



REPORTABLE

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Miscellaneous Appeal No.1192/1997

1. Union Of India through the Secretary, Ministry of Railways, New Delhi.
2. General Manager, Northern Railway, New Delhi.
3. The General Manager, Southern Railway, Madras.
4. Chief Claims Officer, Headquarters Office, Commercial Branch/Claims M.M.C. Madras-3

----Appellants

Versus

Aggarwals And Aggarwals, 47 & 63 Old Dhan Mandi, Sri Ganganagar through Smt. Shakuntala Devi wife of Shri Vijaykumar Goyal R/o 47 Old Dhan Mandi Sole Proprietor.

----Respondent

For Appellant(s) : Mr. Sanjay Mishra, Adv.
For Respondent(s) : Mr. R.K. Agarwal, Sr. Adv. with Mr. Shubham Kumar Sharma

HON'BLE MR. JUSTICE BIRENDRA KUMAR

Judgment reserved on : 28.09.2022

Judgment pronounced on : 12.10.2022

1. This appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is against the award dated 30.05.1997 made by the Railway Claims Tribunal, Jaipur Bench in OA-I-No.204/1995 whereby the learned Tribunal allowed compensation of Rs.9,45,630.55 along with interest @ 12% per annum from the date of application in favour of sole respondent Aggarwals and Aggarwals.

The sole respondent had preferred claim of Rs.10,58,931/- for damage caused to the cotton bales of the claimant booked with the Railways for carrying the same from Sri Ganganagar to Salem Railway Station at "Railway's Risk Rate".



2. The case and claim of the respondent is that two consignments consisting of 110 cotton bales J-34 Sawgin, were booked by the respondent-Company with the Railway Administration vide Railway Receipts No.997232 and 997233, both dated 07.02.1995 from Sri Ganganager (Northern Railway to Salem) (Southern Railway). The consignment was billed in favour of Sri Rajendra Mills Limited, Salem. The value of the two consignments was Rs.6,11,072.98 and Rs.5,98,355.88, respectively, total amounting to Rs.11,09,428.86. The expected time for reaching the destination was 20 days, however, the consignment did not reach at the destination uptill 25.03.1995 as representative of the respondent was regularly making inquiries at Salem Junction. The representative of the respondent, on inquiry, was informed by the Railway Authorities that since consignments are booked at Railway's Risk Rate, the respondent would be informed soon on the arrival of the consignment.

On 26.03.1995, the respondent was informed by M/s Rajendra Mills Limited, Salem that the goods dispatched by the respondent have been burnt by fire. On 27.03.1995, the respondent sent a letter to the Chief Goods Clerk, Salem Junction to arrange for settlement of the claim fully. The respondent further sent a telegram to the Chief Claims Officer, Madras and Chief Goods Clerk to settle the claim fully. The respondent stated that the Railway Authorities mala-fidely concealed the fact about the destruction of the cotton bales by fire for considerable time though the Railways had already set up an inquiry committee to examine the lapses which had caused the fire and damage to the goods. On being demanded by the Railway Authorities, the respondent deposited freight, demurrage and wharfage charges amounting to



Rs.44,101/- as the goods would be delivered on deposit of the aforesaid amount. The respondent deposited the said charges on 10.04.1995 and on 19.04.1995 and only thereafter the Railway informed that the goods have been damaged by fire. A Joint Survey Report disclosed that 80% of the cotton bales were damaged due to fire, on 26.03.1995. The Chief Claims Officer vide his letter dated 15.06.1995 rejected the claim of settlement put forward by the respondent stating therein that the goods had already arrived on 09.03.1995 and after seven days from the termination of transit period, the Railway Administration is not liable to make any compensation for the damages.

