

DISPUTES RELATING TO CARRIAGE OF GOODS

Presented By

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1

Carrier Laws

- The Carriers Act, 1865 (Repealed by The Carriage by Road Act, 2007)
- The Carriage by Road Act, 2007
- The Indian Carriage of Goods by Sea Act, 1925
- The Carriage by Air Act, 1972
- The Multimodal Transportation of Goods Act, 1993

The Carriers Act, 1865

➤ Salient Features:

- This Act was the first statutory enactment in India for common carriers.
- Rights and liabilities of a common carrier were defined under the Act.
- The Act enabled a common carrier to limit his liability by a special contract if he chose to do so, except in case of loss caused by a criminal act, negligence or misconduct. Else, his liability was absolute as an insurer to the extent of value of goods of Rs. 100, and above that if a higher value was declared by the consignor.
- No suit could be filed against a common carrier for loss, unless notice in writing was given to him within six months of loss or injury being known.

Liability of a carrier

Tata Chemicals Ltd. vs. Skypak Couriers Pvt. Ltd. (2002) CPJ 24 (NC)

- **Issue:** What is the value and effect of small print on the consignment note?
- **Held:** A condition in a contract, limiting the liability of one party, though signed by both parties must be construed strictly. The small and fine print should be clearly discernible and should draw the pointed attention of the consumer.
- Such a term could be in bold print and it should be easily readable so that a consumer can read and understand it. A condition in small print would amount to communication only when the attention of the consumer is specifically drawn to it.

Liability of a carrier (Cont.)

Patel Roadways vs. Birla Yamaha Ltd., AIR 2000 SC 1461

- It is clear that the liability of a common carrier under the Carriers Act is that of an insurer.
- In a case of claim of damage for loss to, or deterioration of goods entrusted to a carrier it is not necessary for the plaintiff to establish negligence.
- Even assuming that the general principle in cases of tortious liability is that the party who alleges negligence against the other must prove the same, the said principle has no application to a case covered under the Carriers Act.

Liability of a carrier (Cont.)

A.S. Navigation Co. vs. Jethala AIR 1959 Cal 479

- **Facts:** The whole consignment of tobacco was reduced to a charred mass by spontaneous combustion caused by the presence of water and moisture in the tobacco.
- **Held:** The effective and proximate cause of the damage was found to be due to the careless and negligent stowing of the goods by the carrier and the carrier was held liable for the loss.
- If the loss or damage arises from the neglect, fault or failure in the duties and obligations as provided in the statutory Articles or rules then a clause in the bill of lading exempting the carrier from liability for such loss and damage would be null and void and of no effect.

Limited liability of a carrier

Bharathi Knitting Co. vs. DHL Worldwide Express Courier (1996) 4 SCC 704

- **Issue:** The Supreme Court was called upon to decide the possibility of awarding damages in excess of the agreed limitation of liability of the carrier under the contract.
- **Held:** The parties having agreed to the terms restricting the liability of the carrier, are bound by the same.

The Carriage By Road Act, 2007

➤ Salient Features of The Act and Rules:

- In order to cope with the pace of modern development of road transport, The Carriage by Road Act, 2007 was enacted on September 29, 2007.
- The Act :
 - (a) Provides for registration of common carriers;
 - (b) Provides for execution of a goods forwarding note which describes goods, and goods receipt;
 - (c) Allows limits of liability of common carriers, except in case of loss caused by criminal act;
 - (d) Provides that consignor/consignee need not prove negligence;
 - (d) Regulates the carriage of dangerous and hazardous goods;
 - (e) Provides that no suit can be filed against a common carrier for loss, unless notice in writing is given within 180 days from date of booking of the consignment.

New definition under the Carriage by Road Act, 2007

- **Common Carrier:** means a person engaged in the business of collecting, storing, forwarding or distributing goods to be carried by goods carriages under a goods receipt or transporting for hire of goods from place to place by motorised transport on road, for all persons un-discriminatingly and includes a goods booking company, contractor, agent, broker and courier agency engaged in the door-to-door transportation of documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles, but does not include the Government;

Liability of a carrier

Maharashtra State Electricity Board vs. P.B. Salunke AIR 2009 Bom 185

- **Facts:** A transformer was damaged during transit by toppling down from the trailer. The vehicle carrying the transformer, had inadequate carrying capacity compared to the weight of the transformer.
- **Held:** The transporter was negligent in handling the transformer and was liable to pay damages.

