

FAO-3377-2019 (O&M)

2025:PHHC:072019



FAO-3122-2019 (O&M)

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

Date of decision : 07.03.2025

FAO-3377-2019 (O&M)

Steel Authority of India Ltd. Appellant

versus

Union of India & anr. Respondents

FAO-3122-2019 (O&M)

Steel Authority of India Ltd. Appellant

versus

Union of India & anr. Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Ajay Kumar Yadav, Advocate for
Mr. R.N.Lohan, Advocate for the appellants.

Mr. Shivoy Dhir, Advocate for the respondents-UOI.

PANKAJ JAIN, J. (ORAL)

1 These are two appeals preferred by the consignee against the orders passed by Railway Claims Tribunal, Chandigarh Bench rejecting their claim raised on account of loss of consignment assigned to the Railways, in transit.

2 For convenience, the facts are being culled out from **FAO-3377-2019**.



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3 As per the case of the appellants, they are govt. owned company known as Steel Authority of India Ltd. (SAIL) registered under the provisions of Companies Act, 1956. The applicant company entrusted consignments of GF Sheets under different railway receipts on different dates as detailed below for safe carriage from stockyard siding to SAIL siding Ballabgarh, Faridabad: -

Case No.	Railway Receipt No. & date	Consignment/weight	Shortage
OA-1/01/2016	262035979 dated 25.03.2014	GP Sheets 60.340 MTs	0.900 MTs
OA-1/02/2016	0262040109 dated 07.09.2014	GP Sheets 62.550 MTs	2.350 MTs
OA-1/03/2016	0262028807 dated 10.05.2013	GP Sheets 65.220 MTS	2.350 MTs

4 The above consignments were loaded in the presence of railway staff posted at the said stockyard siding and railway freight was paid as demanded by the railway staff for all these three consignments. The consignments were delivered on 01.04.2014, 11.09.2014 and 15.05.2013 respectively by the railways and on physical inspection, it was found that the some packets of GP Sheets dispatched vide above mentioned railway were missing and the conditions of packets were found disturbed and packing covers were removed. The applicant company had immediately informed the Chief Goods Supervisor vide its letters on the same day and written for open delivery on reweighment. Despite letters received by the respondent railways, the respondent did not conduct reweighment nor did any of the officials come during independent surveyor inspection and reweighment of goods.



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5 After receipt of survey reports, the applicant had issued notices for compensation under Section 106 of the Railways Act, 1989 to the respondent. The notices were not honoured by the respondent despite reminders, hence loss has been caused to the applicant company by the respondent upon denial of the genuine claims of the applicant company.

6 Respondent has filed similar written statement in all the three cases bearing same facts & denying and disputing various averments made in the claim applications. The consignments were delivered to the petitioner with normal transit time under clear receipts at Hindustan Steel Stockyard siding, Ballabgarh. The loading and unloading of the consignments were not supervised by any railway staff and the same were loaded and unloaded at a private siding. Moreover, the railway receipts were issued to the applicant company with remarks, "said to contained". Thus the railway is not responsible for any shortage, damage and deficiency, if any, to the consignment. The consignments cannot be off loaded without the help of crane. Thus the missing or removal of the said material is not possible during the transit period. It was denied that there was any shortage to the consignments in question.

7 Counsel for the applicant had filed replications reiterating the averments made in the claim applications and those of the written statements were controverted.

8 On the pleadings of the parties, following common issues were framed by Tribunal in all the claim applications: -



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- “1. Whether the claim application has been signed, verified and filed by a duly authorized and competent person?*
- 2. Whether a valid and legal notice under Section 106 of Railways Act, 1989 has been served upon the railways?*
- 3. Whether the consignment in question was delivered in short?*
- 4. To what amount of compensation the applicant is entitled to?*
- 5. Relief.”*

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

10 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 any consignment, arising from any cause except the following, namely:—

- (a) act of God;



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- (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.*



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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 non-delivery 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 of the railway administration or of any of its servants



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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-section (2) by the consignor,



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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 six months from the date of entrustment of the goods.



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(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 therefore 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.”

11 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 file the claim application. Managing Director was duly authorized by resolution of Board of Directors of the Corporation to

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sub-delegate his powers to the other officers. Thus, the finding recorded by the Tribunal to the effect that Managing Director was not authorized by Board of Directors to sub-delegate his powers to the other officers, is evidently erroneous and needs to be set aside.

12 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. Notices were acknowledged by the office of the CCO, Northern Railway, New Delhi vide letters dated 05.05.14, 27.11.14 & 19.07.13 respectively. The respondent railways have not shown any documentary evidence to the contrary. In view of above, it is held that statutory notices under Section 106 of the Railways Act, 1989 were served upon the railways within the period of limitation and were in order as per law.

13 Coming onto the issues No.3 & 4, the Independent surveyor/Loss assessor carried out the inspection and re-weighed the articles and vide its report dated 27.06.2013 established short delivery of the material and confirmed that 1 packet of GP Sheets having weight 3.370 MTS was opened and there was a shortage of 2.350 MTs. The Tribunal has erred in not considering the evidence on the file wherein it is fully proved the shortage of 2.350 Mts of the GP Sheets. The consignment were loaded in



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the presence of the railway staff at the stock yard and some packets of GP Sheets were found missing at the time of delivery at the conditions of the packets were found disturbed and packing cover were removed.

14 The respondent-railways have not produced any evidence to the contrary. In absence of any evidence to the contrary, it is held that all the issues are decided in favour of the appellant and the appellant-company is thus held entitled to compensation. The monetary loss caused is evident from the invoice of the material on record.

15 Keeping in view the aforesaid facts, the findings recorded by the Tribunal cannot be sustained and are hereby set aside. The appellant is held entitled for monetary compensation in terms of the losses suffered on account of pilferage during transit at the rate mentioned in the invoice for the shortage as tabulated in para 3 *ibid*.

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

17 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.

18 Ordered accordingly.

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

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20 A copy of this order be kept on the files of other connected case.

07.03.2025

Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No