3. Mr. Sanjay Mishra, learned counsel for the appellants contends that Railway Claims Tribunal, Jaipur Bench had no jurisdiction to entertain the claim petition of the respondent in view of the specific provisions under Rule 9 of the Railway Claims Tribunal (Procedure) Rules 1989 (hereinafter to be referred as the "Rules of 1989") as to the benches having territorial jurisdiction. The said provision is being reproduced below:-

"9. Place of filing application for compensation for loss, damage, destruction, deterioration or non-delivery of goods or animals.- An application for compensation referred to in sub-clause (i) of clause (a) of sub-section (1) of section 13 of the Act may be filed before the Bench having territorial jurisdiction over the place where-

- (a) the goods or animals were delivered for carriage; or
- (b) where the destination station lies; or
- (c) the loss, destruction, damage or deterioration of goods or animals occurred."

Learned counsel for the appellants submits that since the Tribunal at Jaipur had no territorial jurisdiction, the impugned award is without jurisdiction and as such is nullity. Learned



counsel for the appellants next contends that by order dated 21.11.1996, the learned Tribunal wrongly rejected the defence statement put forward by the appellants which has seriously caused prejudice to the case and claim of the appellants. Though the appellants did not challenge the aforesaid order earlier, however, in view of the specific provision under Section 105 of C.P.C., the said order can be assailed in this appeal against award and the Appellate Court would be competent enough to remand the matter for re-adjudication, if the case of the appellants is found to be prejudiced for rejection of the defence. Learned counsel for the appellants next contends that as per Section 99 (1) of the Railways Act, the Railway is not liable to compensate if the consignee does not take away the goods even after expiry of the seven days from the date of termination of transit of the goods at the destination. In the case on hand, there is overwhelming material to show that the goods reached at the destination Station on 09.03.1995 and damage by fire took place on 26.03.1995. Therefore, the appellants are not liable to pay compensation. With halfhearted argument, learned counsel for the appellants attempted to persuade this Court to interfere with the impugned award on the ground of the non-framing of the issues to be decided.

4. Mr. R.K. Agarwal, Senior Advocate appearing for the respondent contends that on perusal of the judgment and award made by the Tribunal, it would be crystal clear that the Tribunal took into consideration the defence of the appellants, the evidences produced by the appellants and passed the award only after hearing the parties. Learned Senior Counsel for the respondent contends that the Tribunal has examined in depth that



goods had not reached the destination on 09.03.1995 as no supporting document was brought on the record except oral testimony of some witnesses who made statement before the Accident Inquiry Committee. On the referred railway receipts, entry was made by the Railway Authorities for the first time on 10.04.1995 mentioning that the goods had already reached on 09.03.1995, which is a deliberate act with mala-fide intention to defeat the claim of the respondent. Learned Senior Counsel for the respondent contends that though the Tribunal did not specifically frame any issue, however, the main issue whether claim petition was fit to be allowed was thoroughly discussed along with ancillary issues which may be raised as objection on behalf of the appellants, therefore, for mere technicalities, the award need not be disturbed.

The order dated 28.08.2017 passed in this appeal would reveal that the Claims Tribunal reported that Lower Court records cannot be transmitted as the same was already destroyed in compliance of Rule 49 of the Rules of 1989. Thereafter, the parties were asked to assist the Court for reconstruction of the record. The parties placed the relevant documents which were taken on record on 07.08.2019 with specific order that there is no need for reconstruction of the Lower Court record.

5. The following points arise for consideration in this appeal:-

- (i). Whether the impugned award stands vitiated for lack of territorial jurisdiction.
- (ii). Whether rejection of the defence by order dated 21.11.1996 has resulted in prejudice to the appellants in considering the case and claim of the appellants by the Tribunal and the same has led to failure of justice.



(iii). Whether the learned Tribunal has correctly considered the material on record to come to the conclusion that there was no delay on the part of the respondent in taking away the goods from the Railway before its damage within the time frame.

Point No.(i)

6. Learned counsel for the appellants contends that the consignments were booked from Sri Ganganager which false within the jurisdiction of Northern Zone of the Railways. The destination of delivery of consignment was at Salem Railway Station in Southern Railway. The claim application was filed at Jaipur Bench of the Railway Claims Tribunal which is within Western Railway. Therefore Tribunal at Jaipur had no territorial jurisdiction in view of provisions of Rule 9 of the Rules of 1989.