Liability of a carrier (Cont.)

Nagpur Golden Transport Co. vs. Nath Traders AIR 2012 SC 357

- **Issue:** Would a common carrier be entitled to the damaged goods after paying for the damage caused during transportation?
- **Held:** The common carrier would be entitled to the value of the damaged goods, else the consignee would stand unjustly enriched.

Liability of a carrier (Cont.)

Brakes India Ltd. & Ors. vs. BIC Logistics Ltd. O.S.A. No. 329 of 2010 (Mad HC)

- **Issue:** Liability of the carrier to pay compensation in the said circumstances
- **Facts:** The Plaintiff has entrusted certain automobile spare parts to the Defendant, who is a public carrier to be transported to Jamshedpur. The spare parts were not received on account of the murder of the driver and the cleaner of the container.
- **Held:** On consideration of the evidence on record, it was held that the Defendant was not liable to pay the amount claimed in the suit, as per Clause 17 of the Carriage by Road Act, 2007, i.e. if a loss has been occasioned by a public enemy, the common carrier is not liable.

12

The Indian Carriage of Goods by Sea Act, 1925

➤ Salient Features of The Act and Rules:

- The Indian Carriage of Goods by Sea Act, 1925 was passed to establish the responsibilities, liabilities, rights and amenities of a carrier covered by the bill of lading.
- It applies to ships carrying goods from any port in India.
- No implied contract of seaworthiness of vessel, subject to diligence of carrier as to seaworthiness – but proof to be by carrier.
- Notice of loss or damage to be given at the time of taken delivery at destination, or within 3 days of delivery if damage is not apparent.
- Suit to be brought within one year after delivery of goods, or date of delivery, or within an additional 3 months if allowed by Court, unless parties agree to a longer period.
- No exclusion of liability permitted for negligence, fault or failure in duties and obligations of carrier.

Applicability of the Act

Shipping Corpn. of India Ltd. v. Bharat Earth Movers Ltd., (2008) 2 SCC 79

- **Issue:** The applicability of the Indian Carriage of Goods by Sea Act, 1925 vis-à-vis the Japanese Carriage of Goods by Sea Act, 1992.
- **Held:** A bare perusal of Section 2 of the Act, demonstrates that the same applies to the carriage of goods by sea in ships carrying goods from any port in India to any other port whether in or outside India.
- Thus, the Indian Act shall apply only when the carriage of goods by sea in ships, takes place from a port situated within India and not a port outside India.
- The Japanese Carriage of Goods by Sea Act, 1992 would govern the contract.

Applicability of the Act (Cont.)

British India Steam Navigation Co. Ltd. v. Shanmughavilas Cashew Industries, (1990) 3 SCC 481

- **Issue:** Whether Indian law would be applicable in case of disputes pertaining to goods shipped from ports outside India?
- **Held:** For the application of Indian law, the port of origin has to be an Indian Port. Goods shipped from Africa and carried to Cochin, will not be governed by India law.

Liability of a carrier (Cont.)

Contship Container Lines Ltd. & Co. Ltd. vs. D.K. Lall AIR 2010 SC 1704

- **Facts:** There was a charter-party agreement between the buyer and carrier. The contract made the charterer responsible to pay demurrage in case of delay. The dispute arose over the payment of demurrage.
- **Held:** The delivery of the Bill of Lading was delayed by the agent of the carrier. The agent of the carrier was guilty of breach of his statutory duty and negligence. The agent of the carrier, jointly with the ship-owner was liable to pay damages to the seller.

Liability of a carrier (Cont.)

M/s. Jeeves Impex vs. Maersk Line India Pvt. Ltd.

