

GAHC010174952016



2026:GAU-AS:3691

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

Case No. : MFA/91/2016

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

VERSUS

M/S K.C. ENTERPRISE
KEDAR ROAD, GUWAHATI-1, ASSAM

Advocate for the Petitioner : MS.U NANDA, MR.D K DEY

Advocate for the Respondent : MR.K P MAHESWARI , MS.M SHARMA

BEFORE

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved : 26.02.2026

Date of pronouncement of judgment : 13.03.2026

Whether the pronouncement is of the operative part of the judgment ? : No

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

(Sanjeev Kumar Sharma, J)

Heard Mr. D K Dey, learned counsel for the appellant and Ms. M Sharma, learned counsel for the respondent.

2. This is an appeal under Section 23 of the Railway Claims Tribunal Act 1987, preferred by NF Railways, challenging the judgment and award dated 10-05-2016 passed by the Learned Railway Claims Tribunal, Guwahati Bench, Guwahati in Claim Application O.A No. 5/2010 (Old) & O.A No-I/Guwahati/2010/0005 (New).

3. By the said judgment the learned Tribunal directed the Railway Authority to make payment of compensation to the respondent for an amount of Rs. 2,52,611/- (damage of 13150 kg of potatoes) to the claimant/respondent. The present respondent, as the claimant, had preferred a claim application before the learned Tribunal stating that the applicant/opposite party booked a trainload consignment of 850 bags of potatoes (50 kg packing each) on 15.09.2009 under Invoice Number 7760/Railway Receipt 212041708 from DKZ to NGC under trainload condition in safe, sound and secure condition under railway risk rate after meeting all legal and statutory inspections as per railway rules.

4. The wagons containing the consignment were stranded at KIUL for about a week. On being requested, CGS/NGC issued a telegraphic message dated 25.09.2009 for movement of the stranded wagons to the destination to avoid damage to the potatoes. The applicant further averred that the consignment reached destination after an abnormal delay and at the time of unloading, it was found that the wagon doors were in an open condition, the wagon roof was leaky, the wagon body was in a damaged condition and stacks of potatoes were in a wet damaged/rotten condition and foul smell was emitting from them. On unloading, it was found that 13,150 kg of potatoes were in a wet, damaged and rotten condition. After proper inspection and verification, the respondent Railway issued necessary short and damage certificates. It is also averred by the applicant that despite serving notice along with the original Damage Delivery Certificate and copy of Beejuck, the respondent did not pay any compensation. As the damage was due to the negligence on the part of the respondent Railway during railway transit, the respondent is liable to compensate the loss sustained by the applicant along with interest and cost.

5. The present appellant/respondent on receipt of notice contested the case by filing a written statement and exhibited relevant documents. In their written statement the Railway has contended that the consignment was booked by the sender at the forwarding station under the remarks in the Railway Receipt

“wagon jointly examined found fit and water tight, train load condition complied with loaded direct from truck/cart to wagon, loading not supervised by Railway staff, bags not of uniform size, condition of contents not checked out not complained of, O.R”. The Railway further states that the Railway is not liable for the alleged damage as the consignment was booked at owner’s risk rate under Section 97 of the Railways Act.

6. The present appellant/respondent also resisted the claim on certain other technical grounds including the validity and sufficiency of the notice under Section 106 of the Railways Act.

7. On the basis of the pleadings of the parties, the following issues were framed for determination by the learned Tribunal:-