As referred above, under Rule 9(a), the Bench having territorial jurisdiction over the place where the goods were delivered for carriage has jurisdiction. There is no dispute that at Sri Ganganager, there was no Railway Claims Tribunal. It is also not disputed that Sri Ganganager falls in the State of Rajasthan. Under Schedule-I to the Rules of 1989, the headquarter of the Railway Claims Tribunal for the State of Rajasthan was at Jaipur vide Serial No.13 except District Alwar. The said rule was applicable on the date of incident, hence the Claims Tribunal, Jaipur had territorial jurisdiction to decide the claim petition of the respondent. Rule 3 of the Rules of 1989 which is relevant for this purpose is being reproduced below:-

“3. Territorial jurisdiction of Benches.-[(1) The number of Benches, the Headquarter of and the territorial jurisdiction of a Bench shall be as specified in Schedule I and Schedule I(A).]

(2) If an application is received by a Bench which does not have territorial jurisdiction to deal with the matter, the



Registrar of the Bench shall return the application to the applicant.

(3) Notwithstanding anything contained in sub-rule (2) the applicant may apply to the Chairman and the Chairman may thereupon for reasons to be recorded in writing direct a Bench other than the Bench before which an application has been filed to hear such application and issue such orders as may be necessary for the transfer of the application."

7. It is not the case of the appellants that the appellants had applied to the Chairman in the light of provision of sub-rule (3) of Rule 3 above for transfer of the claim application to the correct jurisdiction. Therefore, the appellants cannot be permitted to agitate the issue before this Appellate Forum. Section 21 (1) of C.P.C. provides that no objection as to the place of suing shall be allowed by any appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

As has been noticed above, the appellants were required to file an application separately before the Chairman of the Tribunal requesting therein to transfer the claim petition to the proper jurisdiction but the appellants did not take the step according to law hence, only for the reason that written statement of the appellants was refused by the Tribunal, it cannot be argued that the appellants had taken objection with regard to territorial jurisdiction of the Tribunal. Moreover, as has been held above, only Railway Claims Tribunal for whole of the State of Rajasthan, was functioning at Jaipur. Therefore, the Tribunal at Jaipur was not lacking territorial jurisdiction. Identical issue was considered by



the Hon'ble Apex Court in **Hasham Abbassayyad vs. Usman Abbas Sayyad and Others** reported in (2007) 2 SCC 355. The Hon'ble Supreme Court considered the requirement of Section 21 of C.P.C. as well as earlier judgment in **Harshad Chiman Lal Modi vs. DLF Universal Limited** (2005) 7 SCC 791 and observed in paras 23 and 24 as follows:-

"23. This aspect of the matter has recently been considered by this Court in Harshad Chiman Lal Modi v. DLF Universal Ltd. and Another [(2005) 7 SCC 791], in the following terms :

"30. We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity."

(See also Zila Sahakari Kendrya Bank Maryadit v. Shahjadi Begum & Ors. 2006 (9) SCALE 675 and Shahbad Co-op. Sugar Mills Ltd. v. Special Secretary to Govt. of Haryana & Ors. 2006 (11) SCALE 674 para 29)

24. We may, however hasten to add that a distinction must be made between a decree passed by a court which has no territorial or pecuniary jurisdiction in the light of Section 21 of the Code of Civil Procedure; and a decree passed by a court having no jurisdiction in regard to the subject matter of the suit. Whereas in the former case, the appellate court may not interfere with the decree unless prejudice is shown, ordinarily the second category of the cases would be interfered with."

8. As discussed above, this Court is of the considered view that Railway Claims Tribunal Jaipur Bench had/have territorial





jurisdiction to decide the claim of the respondent. It is not the case of any of the party that the Motor Claims Tribunal, Jaipur Bench was lacking pecuniary jurisdiction or jurisdiction on the subject matter. Since Tribunal at Jaipur had jurisdiction, no prejudice was/is caused to the appellants when the matter was decided by the Tribunal having jurisdiction.