- **Facts:** Plaintiff did not received the amounts payable on the goods. Defendant No. 2 was to route the payment to the Plaintiff through the Defendant No. 2's bank. Defendant No. 2 was also supposed to receive goods in exchange of the original Bills of Lading from Defendant No. 1. The good were ultimately received by Defendant No. 2 but no payment was received by the Plaintiff and Defendant no 3.
- **Issue:** Claims of invoice and damages for an export transaction based on an alleged oral contract between the Plaintiff and Defendant No 1.
- **Held:** The Plaintiff failed to produce any evidence concerning its contract with Defendant No. 2. Plaintiff's claim against Defendant No. 1 for recovery of the balance of its invoice value is invalid and therefore, Defendant No. 1 cannot be held liable.

Bill of Lading

- A Bill of Lading is the symbol of the goods, and the right to possess those passes to the transferee of the bill of lading.
- The transfer is symbolic of the transfer of the goods themselves and until the goods have been delivered, the delivery of the duly endorsed Bill of Lading operates as between the transferor or transferee, and all who claim through them, as a physical delivery of the goods would do.

Bill of Lading

Ellerman & Bucknall Steamship Co. Ltd. v. Sha Misrimal Bheraji,
AIR 1966 SC 1892

- A bill of lading serves three purposes:
 - 1.it is a receipt for the goods shipped containing the terms on which they have been received;
 - 2.it is evidence of the contract for carriage of goods; and
 - 3.it is a document of title for the goods specified therein.

Bill of Lading (Cont.)

British India Steam Navigation Co. Ltd. v. Shanmughavilas Cashew Industries, (1990) 3 SCC 481

- A bill of lading is not a negotiable instrument in the strict sense of the transferee deriving better title than the transferor. The transferee of a bill of lading gets no better title than the transferor himself had.
- A bill of lading is intended to provide for the rights and liabilities of the parties arising out of the contract of affreightment. If the consignee claims the goods under a bill of lading he is bound by its terms. It cannot be said that the shipper, did not know of the conditions of carriage printed on the reverse.

Bill of Lading (Cont.)

Shipping Corpn. of India Ltd. v. Bharat Earth Movers Ltd., (2008) 2 SCC 79

- *Invoice is not a part of the Bill of Lading. The value of the goods is required to be stated on the Bill of Lading so as to enable the shipping concern to calculate the quantum of freight. It cannot, in absence of any statutory provisions, be held to be incorporated therein by necessary implication or otherwise.*

Carriage by Air Act, 1972

- Salient Features of The Act and Rules:
 - Gives effect to international conventions – Warsaw 1929 and Montreal 1999.
 - Documents involved – passenger ticket, luggage ticket, air consignment note. These may include exclusion from liability.

Carriage by Air (Amendment) Act, 2016

- Amendment made to Section 4A of the Carriage By Air Act, 1972:
- The Central Government may, having regard to the objects of the Act, and if it considers necessary or expedient so to do, by notification in the Official Gazette, ***give effect to the limits of liability***, revised by the depository under rule 24 of Chapter III of the Third Schedule to this Act, for the purposes of determining the liabilities of the carriers and extent of compensation for damages under the said Chapter of that Schedule.

Liability of a carrier

Anil & Co. vs. Air India AIR 1986 Del 312

- **Facts:** The Plaintiff booked certain goods with Air India for carriage to New York. The New York Banker was named as the consignee in the airway bill. Air India carried goods to Paris and entrusted the carriage of the said goods to Trans World Airlines for delivery to New York. Trans World Air Lines wrongly delivered the goods.
- **Held:** Air India was liable for the value of the goods as the consignment was negligently and without authority delivered by the Trans World Airlines.

Liability of a carrier

Gujarat Urja Vikas Nigam Ltd. vs. Air India Ltd. 2009(2) C.P.J. 378

- **Facts:** The complainant's goods ordered from London were transferred by air. At the time of taking delivery, Air India stated that the goods were mishandled or were missing. The goods were later found to be auctioned and subsequently purchased.
- **Held:** As there was gross and wilful negligence on the Part of Air India, the deficiency in service was apparent. Complainant was held to be entitled to the full value of goods with interest, and costs.