1. Was there been a proper notice under Section 106 of the Railways Act?

2. Was there been any damage as contended by the applicant?

3. Whether the respondent is liable to pay compensation? If so, to what sum?

4. Reliefs and costs?

8. Neither party adduced any oral evidence. The applicant filed copies of the Railway Receipt, the Message dated 25.09.2009 issued by CS/G/NGC, the Open-cum-Assessment Delivery Report, the Record of Joint Survey of Open Delivery (for Shortage and Damage), Notice dated 12.10.2009, original Sale Invoice dated 15.09.2009 issued by R.S. Traders, original Bill dated 15.09.2009 issued by Nitin Traders, original Acknowledgment Letter dated 16.10.2009/20.10.2009 issued by the Chief Claims Officer, N.F. Railway, Amended Claim Letter dated 12.11.2009 and Affidavit dated 21.03.2012 of Kusum More, Proprietor of M/s K.C. Enterprises, Guwahati, marked as exhibits A1 to A10 respectively. On the other hand, the respondent filed copies of the Delivery Deficiency Message, original Railway Receipt, copies of the Open-cum-Assessment Delivery Report, the Forwarding Note, the Record of Joint Survey of Open Delivery (for Shortage and Damage), Clause 1507 of the Indian Railway Commercial Manual, typed copies of the Eastern Railway's letter dated 11.10.1991, the Railway Board's letter dated 25.05.1997 and the extract of Railway Board's D.O. No. 77-TCIII/49 dated 25.05.1977, marked as exhibits A1 to A9 respectively.

9. The learned Tribunal, after considering the aforesaid documents, answered

all the issues in favour of the claimant/present respondent.

10. I have heard Mr. D.K. Dey, learned counsel for the N.F. Railway and Ms. M. Sharma, learned counsel for the respondent.

11. It is submitted by the learned counsel for the appellant that the learned Tribunal, while passing the impugned order, has failed to take into consideration the remarks indicated in the Railway Receipt. It is submitted that the consignment was booked by the sender at the forwarding station with the remarks "wagon jointly examined found fit and water tight, trainload condition complied with loaded direct from truck/cart to wagon, loading not supervised by the railway staff, bags not of uniform size, condition of contents not checked by railway staff, said to contain, packaging condition outer not complained of, Original Receipt."

12. It is submitted that the learned Tribunal has failed to take into consideration the law that has been laid down in the Railways Act, 1989. The consignment was booked at owner's risk rate under Section 65(2) and 97 of the Railways Act. At the time of granting delivery, the consignor was required to produce the sender's original trade invoice but did not produce any such document. As such, the appellant/respondent did not have the opportunity to check or verify the consignment with the Railway Receipt.

13. It is further submitted that the learned Tribunal, while passing the impugned judgment, has failed to take into consideration the legal point that the consignment was booked under the remark (RR). As per Section 65 and 97 of the Railways Act, 1989, relating to "said to contain" remarks on 'RR' as well as non-supervision of loading by Railway staff, the burden of proof about the number of bags, quality and quantity in proper loading lies on the consignor. The burden of proving such negligence or misconduct shall lie on the consignor.

14. Learned counsel for the respondent, while taking the Court through the impugned judgment, has referred to the findings of the learned Tribunal on issues Nos. 2 & 4, wherein the learned Tribunal has referred to the exhibits, including an attested copy of a message dated 25.09.2009, issued by the Railway Authority stating as follows:-

“As shown in FOIS/NHC, a rake of Mixed Goods consisting 42 BCNA wagon ex, DKZ to NGC and date of loading 15/09/09 is standing since 19.09.09 at your's. Pleas arrange to send this rake onwards to NGC at the earliest as the rake containing 6-7 wagons (Stated by Party) perishable item (Potatoes) to avoid damage of the consignment.”

15. The learned Tribunal, on the basis of the letter, came to the conclusion that

the respondent had delivered the consignment at its destination after an abnormal delay in transit despite full knowledge of the fact that the goods loaded were of a perishable nature. The learned Tribunal also found that the fact that the consignment was delivered in a damaged condition is confirmed by the Open-cum-Assessment Delivery Report and the copy of the Record of Joint Survey of Open Delivery Report (for Shortage and Damage), which were issued by the respondent Railway and marked as Exhibits A3 and A4. The Delivery Deficiency Message issued by CS/G/NGC, N.F Railway (Exhibit R1), also confirms the above fact. Exhibits A3 and A4 show the quantum of damage as under:-

Damage in bags	Actual damage in percentage	Weight of one sound bag	Actual damage in kg
189	106 bags 58%	50 kg	3074 kg
	83 bags 70%	-do-	2905 kg
376	256 bags 40%	-do-	5120 kg
	120 bags 45%	-do-	2700 kg
Total			13799 kg
-5% salvage value			689.95 kg

Total Wet Damage of Cement (in kg)	13109.05 kg
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16. The learned counsel for the respondent has referred to Section 93 of the Railways Act, 1989 which provides that a railway administration shall be responsible for loss, destruction, damage or deterioration in transit or non-delivery of any consignment arising from any cause with the exception of certain causes. Learned counsel has also referred to Section 97 which provides that notwithstanding anything contained in Section 93, a railway administration shall not be responsible for any loss, destruction etc. of any consignment carried at owner's risk rate, from whatever cause arising, except upon proof that such loss, destruction, damage etc. was due to negligence or misconduct on its part or on the part of any of its servants, subject to certain exceptions.

