

GAHC010187732014



2026:GAU-AS:113

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

**Case No. : MFA/76/2014**

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

VERSUS

M/S INDIAN OIL CORPORATION LIMITED  
2, DR. BANI KANTA KAKOTI LANE, KACHARI BASTI, ULUBARI,  
GUWAHATI-7, ASSAM OIL DIVISION

**Advocate for the Petitioner** : MSB DEVI, MS.R R BORAH,MR.B SARMAH(Rly.Adv.),MS. K KALITA,MS. M CHATTERJEE,MRS. UMA CHAKRABORTY

**Advocate for the Respondent** : MR.K P MAHESWARI, MR.A CHOUDHURY,MR.A GOYAL,FOR CAVEATOR,MS. M SHARMA,MS. L DAS

**:: BEFORE ::**

**(HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA)**

Advocate(s) for the Appellant : Mrs. U. Chakraborty,  
Advocate.

Advocate(s) for the Respondent : Ms. M. Sharma,  
Advocate.

Date on which judgment is reserved : 02.09.2025.

Date of pronouncement of judgment : 06.01.2026.

Whether the pronouncement is of the  
operative part of the judgment? : YES.

Whether the full judgment has been  
pronounced? : YES.

### **JUDGMENT AND ORDER (CAV)**

Heard Mrs. U. Chakraborty, learned counsel appearing for the appellant. Also heard Ms. M. Sarma, the learned counsel representing the respondent.

2. This is an appeal under Section 23 of the of the Railway Claims Tribunal Act, 1987, challenging the judgment and order dated 27.06.2014 passed by the Railway Claims Tribunal, Guwahati Bench in O.A. No.1362 of 2007.
3. The respondent filed the application under Section 16 of the Railway Claims Tribunal Act, 1987 seeking compensation on account of short delivery of S.K.O (Superior Kerosene Oil) booked by them.
4. The respondent booked 48 BTPN wagons for transportation of SKO in sound condition under Railway Risk Rate. The consignment was loaded under supervision of Railways on verification of quantity loaded by dip measurement and freight was realized accordingly. The consignment was booked on 19.02.2007 vide Railway Receipt No.03/212000419 from Rajbandh to TXOT (IOC siding, Tinsukia). On arrival of the wagons at the destination Station and at the time of unloading, it was found that out of the wagons, 38 numbers of BTPN Tank wagons was without seals suggesting criminal interference enroute. Both the top and the bottom seals of the wagons were found missing and there was leaking of oil. A joint inspection was made and shortage was assessed by dip measurements. A certificate to that effect was issued on 23.04.2007 at the destination station.
5. The respondent served the statutory notice under Section 106 of the Railways Act, 1989 seeking compensation and refund of overcharge.
6. The respondent claimed that they had sustained a loss of ₹8,71,223/-. According to the respondent, the appellant did not settle the issue. Therefore, they filed the petition under Section 16 of the the Railway Claims Tribunal Act, 1987 seeking compensation of ₹8,71,223/- along with interest.
7. After entering appearance, the appellant filed the written statement. Therein they claimed that the consignment was booked at the forwarding station with remarks in the Railway Receipt “said to contain, wagon selected by sender, wagon examined by TXR declared fit and water tight, dip measurement not witnessed by Railway staff, senders weight accepted, packing condition outer not complied”.
8. According to the appellant, the tank wagons were not supervised by the Railway staff at the

forwarding station and as such, the question of shortage does not arise. They further claimed that there was no transit delay for which there was no scope of criminal interference enroute. The appellant pleaded that in view of the endorsement in the Railway Receipt, "said to contain" the respondent has to prove entrustment of the consignment and actual quantity to the Railway Administration at the forwarding station

9. Upon the pleadings, the Tribunal framed the following issues:

1. Whether the applicant proves the validity of notice under Section 106 of Railways Act, 1989 was served on the respondent? (sic.)
2. Whether the applicant proves that there was shortage *vis-à-vis* the booked quantity? (sic.)
3. Whether the respondent proves that there was no criminal interference enroute to the wagons? (sic.)
4. Is the applicant entitled to relief?
5. The quantum of relief?

10. At the time of hearing, both sides did not examine any witness. They only relied upon documentary evidence in support of their respective cases.

11. The Tribunal held all the issues in favour of the respondent.

13. I have considered the submissions made by the learned counsel of both sides and I have also gone through the impugned judgment.

14. At this stage, Section 110 Railways Act, 1989 comes into play. So, a brief visit to the said Section of law would be fruitful. It reads as under:

"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, 42 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."

15. According to Section 110 of the Act of 1989, the burden of proving monetary loss actually sustained shall be on the person claiming compensation. It shall not be necessary for him to prove how the loss was caused.

16. In the case before the Tribunal, the respondent did not adduce any oral evidence. It relied upon documentary evidence which were available before the Tribunal.

17. Out of the 48 tank wagons, 38 numbers of tank wagons were found without seals on top/bottom, valve leakage and without nuts and bolts etc. At the destination station, it was checked and a joint measurement with RPF/TSK and CGS/TXOT, it was found that there was a shortage of 31.215 KL.

18. It was pleaded by the appellant that since the loading was not supervised at the forwarding station and in the Railway Receipt there was a remark "said to contain", the Railway administration is not responsible for the loss unless it is proved that actual quantity as stated in the Railway Receipt, was entrusted to the Railway Administration.

**19.** In *Union of India v. Rup Narayan*, reported in AIR 1997 Raj. 123, it was held that if the Railway Receipt contains the remark “said to contain”, it does not amount to admission on the part of the Railway Administration that the said number of articles had in fact been loaded.

**20.** Thus, Section 110 of the Railways Act, 1989 is applicable in this case. If the respondent claims that there was a loss of 31.215 KL, it has to prove that fact. The admission of the appellant that out of 48 tank wagons, 38 wagons were found without seals at the top and bottom, valves leakage etc. does not prove the case of the respondent. These things do not themselves prove any case of any claimant.

**21.** This Court is of the opinion that the learned Tribunal had erroneously oriented itself and arrived at an incorrect finding. Therefore, the appeal is allowed.

**22.** The impugned judgment and order dated 27.06.2014 passed by the Railway Claims Tribunal, Guwahati Bench in O.A. No.1362 of 2007, is set aside.

The appeal is disposed of accordingly. Send back the TCR.

**JUDGE**

**Comparing Assistant**