2026 INSC 711

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO……. OF 2026
(Special Leave Petition (C) No.22748 of 2025)

M/S BAJAJ TRADING COMPANY … APPELLANT(S)

VERSUS

UNION OF INDIA … RESPONDENT(S)

J U D G M E N T

Sanjay Karol, J.

1. Leave Granted.

2. The appellant is aggrieved by the concurrent rejection of their claim by the Railway Claims Tribunal[1], Guwahati

Signature Not Verified
Digitally signed by RAJNI MUKHI
Date: 2026.02.17 15:54:05 IST
Reason:

[1] RCT

Bench[2] in terms of order dated 3rd September 2012 and the Gauhati High Court[3] by judgment dated 17th December 2024.

3. The appellant had entrusted the shipment of 40,444 bags of salt from Chirai Junction (CHIB), Gujarat to Dharmanagar(DMR), Assam on 10th November 2009. However, when the consignment reached DMR, delivery recorded only 38,702 bags i.e. a shortage of 1742 bags. The respondent-Railway Authorities issued a shortage certificate being Serial No.82/77/57 dated 19th March 2010. Accordingly, a claim notice dated 6th April 2010 was filed at the rate of Rs.200 per bag totalling to Rs.3,48,400/-.

> "30. Applicant is relying on exhibit R2 series i.e., copies of the transshipment tallies. Reference to the page having no.64 of exhibit R2 shows that at the time of transshipment, it was found that one wagon bearing no. SCBCN 38595 had 1286 bags of salt, wagon bearing no. SE 180044 had 1320 bags, wagon bearing no. SC 28331 had 1205 bags, wagon bearing no. NR 90289 had 1250 bags when it was loaded with 1217 bags as per Railway Receipt and wagon bearing no. SR 43356 had 1240 bags which was allegedly loaded with 1217 bags. Likewise, page no.65 says that wagon bearing no. SE 131794, which was loaded with 1277 bags had 1173 bags, wagon bearing no. 9931188 which was allegedly loaded with 1277 bags had 1342 bags. Page no.66 of exhibit R2 says that wagon bearing no. ERBCN 113457 which was allegedly loaded with 1277 bags had 1331 bags at the time of unloading. The above shows that either there was improper loading or there was criminal interference during transit whereby articles loaded in the above referred wagons were changed

[2] Claim Application No: OA-I-6/2011
[3] MFA No.1/2013

> to the other wagons. That is a situation which is difficult to comprehend. Transshipment tally is a document _____ by an official during his official activities. It should be treated with some respect. When given respect, it has to be found that case of the applicant that there was loading as contended by him and as stated in exhibit R1 forwarding note and exhibit R4 Railway Receipt, cannot be accepted. In view of that finding, reference to exhibit R3 delivery certificate is not necessary. As that finding is not possible, it is not possible to conclude that there was short delivery."

4. A statutory appeal MFA No.1 of 2013 was filed before the Gauhati High Court under Section 23 of Railway Claims Tribunal Act, 1987[4]. It appears that the Court noticed four aspects; (a) the goods were loaded directly from the truck/cart to the wagon by the employees of the consignor; (b) such act of loading was not supervised by any railway staff; (c) sender's weight was accepted; and (d) packing conditions were not compliant, along with taking note of the fact that the railway receipt had the '*said to contain*' remark. As such, the appeal was held to be bereft of merit, and accordingly stood dismissed.

5. We have heard Mr. Gunjan Kumar, learned Advocate on Record for the appellant and Ms. Archana Pathak Dave, learned ASG for the respondents.

[4] RCT Act

5.1 The sum and substance of the appellant's case is that even if the booking was made at owner's risk, the general obligation cast upon the Railway Authorities, under Section 93 of Railways Act, 1989[5] could not be done away with; the loading of the goods was to be supervised by a Goods Clerk (violation of Rule 1512 of Indian Railway Commercial Manual[6]) and failure on the part of the respondent cannot be held against the appellant; "*said to contain*" bookings are only available for "*private siding"* and this was a case of "*railway siding*" hence, once a quantity has been mentioned in the receipt, *siding* cannot be used to deny the claim; Section 97 of the 1989 Act makes it clear that the Railway Authorities, will be liable for negligence even if booking is under "*owner's risk*".

5.2 The case of the respondent as can be understood from record, *inter alia* is that the grant of Shortage Certificate issued by the railway authorities is, by no means, an admission in any form; reference is made to Section 65(2) of the 1989 Act which stipulates that in the absence of a Clerk of the Railway having checked the goods, the burden of proof for the number/quantity of consignment rests with the

[5] 1989 Act
[6] IRCM

consignor/consignee/endorsee; neither Section 93 nor Section 97 are of any use to the appellant since the former does not talk about shortage and the latter limits the liability upon the railways only in cases of negligence or misconduct along with a few other exceptions.