17. Further reference has also been made to Section 64 and 65 of the Railways Act. Section 64 refers to the requirement of executing a forwarding note except for exempted goods, whereas Section 65 provides for issuance of a Railway Receipt in case where goods are loaded by a person, entrusting the goods to the Railway on the completion of such loading and in other cases on the acceptance of goods by it, which shall be prima facie evidence of the weight

and number of packages stated therein. It is submitted that the aforesaid provision of Section 65 is applicable to cases of shortage, whereas the present is a case of wet damage.

18. It is submitted on behalf of the respondent that the learned tribunal has taken into consideration the railway boards D.O letter dated 24.09.1991 issued by the Joint Director, Traffic Commercial (Claims), wherein it is stated as follows:-

“It is seen that all the seven pleas taken by the railway administration to repudiate claims on damage by wet are such as cannot be sustained in a Court of Law, Repudiation of claims on damage by wet on pleas such as ‘said to contain RR, loading directly from truck to wagon or loading not supervised’ are relevant only in cases of shortage and not in case of damage by wet. It has been clearly indicated to Zonal Railways vide letter no. 77/TC III/49 dated 25.02.1977 that claims for damage by wet during transit are payable unless it is proved by the Railway that the goods were already in damaged condition at the time of booking.”

19. It was observed in the impugned judgment that in the case of *Union of India vs. Laduram, AIR 1974 Calcutta 207*, that in order that the railway administration may be absolved of its liability under Section 73, it is necessary that in the forwarding note not only should there be a recording about the

defective or improper packing of the goods but also it should be further recorded that as a result of such defective or improper packing the goods are liable to damage, deterioration, leakage or wastage. It would, therefore, be necessary to examine whether the fact of defective or improper packing and the consequences thereof in the instant case have been recorded by the sender or his agent in the forwarding note. A perusal of the Forwarding Note (Exhibit R4) shows that no such adverse remark has been found recorded therein. The Railway staff should have refused the booking of such consignment, if it were defectively or improperly packed, since nobody prevented them from doing so.

20. In the instant case, it is an admitted position that the railway authorities have issued the Open-cum-Assessment Delivery Report, which has been exhibited as Exhibit A3, which clearly indicates that the goods in question were received in a damaged condition both fully and partly and the perusal of the Forwarding Note would also indicate that the total quantity of 850 bags had been loaded, and moreover, there is no adverse entry regarding the condition of the goods. Further, as per the Open-cum-Assessment Delivery Report (Exhibit A3), the wagon was found in a leaky condition and the door was also found partially open which also establishes negligence on the part of the Railways, and therefore, by virtue of Section 97 of the Railways Act, referred to earlier, liability

for the damage has to be fastened on the Railways even assuming that the goods were booked at owner's risk rate.

21. Therefore, in the facts and circumstances of the present case, the reliance placed by learned counsel for the appellant on the decision of the Hon'ble Apex Court in *Hari Sao & Anr. vs. State of Bihar*, reported in (1969) 3 SCC 107 appears to be misplaced. In addition to what has been discussed above, the circular of the Railway Board i.e., letter dated 24.09.1991, referred to earlier, clearly negates the stand of the Railways, which may be relevant in case of shortage but not in case of wet damage as in the present case.

22. Having regard to what has been discussed above, I do not find any infirmity in the impugned judgment & award, and consequently the appeal is found to be devoid on merit. It is dismissed accordingly.

23. Send back the records to the learned tribunal. The appellants are directed to comply with the order of the Tribunal within a period of 45 days from today.

24. The appeal stands disposed of.

Comparing Assistant