

# *Carriage of Goods in India*

*Dheeraj Nair*  
*Partner*  
*J. Sagar Associates*

# Laws governing Carriage of Goods in India

Goods can be carried by land (including inland waterways), sea, air or a combination of all these modes of transportation (multimodal transport system). Different laws govern such different modes of carriage of goods:-

- ❑ For carriage of goods by land:
  - *Carriage by Road Act, 2007;*
  - *The Railways Act, 1989.*
  
- ❑ For carriage of goods by air:
  - *The Carriage by Air Act, 1972.*
  
- ❑ For carriage of goods by sea:
  - *The (Indian) Bills of Lading Act, 1856;*
  - *The Carriage of Goods by Sea Act, 1925;*
  - *The Merchant Shipping Act, 1958.*
  
- ❑ For multimodal transportation of goods:
  - *The Multimodal Transportation of Goods Act, 1993.*

## The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act , 2015

- ❑ Disputes in respect of ‘Carriage of Goods’ are ‘commercial disputes’.
- ❑ Section 2 (c) of the Commercial Courts Act defines a commercial dispute and includes disputes arising out ‘carriage of goods’.
- ❑ Section 2 (i) defines ‘specified value’ in relation to a commercial dispute, to mean the value of the subject-matter in respect of a suit as determined in accordance with Section 12 which shall not be less than one crore rupees or such higher value, as may be notified by the Central Government.
- ❑ Section 6 provides that the jurisdiction of a Commercial Court is to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction. Disputes in respect of ‘carriage of goods’ of the ‘specified value’ would be triable by Commercial Courts or Commercial Divisions of High Courts, as the case may be.
- ❑ However, Section 11 provides for a bar of jurisdiction of Commercial Courts where the jurisdiction of the civil court is either expressly or impliedly barred under any other law for the time being in force.

# Carriage of Goods by Land

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## Carriage by Road Act, 2007 - Overview

- Carriage by Road Act, 2007 came into force on March 1, 2011 superseding the erstwhile Carriers Act, 1865. The Carriage by Road Rules, 2011 came into force on the same day.
- This Act provides for the regulation of common carriers, limiting their liability and declaration of value of goods delivered to them to determine their liability for loss, or damage to, such goods occasioned by their negligence or criminal acts, their servants or agents and for incidental matters.
- Carriage by Road Act 2007 does not apply to the Government or private carriers.

# Carriage by Road Act, 2007

## Classification of Carriers

- As per **Section 2 (a)**, a ‘**common carrier**’ is defined as: “*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 motorized transport on road, for all persons indiscriminatingly and includes a goods booking company, contractor, agent, broker and courier agency engaged in the door-to-door transportation of documents, goods or articles utilizing the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles but does not include the Government*”.
- **Private Carrier** - A private carrier is distinct from a common carrier as it has the discretion to refuse to sell its services. A private carrier does not make a general offer to carry goods and enters into a contract with other parties to carry goods on mutually agreed terms.

# Carriage by Road Act, 2007

## Rights, Liabilities and Responsibilities of Common Carriers

- ❑ Under **Section 8**, every consignor is required to issue a 'goods forwarding note' which would declare *inter alia* value and nature of the consignment.
- ❑ Consignor is responsible for the correctness of the particulars in the goods forwarding note, and is liable to indemnify the common carrier for any loss or damage suffered by him by reason of incorrectness or incompleteness of the particulars on the note.
- ❑ As per **Section 10** of the Act, the liability of a common carrier for loss of, or damage to any consignment, shall be limited to ten times the freight paid or payable (as per **Rule 12** of the Carriage by Road Rules, 2011) having regard to the value, freight and nature of goods, documents or articles of the consignment, unless the consignor or any person duly authorised in that behalf has expressly undertaken to pay higher risk rate fixed by the common carrier, under **Section 11**.