Point No.(ii)

Learned Senior Counsel for the respondent has drawn attention of the Court to paras 2 and 3 of the memo of appeal which contains statement made in the written statement before the Tribunal which was refused to be taken on record by the Tribunal. Learned Senior counsel for the respondent submits that the impugned judgment and award would make it abundantly clear that the defence raised by the appellants was considered in detail.

At the cost of making the judgment cumbersome, Paras 2 and 3 of the memo of appeal are being reproduced below:-

"2... .. It is submitted that the notices of the claim petition were served on the Presenting Officer, Railway Claims Tribunal, Jaipur sometime in January, 1996 who sent copies of such notices to the Chief Claims Officer Northern Railway, New Delhi and Chief Claims Officer Southern Railway Madras. Certain correspondence between these two zones of the Railways as well as between them and the Presenting Officer, Jaipur took place, but sometime was consumed in collection of the details because the claim was relating to the goods booked for carriage in the month of February, 1995. The matter being old it naturally took sometime. In the meantime, the Railway Claims Tribunal forfeited the right to reply. It was on collection of required information that the reply was prepared by the Commercial Branch of the Headquarters Office of Southern Railway at Madras and was sent to the Presenting Officer, Railway Claims Tribunal, Jaipur with their letter dated 13.8.1996. The Presenting Officer filed



the reply with an application requesting that the reply may be taken on record, but this application was ultimately rejected by the learned Railway Claims Tribunal on 21.11.1996. In the reply that was so filed, it was inter alia pleaded that the goods booked on 7.2.1995 arrived at the destination on 9.3.1995 with seals of the sending station intact and the consignment compact and safe. The consignment was got unloaded by the agent of the consignee and no damage caused to the consignment till it got unloaded and during the transit period. It was pleaded that the consignment reached the destination on 9.3.1995 and the fire accident took place on 26.3.95 after 17 clear days from the date of unloading by his agent. It was submitted that as per provisions of Section 99(1) of the Act, the 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 upto a period of 7 days only after the termination of transit. In the instant case since the party failed to take delivery even upto 17 days after termination of transit, the Railways are not liable for the alleged damage by fire to the consignment as per provisions of Section 99(1) of the Railways Act, 1989. In the reply, it was further submitted that there was a huge stock of cotton bales (total 2710 bales) which were not taken delivery by the consignee and the same were kept as follows:-

“Altogether 1575 cotton bales were available inside the goods shed and 1135 bales were available in open shed. Out of the above 1135 bales, 330 were at Karuppur end of the Goods Shed Platform, 592 on the Varandaha and 755 bales at the Erode end of the Goods Shed Platform. FP Cotton bales arrived heavily at Salem Junction after the crop season in Punjab and other North Indian States. 755 bales stacked at the Erode end of the platform caught fire and all possible steps and sincere efforts had been taken by the Railways to put out the fire and safeguard the goods. The fire-accident had occurred only due to the negligence of the consignee in not clearing the goods immediately on arrival.”

Without prejudice to the above, it was submitted in the reply that the fire-accident being an unexpected and unforeseen one which occurred inspite of care being taken by the Railways to prevent it and, therefore, the Railways are absolved from liability as per the provisions of Section 93 (i) of the Railways Act, 1989. Negligence or misconduct on the part of the Railways Administration or any of its servants are completely ruled out from the fact that out of 3302 cotton bales involved in the accident quick, determined, swift and immediate action had saved 2547 bales, limiting the damage within 755 bales. It was, therefore, denied that Railway Administration failed to discharge its duty and obligation and that the consignment





damaged as a result of any negligence caused by the Railways Administration. In the reply, it was specifically pleaded that the claim for damage has been filed with Chief Claims Officer, Southern Railway, Madras-3 and, therefore, the application for claim should also have been filed before the Railway Claims Tribunal according to Section 107 of the Railways Act and the original application filed before the Jaipur Bench of the Tribunal is not at all maintainable and the same should, therefore, be dismissed with costs. It was, therefore, prayed that the application filed by the respondent-applicant deserves to be dismissed.

