

GAHC010243402015



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MFA/15/2015

UNION OF INDIA
REPRESENTED BY THE GENERAL MANAGER, N.F. RAILWAY, MALIGAON,
GUWAHATI-11

VERSUS

M/S INDIAN OIL CORPORATION LIMITED AOD
2, DR. BANI K.K. LANE, ULUBARI, GUWAHATI-7, ASSAM.

Advocate for the Petitioner : MS.R R BORAH

Advocate for the Respondent : MR.K P MAHESWARI

Linked Case : I.A./70/2015

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M/S INDIAN OIL CORPORATION LIMITED AOD

2
DR. BANI K.K. LANE
ULUBARI
GUWAHATI-7
ASSAM.

Advocate for : MS.R R BORAH
Advocate for : appearing for M/S INDIAN OIL CORPORATION LIMITED AOD

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Mrs. U. Chakraborty,
Advocate.

For the Respondent: Ms. M. Sarma,
Advocate.

Date of Hearing : 21.09.2023.

Date of Judgment: 10.10.2023.

JUDGMENT AND ORDER (CAV)

Heard Mrs. Uma Chakraborty, learned counsel representing the appellant as well as Ms. M. Sarma, learned counsel appearing for the respondent.

2. This is an appeal under Section 23 of the Railway Claims Tribunal Act, 1987 against the judgment and order dated 30.01.2015 passed in by the learned Railway Claims Tribunal, Guwahati Bench in O.A. Case No.03/2008

3. The respondent booked 47 BTPN Tank wagons for transporting SKO from Paradeep to Tinsukia. Goods were loaded under the supervision of

Railway and on verification of the quantity loaded by dip measurement, freight bills were prepared.

4. At the time of unloading at destination station, freight seals of both top and bottom were found missing and the oil was leaking. The respondent discovered that 25767 litres of SKO was found short in 29 BTPN Tank wagons. Therefore, on the basis of the price per kilo litre, the respondent claimed ₹7,80,521/- from the appellant.

5. The appellant contested the claim by filing a written statement. The appellant claimed that the seals were intact in all the wagons except one wagon i.e. Wagon No.90062, in which the seal was found to be in a defective condition.

6. The appellant also averred that the consignment was booked under the owner's risk rate and therefore, it is protected under Section 97 of the Railways Act.

7. The appellant further claimed that the loading was not supervised by any Railway employees and therefore, as per Section 65(2) of the Railways Act, the burden of proving the quantity or volume of the consignment lies upon the respondent.

8. I have considered the submissions made by the learned counsels of both sides.

9. The Railway receipt shows that the consignment was loaded at the private siding of the respondent and the loading was not supervised by Railway staff and it was "said to contain SKO as per forwarding note".

10. Finally, the Tribunal held that the appellant Railway was responsible

for short delivery of goods.

11. In *Sreeniwas Basudeo vs. Union of India and Ors.*, reported in 2002 (1) GLT 605, this Court has already clarified that the phrase “said to contain” cannot be interpreted as “contained”.

12. In MFA/92/2016, this Court has held that when there is no clear statement by the Railway servant about the volume of goods loaded at the place of origin, Section 65(2) of the Railways Act would be applicable and the burden to prove the weight or volume of the goods at the place of origin, would be on the respondent.

13. I find that the learned Tribunal has not decided on the most pertinent question as to what was the weight or volume of the goods loaded by the respondent IOC at the place of origin.

14. In view of the above, the judgment and order dated 30.01.2015 passed in by the learned Railway Claims Tribunal, Guwahati in O.A. Case No.03/2008, is set aside.

15. The appeal is allowed and disposed of.

16. The case is remanded to the Tribunal to decide the issue as to what was the quantity of goods loaded by the respondent at the place of origin. The Tribunal is directed to pass a fresh judgment on all issues accordingly.

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JUDGE

Comparing Assistant