# Carriage by Road Act, 2007

## *Rights, Duties and Liabilities of Common Carriers*

- ❑ As per **Section 10 (2)**, for any delay in delivery up to the mutually agreed period, the liability is limited to the freight charged.
- ❑ Under **Section 12**, a common carrier is liable to the consignor for the loss or damage to any consignment, where such loss or damage has arisen on account of any criminal act of the common carrier, or any of his servants or agents. The Plaintiff does not bear the onus to prove such negligence or criminal act.
- ❑ **Section 15** provides for common carrier's right to sell the goods in case of consignor's default to take delivery of the goods. In case of non-perishable goods, a prior notice of 30 days is required before the common carrier can exercise his right to sell.

# Carriage by Road Act, 2007

## *Rights, Duties and Liabilities of Common Carriers*

- ❑ **Section 16** provides that a prior notice by the consignor to the common carrier for loss or damage is mandatory for instituting any suit or other proceedings, Such notice should be served within a period of 180 days from the date of booking the consignment.
- ❑ Under **Section 17** of the Act, a common carrier is responsible for the loss, destruction, damage or deterioration in transit or non-delivery of any consignment entrusted to him for carriage, arising from any cause except acts of God; war, riots and civil commotion; arrest, restraint or seizure under legal process; or an order, restriction, or prohibition imposed by the Government.
- ❑ However, even in above cases, common carrier is required to exercise due diligence and care to avoid such loss, destruction, damage or deterioration.



# Carriage by Road Act, 2007

## Type of commercial disputes which arise under this Act

- ❑ Interpretation of goods forwarding notes – effect and affixation of liability in view of the declaration thereon.
- ❑ Determination of delay, negligence or lack of due care by common carriers.
- ❑ Extent of liability of common carriers under the Act.
- ❑ Limitation of liability of carriers, when applicable.
- ❑ Legality in the exercise of right to sell by common carriers.

# Railway Act, 1989

- The Railway Act, 1989 came into force on July 1, 1990 superseding the erstwhile Indian Railway Act, 1890. Carriage of Goods has been dealt with in *inter alia* Chapter IX-XI of the Act (Sections 61-112). The Act provides for *inter alia* responsibilities, duties and liabilities of the Indian railway administration as a carrier of goods, provision for rates and procedure required to be complied with and redressal mechanism for grievances related to carriage of goods.
- The Railway Claims Tribunal Act, 1987 provides for the establishment of a Railway Claims Tribunal for enquiring into and determining claims against a railway administration for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to it and connected matters. This Act has an overriding effect. **Section 15** read with **Section 13** of the Railway Claims Tribunal Act, 1987 bars the jurisdiction of civil courts.
- By virtue of the above sections read with **Section 11** of the Commercial Courts Act, 2015, Commercial Courts will not have jurisdiction over disputes arising out of carriage of goods by railway administrations.

# Carriage of Goods by Air

## Carriage by Air Act, 1972

- ❑ Carriage by Air Act, 1972 came into force on May 15, 1973, superseding the erstwhile Indian Carriage Act, 1934. It is an Act to give effect to:-
  - the Warsaw Convention for the Unification Of Certain Rules Relating To International Carriage By Air, 1929 as amended by the Hague Protocol on September 28, 1955; and
  - the Montreal Convention (Convention for the Unification of Certain Rules for International Carriage by Air) signed on May 28, 1999.
- ❑ The Act makes provision for applying the rules contained in the said Conventions to international and non-international carriage by air and for matters connected therewith.
- ❑ The above Conventions govern the liability of air carriers for injury or death of passengers, for destruction or loss of or damage to baggage and cargo, and losses caused by delay in international carriage of passengers, baggage and cargo. These Conventions have been incorporated as Schedules to the Act.

# Carriage by Air Act, 1972

## Warsaw and Montreal Conventions

- ❑ The Warsaw Convention regulates liability for international carriage of persons, luggage or goods performed by aircraft for reward.
- ❑ The Warsaw System allowed four choices of jurisdiction for filing of a claim by the passenger namely, place of issue of ticket, principle place of business of the carrier, the place of destination of the passenger and the place of domicile of the carrier. Through the Montreal Convention a fifth jurisdiction is added which is the place of domicile of the passenger, provided the airline has a presence there. Therefore an Indian would be able to file claim in India even if the journey was undertaken outside India.
- ❑ Under Article 5 of this Convention, the consignor is required to issue a air consignment note to the carrier, declaring *inter alia* the value of the goods. If the carrier accepts goods without such note, he loses his right to seek benefit of the limitation of liability under the Convention for loss of, damage to or destruction of goods:-
  - 250 Francs per kilogram for registered luggage and goods;
  - 5,000 Francs for the hand luggage per passenger.