3. That various documents were filed in the shape of documentary evidence from the side of the present appellants as well as respondent. However, the learned Railway Claims Tribunal did not deem it necessary to frame any issues because the request for filing the reply of the Railways had been turned down and there being no reply, no issues, according to the Tribunal, were necessary to be framed. On hearing arguments of the parties, the learned Railway Claims Tribunal vide its order dated 30.5.1997 allowed the claim application and awarded to the claimant a sum of Rs. 9,45,630.55 P. and also awarded interest @ 12% p.a. on such amount from the date of filing the OA till its realisation, with proportionate costs. Certified copy of the order is enclosed herewith."

Learned counsel for the appellants has not produced or referred to any documentary evidence which was produced before the Tribunal and not accepted or considered in the impugned judgment and award. The documentary evidences produced were considered by the Tribunal. The statement in Para 2 above, though made in the context of the explanation of delayed submission of the written statement, but speaks volumes about fairness on the part of the Tribunal in serving notices of the claim petition to the representative of the appellants Railway at the earliest.

The relevant portions of the impugned judgment are being reproduced below:-

"The Railway Administration filed an affidavit of B. Sundar along with original Railway Receipts (pages 48 and 49), original record dated 29.03.1995 (pages 50 and 51), copy of letter dated 31.03.1995 (page 52), copy of



Enquiry Committee's Report (pages 53 to 60) and copies of letters of the Railway Administration (pages 62 to 65).

Due to non-challenge of the pleading of the applicant by way of reply by the respondent, no issues have been framed in this case.

We have heard both the parties at length and have perused the material placed on record by them and our findings on the claim petition are as under."

9. Evidently, the Tribunal has considered the documentary evidence placed by the Railways and has passed the impugned judgment after hearing the parties at length. The aforesaid findings is not challenge as erroneous or error of record. The findings recorded by the Tribunal which would be considered hereinafter while discussing point No.(iii) would make it clear that not only the defence of the appellants, as reproduced above, rather the evidences produced by the appellants and their arguments before the Tribunal was also properly considered, therefore, it cannot be argued that due to order dated 21.11.1996 whereby the learned Tribunal refused to take the written statement on record has caused any prejudice to the appellants. The point stands decided against the appellants.

Point No.(iii)

The learned Tribunal recorded:- "on hearing rival contention of the parties, the question before the Tribunal was whether the respondent had knowledge of arrival of consignment at Salem Station on 09.03.1995 itself and has also knowledge of damage of consignment by fire on 26.03.1995. If the answer would be in positive, the appellants Railway would get protection of Section 99 (1) of the Railways Act, 1989. On proof of contrary, the respondent would be entitled to be compensated." The Tribunal found that the Railway receipts of the booking of the consignment



were endorsed in favour of its Banker, the Bank of Rajasthan Limited. The same was further endorsed in favour of the Central Bank of India, Salem. The Railway receipts were to be handed over by the Bank to the authorized consignee only on due payment. The Bank papers were handed over to consignee Mohan only on 19.04.1995. The learned Tribunal further considered the relevant provisions of rules which provides that only on production of the receipts, the consignment would be unloaded after due verification of the consignee. Therefore, till 19.04.1995 the papers were with the Bank, hence there was no question of authorized and valid unloading of the consignment by the Railways employees. The learned Tribunal noticed and has referred in details, the provision under para 1801 and 1805 of Indian Railways Commercial Manual which provides that immediately after goods have been unloaded and tallied, the consignee concern should be advised of the fact on telephone wherever such facility exists. There is provision of putting a notice of arrival of the consignment at the goods shed of the Railways. Section 84 of the Railways Act has been reproduced by the Tribunal which provides that if any person fails to take delivery of any consignment, the consignment is to be treated as unclaimed consignment and there is provision and manner for disposal of the consignment. The Tribunal held that the Railways did not follow the aforesaid provisions, hence it cannot take the benefit of Section 99 of the Railways Act. The Tribunal further held that the Railways was not inclined in protecting the consignment as per the settled norms under the Rules and manuals and observed as follows:-