Liability of a carrier

Ethiopian Airlines vs. Ganesh Narain Saboo (2011) 8 SCC 539

- **Issue:** A 3 judge bench of the Supreme Court was asked to determine whether Ethiopian Airlines would be governed by the Carriage by Air Act, 1972
- **Held:** According to Indian Law, Ethiopian Airlines can be subjected to a suit under the Carriage by Air Act, 1972.
- Ethiopian Airlines must be held accountable for the contractual and commercial activities and obligations that it undertakes in India.
- Countries who participated in trade, commerce and business with different countries ought to be subjected to normal rules of the market.

Liability of a carrier

Virendra Khullar vs. American Consolidation Services Ltd. & Ors. I *(2004) CPJ 73 NC*

- **Facts:** The appellants had entrusted consignments of men's wear apparels in to Respondent No.1. In the Bill of Lading issued by the shipping carriers, name of consignee was changed from Central Fidelity Bank to Coronet Group Inc., amongst several other changes. The Appellant filed a complaint for the cartons sent through cargo.
- Respondent No. 1 contested the complaint and pleaded that no payment was made for services provided and the receipt, custody and forwarding of the goods of the complainants were governed by the bailment agreement, which stated that after the delivery by Respondent No.1, the liability for the care, custody, carriage and delivery of goods was of that concerned carrier.

Liability of a carrier

Virendra Khullar vs. American Consolidation Services Ltd. & Ors. I *(2004) CPJ 73 NC*

- **Issue:** Respondent No.1's plea is that it acted only as a consolidator and not a carrier and therefore, it cannot be held liable in a case of negligent act or carelessness while handling of the shipment
- **Held:** The Honb'le Supreme Court held and accepted the plea of Respondent No. 1 and also held that Respondent No. 2, i.e. the bank cannot be held liable for the deficiency of service, as the amount was not collected from the consignee.

Insurance

Namrata Singh & Ors. vs. DGCA & Ors. WP(C) 1867/2012 (Del HC)

- **Issue:** Whether or not the crew was covered under the insurance policy?
- **Facts:** Respondent 3 lent his aircraft for enabling a medical evacuation of a critically ill patient in Patna. The aircraft encountered a thunderstorm and crashed over Parvatia Colony in Faridabad, which resulted in the death of all the occupants on board. It also resulted in the death of three persons on the ground and damage to immovable property. A legal notice for claims was sent by the petitioners and in response respondent no 3 denied its liability.
- **Held:** The UICL was made to payments of monetary sums along with interest to the Petitioners.

Airway bill

Dilawari Exporters vs. Alitalia Cargo (2010) 5 SCC 754

- As regards to a contract for carriage of goods by air, an air waybill is *prima facie* evidence of conclusion of contract, of the receipt of the cargo, and of the conditions of carriage.

The Multimodal Transportation of Goods Act, 1993

➤ Salient Features of The Act and Rules:

- Carriage of goods may be executed by sea, air or land or by a combination of more than one. A carriage by one of the said modes is termed unimodal and a carriage carried out by a combination of two or more, is called multimodal transport.
- The Act provides for the regulation of multimodal transportation of goods from India to outside India.
- Requires registration to carry on such business.
- Requires issuance of a negotiable or non-negotiable multimodal transport document as a document of title.
- Consignor must make disclosures as required, and indemnifies operator against loss resulting from inadequacy or inaccuracy of disclosures.

The Multimodal Transportation of Goods Act, 1993

➤ Salient Features of The Act and Rules:

- Provides for assessment of compensation for loss or damage to consignment.
- Notice of loss or damage to be given at the time of taken delivery at destination, or within 3 days of delivery if damage is not apparent.
- Suit to be brought within one year after delivery of goods, or date of delivery, or within an additional 3 months if allowed by Court, unless parties agree to a longer period.
- No exclusion of liability permitted for negligence, fault or failure in duties and obligations of carrier.
- the Multimodal Transport Operator shall not be liable if he proves that no fault or neglect on his part had contributed to such loss, damage or delay in delivery.

The Multimodal Transportation of Goods Act, 1993

➤ Limitation on action:

- The Act restricts any action of liability against the carrier if such action is not brought within nine months from:
 - (a) the date of delivery of the goods, or
 - (b) the date when the goods should have been delivered, or
 - (c) the date on and from which the party entitled to receive delivery of the goods has the right to treat the goods as lost under sub-section (2) of section 13.

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