# Carriage by Air Act, 1972

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## Warsaw and Montreal Conventions

- ❑ The above limit of 250 Franc for registered luggage does not apply in cases where the consignor has declared the value at delivery and has paid supplementary sum. In such cases, carrier is liable to pay the declared amount, unless he proves that the declared value is greater than the actual value.
- ❑ Further, such limitation does not apply in case of wilful misconduct of the carrier.
- ❑ Article 29 sets the limitation period of 2 years from the date of arrival or expected arrival at destination for instituting any claim for damages.

# Carriage by Air Act, 1972

## Montreal Convention – Key provisions

- ❑ The Montreal Convention was signed in 1999, and changed several aspects of the Warsaw Convention system. The provisions of the Montreal Convention have been enshrined in Schedule III to the Act, and are applicable to carriage by air that is not international.
- ❑ Liability has been fastened on the carriers for damages sustained in the event of the destruction, damage or loss to cargo. However, the carriers are not liable in case of any inherent defect in such cargo, defective packing, act of war etc.
- ❑ Under Article 22 of the Convention in the case of carriage of baggage, the liability of the carrier in the case of destruction, loss, damage, or delay is limited to Rs.20,000 per passenger. Said Article provides that in the case of carriage of cargo, the liability of the carrier is limited to a sum of Rs. 350 per kilogram. However, the above limits for carriage of baggage and cargo do not apply in cases where the consignor has declared the value at delivery and has paid supplementary sum. In such cases, carrier is liable to pay the declared amount, unless he proves that the declared value is greater than the actual value.

# Carriage by Air Act, 1972

## Montreal Convention – Key provisions

- ❑ Under Article 31, a complaint is a pre-condition for instituting any action against the carrier, except in cases of fraud. Such complaint should be made forthwith after discovery of the damage, and, at the latest, within 7 days from the date of receipt of checked-in baggage and 14 days from the date of receipt of cargo. In case of delay, such complaint should be made within a period 21 days from the date on which cargo was placed at his disposal.
- ❑ The right to claim damages is extinguished if no action is instituted within a period 2 years from the date of arrival or expected arrival at destination for instituting any claim for damages.
- ❑ Given the aforesaid limitation of liability of carriers under the Act, value of disputes concerning loss, damage or destruction of baggage/ luggage of passengers, generally would not meet the ‘Specified Value’ under the Commercial Courts Act i.e. Rs. 1 Crore. However, there may be cases where the plaintiffs would seek to get around this limitation by alleging willful misconduct or recklessness of the carrier. The veracity of such allegation would be crucial to determine the jurisdiction of the Commercial Courts.

# Carriage of Goods by Sea

- ❑ The law relating to shipping in India is contained in the Indian Bills of Lading Act, The (Indian) Carriage of Goods by Sea Act 1925 and the Merchant Shipping Act, 1983.
- ❑ The Indian Carriage of Goods by Sea Act 1925 applies to carriage of goods by sea under bills of lading, or similar documents of title, from a port in India to any other port in or outside India. The substantive rights, recognised by the statute, are of equal application to foreign merchant ships as they are to Indian merchant ships. The Brussels Convention, 1922 has been adopted by virtue of the Act and has been made applicable to India.
- ❑ Carriage of goods covers the period from the time when the goods are loaded on to the vessel till the time that they are discharged.



# Carriage of Goods by Sea

- ❑ This Act establishes the responsibilities, liabilities, rights and amenities of a carrier covered by the bill of lading.
- ❑ Under **Article III** to the Schedule to the Act, the Carrier is responsible to *inter alia* make the ship seaworthy, properly man, equip and supply the ship, and properly and carefully load, handle, stow, carry, care for and discharge the goods.
- ❑ A Bill of Lading issued by the carrier constitutes prima facie proof of the receipt of goods by him.
- ❑ The Shipper is deemed to have guaranteed to the carrier the accuracy of the marks, numbers, quantity and weight of the goods at the time of shipment, and is liable to indemnify the carrier from any loss, damage and expenses arising out of any inaccuracy in such particulars.