“The major point of controversy between the parties is the exact date of termination of transit. Though it has been



alleged on behalf of the railway administration that 09.03.95 was the date of termination of the transit but the same is denied on behalf of the applicant as the applicant was neither informed about termination of transit nor was aware of such termination on 09.03.95. We find that on the Railway Receipts the date of arrival of the consignments at destination has been mentioned as 09.03.95, however, the mere remarks on the Railway Receipts regarding date of arrival of the consignment as 09.03.95, which are recorded on 10.04.95 at the time of depositing of necessary charges, is not concrete evidence as admittedly the said remarks have been copied from any other record by the concerned official of the railway administration. The Wagon Position Register, which is the primary evidence on this point, has not been produced by the railway administration. The date of arrival shown in the copies of Report of Enquiry Committee, is based upon the statement of the person whose names have been mentioned in the said Report. The perusal of the whole Enquiry Report and the statements of the examined persons shows that the Enquiry Committee did not verify the exact date of arrival of the consignments from the relevant records and has merely recorded the statements of such examined persons. More-over the said enquiry in the alleged fire incident has been initiated, at the back of the applicant and without the applicant's knowledge, therefore, is not binding upon the applicant, as per well settled principles of law, unless the applicant was joined in the said enquiry who undoubtedly was an interested party being directly affected because of the damage of its consignments. No affidavit of the concerned officials of the railway administration to prove the authenticity of the Enquiry Report has been filed and there being no affidavit, the veracity of the said Enquiry Report is doubtful. The railway administration has not been able to prove the date of arrival of the consignments at destination, by way of primary evidence and without there being primary evidence on record, any secondary evidence such like remarks on Railway Receipts and photo-copies of Enquiry Report cannot be looked into on this point of controversy, therefore, due to failure of the railway administration to prove the actual date of arrival of the consignments at Salem Junction by cogent evidence the railway administration cannot escape under the garb of Section 99 (1) of the Act.

Admittedly, the consignments were lying in open at the platform under direct sun rays. Learned Presenting Officer has not been able to convince us by a reasonable explanation as to how it can be assumed that due care was taken by the railway administration. Paras 1724, 2126 and 2127 of IRCM deal with the precaution to be taken by





the railway officials from the damage by fire and they read as under:-

"1724. All damageable goods lying on the platform must be covered by tarpaulins. Similarly, when the weather shows signs of rain, all the goods should be covered by tarpaulins. Further, during the rainy season the packages must be stacked, either on sleepers or on wooden platforms specially provided for this purpose so that the packages may not be damaged by wet. Goods such as cotton, wool etc. which are liable to damage by fire should be stacked away from running lines, naked light, etc. Valuable consignments, such as packages of silk, piece-goods and goods on which percentage charges have been paid and all pilfered goods, must be kept locked in a safe room or, in the absence of such a facility, should be specially handed over to the custody of the Railway Protection Force under signature."

2126. Prevention of damage by fire.- The Railway Fire Services function under the administrative control of Security Branch, who are responsible for the efficient functioning of the Fire Service Units, both operational and maintenance. However, it is the primary duty of every railway servant to protect the railway property, committed to the care of the railway for carriage, from fire also to render necessary assistance when a fire breaks out irrespective of the fact whether he is on duty or otherwise."

2127. Fire fighting equipment (chemical extinguishers, implements for cutting out an opening in sheds, buckets, sand bins, hydrants, etc.) are provided in the transshipment sheds, goods sheds, parcels depots, lost property offices; etc. These appliances must always be kept in readiness for immediate use, wherever necessary. Occasional checks should be exercised to see that the apparatus is intact and in working order. All such appliances should be kept at a convenient place which should be known to all the staff."

