuine whether it was issued by the authorized authority.

15. In these circumstances, the Tribunal has taken a view that the document dated 06.12.2008 non delivery certificate issued by the Railway authorities remain uncontroverted. This view in light of the fact that there is nothing on record of the railways cannot be said to be arbitrary. This Court while exercising its appellate power would not necessarily take a view contrary to what has been stated by the trial court merely because another view is possible and in this case since there is no contrary material on record, this Court finds that the submission as advanced by counsel for appellant can be given weight since they have already failed to file any evidence. The only evidence which has been referred to are the three documents filed along with the application dated 12.05.2010 and that too under the signature of counsel for Railways. Since there was no material on record by which it could be inferred that the findings recorded by the Tribunal are perverse or are against the material on record, this Court does not find that there is any error in the award dated 24.12.2010. Consequently the same is affirmed. The appeal is devoid of merits and is dismissed. Costs are made easy.

16. Record of the Tribunal shall be returned forthwith.

Order Date :- 15.7.2025

Renu/-