6. Lord Parker of Waddington, J., in the matter of ***cargo ex sailing ship "Parchim"***[7], 1917 observed:

> "17. According to the authorities, it is beyond doubt that the fact that the cargo was at the buyer's risk from the moment it was placed on board points to the property having been intended to pass at that time. The general principle subsequently embodied in "The Sale of Goods Act, 1893," (Section 20) was, as early as 1873, laid down by Lord Blackburn in *Martineau* v. *Kitching* [L.R. 7 Q.B. 453, 454.] where he says:—
>
> > "As a general rule, *Res perit domino*, the old civil law maxim, is a maxim of our law; and when you can show that the property passed the risk of the loss, *prima facie*, is in the person in whom the property is. If, on the other hand, you go beyond that, and show that the risk attached to one person or the other, it is a very strong argument for showing that the property was meant to be in him. But the two are not inseparable. It may be very well that the property shall be in the one and the risk in the other."

7. We may also observe that before the current legislation, there was also the Carriers Act No.III of 1865 which was similar to the Act of English Carriers Act, 1830. There was

[7] SCC OnLine PC 69

also an Indian Railways Act of 1890. The general position of law, prior to these legislations and even prior to Indian Contract Act 1872 has been captured by the Privy Council in *Irrawaddy Flotilla Co., Ltd. v. Bugwandass*[8], in the following words:

> "..At the date of the Act of 1872, the law relating to common carriers was partly written, partly unwritten, law. The written law is untouched by the Act of 1872. The unwritten law was hardly within the scope of an Act intended to define and amend the law relating to contracts. The obligation imposed by law on common carriers has nothing to do with contract in its origin. It is a duty cast upon common carriers by reason of their exercising a public employment for reward. "A breach of this duty," says *Dallas, C.J., Bretherton* v. *Wood*[7], "is a breach of the law, and for this breach an action lies founded on the common law which action wants not the aid of a contract to support it."…."

8. Before proceeding further, let us take note of the relevant provisions of the 1989 Act:

> "65. Railway receipt
>
> …
>
> (2) A railway receipt shall be prima facie evidence of the weight and the number of packages stated therein:
> Provided that in the case of a consignment in wagon-load or train-load and the weight or the number of packages is not checked by a railway servant authorised in this behalf, and a statement to that effect is recorded in such railway receipt by him, the burden of proving the weight or, as the case may be, the number of packages stated therein, shall lie on the consignor, the consignee or the endorsee.
>
> …

[8] **1891 SCC OnLine PC 11**

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;

(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.
…
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 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 40 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."
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> *(Emphasis supplied)*

9. Section 93 casts a responsibility upon the Railways for loss, destruction, damage, deterioration, non-delivery of goods arising from transit. While certain exceptions are listed, the Section also places a responsibility on the Railways itself to demonstrate that the exceptions are applicable and further to prove that reasonable foresight and care had been employed in the carriage of goods. Section 97 talks about the scenarios in which goods are loaded onto the wagons at owner's risk. It absolves the Railways of liability except in cases of negligence and misconduct of the railway employees being proved. A burden of proof for negligence/misconduct lies on the person making the allegations. Section 99 provides that the Railways is responsible as a bailee for loss, destruction, damage, deterioration or non-delivery up to seven days after termination of transit and not thereafter. Exceptions to this Rule are provided as in the case of perishable goods, animals,

explosives or prescribed goods, along with those situations where goods are loaded at owner's risk. In the case of the latter, only negligence or misconduct makes them liable.

10. If the case of the appellant is to be accepted, and responsibility is to be fastened on the respondent- Railway authorities, the same would have to be located somewhere within the ambit and scope of Sections 93 and 97. One of the primary grounds for repelling responsibility by the Railway authorities has been '*said to contain*' which is provided in Rule 1811 of the Indian Railway Code for Traffic (Commercial) Department as follows :

> "**1811. Issue of "Said to contain" Railway Receipts**
>
> If no Railway staff is provided at a siding or if the strength of railway staff provided is not adequate to check the weight or the number of packages loaded in a wagon, a remark should be recorded in the Railway receipt, by issuing a "said lo contain" Railway Receipt. In such cases, the burden of providing the weight or as the case may be. the number of packages stated in the Railway Receipt shall lie on the consignor, consignee or the endorsee."