There is no evidence by the railway administration that the goods were stacked away from running line or the instructions of Paras 2126 and 2127 were followed. The statement of Shri A.K. Abdul Ghani, Head Good Clerk, Salem in reply to question No.3 said that fire was first reported at 2:00 p.m. and answer to question No.4 shows that he took five minutes to inform the fire department, which is quite a long time considering the nature of incident as obviously during these five minutes the wrath of fire must have got doubled. In answer to question No.7, the said witness stated that first fire fighter from Tamil Nadu Fire Services arrived only at 2:35 p.m. and second one from Salem Steel Plant at 3:45 p.m. and during this period from a distance, only one extinguisher was used by the said witness. It is also stated by said railway official that water was poured with the help of public, which was brought by the public through the window. The suggestion given by the



Enquiry Committee is self-explanatory, which reads as under:-

“We may provide fire buckets 4 in each of the Sheds plus 4 each at the Varandahs. Since the high level water tank is available near the goods shed, we may provide one hydrant point with an outlet of 2’/2” male coupling so as to facilitate to make use of the water by the fire attenders in case of fire accident.”

The above suggestions given by the Enquiry Committee confirms that there was no fire fighting or extinguishing arrangements near the Shed and Varandah; even the water was also not available and there was no hydrant point. The said suggestions given by the Enquiry Committee show that prior to the said fire there was no foresight used by the railway administration as a precautionary measure in order to face such an eventuality. A copy of inventory, which is prepared as per Para-2135 of IRCM, has been filed by the railway administration (page-63) shows that only 56 bales were reported burnt out of 110 bales and the balance has been shown as 50; further 70 bales are reported to have been segregated. Learned Presenting Officer has not been able to explain the statement in the light of the copy of Joint Survey Report which shows that 106 bales were completely burnt. The inventory is also not signed by the Station Master and representative of Railway Protection Force as required in Para-2135 of IRCM.

Another contention of learned Presenting Officer that the railway administration has not been able to produce the relevant records in its defence in this case, because the same have been submitted by the railway administration in case No. OA-I-455/95 and OA-I-456/95 pending before Railway Claims Tribunal, Chandigarh, is an un-substantial argument as the perusal of the copy of letter dated 30.08.96 (page 64 & 65) on record shows that the records relating to Railway Receipt No.931827 dated 09.02.95 and Railway Receipt No.936388 dated 26.01.95 and the consignments loaded in Wagon No. ERC 12010 and ERC 10626, respectively, were called by the Presenting Officer of Chandigarh Bench and have been received by him, whereas the present consignments relate to Railway Receipts No.997232 and 997233 both dated 07.02.95 and the consignments were loaded in Wagon No. NRC 27592, thus, the arguments of learned Presenting Officer are untenable, hence, are repelled.”

10. The Tribunal considered the provisions which requires to be followed for protection of the consignment from damage and effect of non following those procedure as well as the failure of the





appellants to bring a case within the ambit of Section 99 of the Act.

11. From the record, it is established that the appellants (a) failed to produce any cogent documentary evidence that the consignment reached at the destination on 09.03.1995 itself. (b) The endorsement on the Railway receipts that the consignment reached on 09.03.1995 was made for the first time by the Railway Authorities on 07.04.1995. (c) As per rules the consignment could not have been unloaded until the consignee is affirmed by documents which could have been done only after release of the booking receipt by the Bank concern on payment of the required fees and this exercise was completed on 19.04.1995. (d) The appellants failed to give notice of arrival of consignment to the consignee, therefore, the appellants could not have taken the defence that after seven days of termination of transaction the Railways is not liable to compensate. The material available on record does not justify the claim of the appellants that consignment was not received by the consignee within statutory period of seven days.

12. Therefore, the impugned award cannot be faulted with on this ground as well.

13. In view of adjudication of the points above, this appeal has got no merit and accordingly stands dismissed, without costs.

(BIRENDRA KUMAR),J

BM Gandhi/-91