The non-obstante clause under Section 97 also becomes important.

10.1 In ***Mohd. Abdul Samad v. State of Telangana***[9], B.V. Nagarathna J. observed as under:

> "82. A non obstante clause is usually appended to a section in the beginning with a view to give the enacting

[9] (2025) 2 SCC 49

part of the section, in case of a conflict, an overriding effect over the provision or the Act mentioned in the non obstante clause. In other words, in spite of the provision or the Act mentioned in the non obstante clause, the enactment following it will have its full operation or that the provisions embraced in the non obstante clause will not be an impediment for the operation of the enactment. Thus, a non obstante clause is a legislative device used by a Parliament or legislature sometimes to give an overriding effect to what has been specified in the enacting part of a section in case of a conflict with what is contained in the non obstante clause as stated above.

83. Further, a non obstante clause has to be distinguished from the expression "*subject to*" where the latter would convey the idea of a provision yielding place to another provision or other provisions to which it is made subject to. Also, the expression "*notwithstanding anything in any other law*" in a section of an Act has to be contrasted with the use of the expression "*notwithstanding anything contained in this Act*", which has to be construed to take away the effect of any provision of that particular Act in which the section occurs but it cannot take away the effect of any other law. [Source : *Principles of Statutory Interpretation* by Justice G.P. Singh, 15th Edn., Chapter 5.4, p. 284.]"

10.2 In ***A.G. Varadarajulu v. State of T.N***[10]., a co-ordinate Bench observed as follows with reference to the interpretation of the non obstante clause as given by the eleven-judge bench in *Madhav Rao Jivaji Rao Scindia v. Union of India*[11],

16. It is well settled that while dealing with a non obstante clause under which the legislature wants to give overriding effect to a section, the court must try to find out the extent to which the legislature had intended to

[10] (1998) 4 SCC 231
[11] **(1971) 1 SCC 85**

give one provision overriding effect over another provision. Such intention of the legislature in this behalf is to be gathered from the enacting part of the section. In *Aswini Kumar Ghose* v. *Arabinda Bose* [(1952) 2 SCC 237 : AIR 1952 SC 369 : 1953 SCR 1] Patanjali Sastri, J. observed:

> "The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously;"

In *Madhav Rao Scindia* v. *Union of India* [(1971) 1 SCC 85] (SCC at p. 139) Hidayatullah, C.J. observed that the non obstante clause is no doubt a very potent clause intended to exclude every consideration arising from other provisions of the same statute or other statute but "for that reason alone we must determine the scope" of that provision strictly. When the section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. "A search has, therefore, to be made with a view to determining which provision answers the description and which does not."

10.3 In ***Chandavarkar Sita Ratna Rao v. Ashalata S. Guram***[12], it was observed:

> 67. A clause beginning with the expression "notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract" is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non obstante clause or any contract or document

[12] (1986) 4 SCC 447

> mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment. See in this connection the observations of this Court in *South India Corpn. (P) Ltd.* v. *Secretary, Board of Revenue, Trivandrum* [AIR 1964 SC 207, 215 : (1964) 4 SCR 280].

11. In view of the above discussion, the non obstante clause contained in Section 97 would exclude the general obligations cast on the Railway by Section 93. Since, in the present case the goods were booked at '*owner's risk*', if liability is to be fastened on the authorities, it can only be done if negligence or misconduct on its part or its employees.

12. Now, let us attempt to understand negligence. A question may arise as to why only aspects of negligence are taken into consideration. It is so because there are allegations of the seal(s)being broken or the carriages being in open condition on reaching the transshipment point. There aren't any specific allegations of misconduct by employees of Railway wagons found to be open, would still not come to the rescue of the appellants.

12.1 *Concise Oxford English Dictionary*[13] , the term "*negligence*" is defined and explained as under:

[13] Tenth Edition

"*negligence* ▪ *n*. failure to take proper care over something. Law - breach of a duty of care which results in damage."

"*neglect* ▪ *v*. fail to give proper care or attention to. fail to do something. ▪ *n*. the state or process of neglecting or being neglected. failure to do something."

12.2 Black's Law Dictionary[14] defines "*negligence*" as under:

"the omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do."

12.3 P Ramanatha Aiyar's Advanced Law Lexicon[15] defines "*negligence*" as:

"A coming short of the performance of duty

Failure to use the care that a reasonable and prudent person would have used under the same or similar circumstances."

12.4 In *Poonam Verma v. Ashwin Patel*[16], it was held:

"42. Negligence has many manifestations — it may be active negligence, collateral negligence, comparative negligence, concurrent negligence, continued negligence, criminal negligence, gross negligence, hazardous negligence, active and passive negligence, wilful or reckless negligence or negligence per se, which is defined in *Black's Law Dictionary* as under:

"*Negligence per se*.—Conduct, whether of action or omission, which may be declared

[14] https://www.latestlaws.com/wp-content/uploads/2015/04/Blacks-Law-Dictionery.pdf
[15] Third Edition
[16] (1996) 4 SCC 332

> and treated as negligence without any argument or proof as to the particular surrounding circumstances, either because it is in violation of a statute or valid municipal ordinance, or because it is so palpably opposed to the dictates of common prudence that it can be said without hesitation or doubt that no careful person would have been guilty of it. As a general rule, the violation of a public duty, enjoined by law for the protection of person or property, so constitutes.""

12.5 In ***Rajkot Municipal Corpn. v. Manjulben Jayantilal Nakum***[17], the concept of negligence was explained in detail, as follows:-

> "14. Negligence has been viewed in three ways. Firstly involving a careless state of mind; secondly, a careless conduct; and thirdly, a tort in itself. Every case giving rise to tortious liability, consists of injury and damage done due to negligence. Injury and damage may be found due to breach of contract or tort. We are concerned in this case with the injury and damage in tort. Therefore, it is necessary to dwell, in depth, on strict liability, absolute liability or special liability. In the present case, the omission alleged is to take care of periodical check-up of the condition of the trees. The degree of liability depends upon the degree of mental element. The elements of tort of negligence, therefore, consist in (*a*) duty of care; (*b*) duty owed to the plaintiff; and (*c*) it has been carelessly breached. Negligence does not give rise to liability unless the law fastens the duty of care in given circumstances. Duty is an obligation recognised by law to avoid conduct brought with unreasonable risk of damage to another.

[17] (1997) 9 SCC 552

The question whether duty consists in a particular situation involves determination as a question of law.

15. Negligence would include both acts and omissions involving unreasonable risk of having done harm to another. The breach of duty must cause damage. How much of the damage to be compensated by the defendant should be attributed to his wilful conduct and how much to his wilful negligence or careless conduct or remissness in performance of duty, are all relevant facts to be considered in a given act or omission in adjudging duty of care. The element of carelessness or the breach of duty and whether that duty is towards the plaintiff or the class of persons to which the plaintiff belongs are important components in tort of negligence. Negligence would, therefore, mean careless conduct in commission or omission of an act, whereby another to whom the plaintiff owed duty of care has suffered damage. The duty of care is crucial in understanding the nature and scope of tort of negligence. The question in each case is whether the defendant has been negligent in the performance of duty or omission thereof. Determination of duty of care also involves statutory action which requires detailed examination…"

12.6 This Court in ***Jay Laxmi Salt Works (P) Ltd. v. State of Gujarat***[18], observed:

"14. … Law of torts, however, is not confined and cannot be strictly categorised. Where the State undertakes common law duty its actions may give rise to common law tort. Negligence in performance of duty is only a step to determine if action of Government resulting in loss or injury to common man should not go uncompensated…"

[18] (1994) 4 SCC 1

13. What we must now consider is whether, the Union of India, through the concerned Railway, had a duty towards the goods of the appellant. If only, the answer to this question is in the affirmative, then can liability be fastened upon them under Section 97 of the 1989 Act.

14. The *proviso* to Section 65(2) which we have reproduced above provides that when the particulars of a consignment being loaded are not verified by the Railway employees, burden of proof in regard thereto shall apply on the consignor, consignee or endorsee. For it to be established that the Railway authorities were negligent, it has to be shown that they had a duty of care. Had they, at any stage been involved in the noting, counting or weighing of goods, thereby being actively aware of the amount being transported by them, then, it could be said that they had duty to ensure that the total amount that they have counted or weighed, was the amount they ought to safely transit to the end destination. This was not the case.

15. The learned Single Judge has correctly observed that the appellant has not provided any documents to show that a particular number of bags were procured and processed and then were being further sent for iodisation. In other words, the burden of proof as per the *proviso* to Section 65(2) was not

discharged. Once this burden had been discharged, only then could we come to the question of there being any negligence/misconduct on part of the Railways or its employees if liability was to be fastened upon them despite the fact that the same had been booked in the "*owner's risk*" category.

16. The appeal is dismissed. Pending application(s) if any stands disposed of.

…….J.
(SANJAY KAROL)

…….J.
(VIPUL M. PANCHOLI)

New Delhi;
July 16, 2026