# Carriage of Goods by Sea

- ❑ Under Article III Clause 6, notice of loss or damage to be given at the time of taking delivery at destination, or within 3 days of delivery if damage is not apparent. Else, such delivery is prima facie evidence of the delivery of goods by the carrier as described in the Bill of Lading.
- ❑ 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.
- ❑ Under Article III Clause 8, clauses, covenants or agreements excluding or lessening the liability of the carrier for negligence, fault or failure in duties and obligations of carrier, are null and void

- ❑ As per **Article IV of the Schedule:**

*“Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III.*

*Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this section.”*

- ❑ **Clause (2) of Article IV** excludes the liability of the carrier in case of any act, neglect, or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of ship; fire (unless caused by the actual fault or privity of the carrier); perils, dangers and accidents of the sea or other navigable waters; act of God; act of war; arrest of seizure under legal process; quarantine restrictions; act or omission of the shipper or owner of the goods etc.

# Carriage of Goods by Sea

- ❑ **Clause (5) of Article IV**, limits the liability of the carrier to 666.67 Special Drawing Rights per package or unit or two Special Drawing Rights per kilogram of the gross weight of the goods, unless the nature and value of goods have been declared by the owner of the goods before shipment and inserted in the Bill of Lading.
- ❑ However, this limitation does not apply in cases of proven acts or omissions of the carrier done with the intent to cause damage, or recklessly and with knowledge that damage would probably result.
- ❑ Given the aforesaid limitation of liability of carriers under the Act, value of disputes concerning loss, damage or destruction of cargo, in several cases, may not meet the 'Specified Value' under the Commercial Courts Act i.e. Rs. 1 Crore. However, there may be cases where the plaintiffs would seek to get around this limitation by alleging willful misconduct or recklessness of the carrier. The veracity of such allegation would be crucial to determine the jurisdiction of the Commercial Courts.

- ❑ The Multimodal Transportation of Goods Act, 1993 was introduced to and give the exporters a sense of security in transporting their goods. Multi-modal transportation reduces logistics costs of exporter and makes products more competitive in the international market. This Act provides for regulation of the multimodal transportation of goods, from any place in India to a place outside India, on the basis of a multimodal transport contract and for matters connected therewith or incidental thereto.
- ❑ **Section 2 (k)** defines ‘multimodal transportation’ to mean carriage of goods by at least two different modes of transport under a multimodal transport contract from a place of acceptance of the goods in India to a place of delivery outside India.
- ❑ **Section 2 (m)** defines a ‘multimodal transport operator’ (“**MTO**”) to mean any person who -
  - (i) concludes a multimodal transport contract on his own behalf or through another person acting on his behalf;
  - (ii) acts as principal, and not as an agent either of the consignor, or consignee or of the carrier participating in the multimodal transportation, and who assumes responsibility for the performance of the said contract.

- ❑ **Section 2(la)** defines ‘Multimodal transport document’ to mean a negotiable or non-negotiable document evidencing a multimodal transport contract and which can be replaced by electronic data interchange messages permitted by applicable law. It is to be regarded as a document evidencing title of the consignor, and a prima facie evidence that the MTO has taken charge of the goods.
- ❑ Under **Section 10**, MTO can insert a reservation on the document if he has reason to believe that the particulars of the goods furnished by the consignor are not accurate. Failing such insertion, he is deemed to have accepted the goods in apparent good condition.
- ❑ **Section 13** provides for the liability of a MTO for loss resulting from:
  - any loss of, or damage to the consignment;
  - delay in delivery of the consignment; and
  - any consequential loss or damage arising from such delay.

- ❑ However a MTO shall be liable only in instances where such loss, damage or delay in delivery of consignment took place at a time when the consignment was in the charge of such multi-modal transport operator.
- ❑ The MTO shall not be liable if he proves that no fault or neglect on his part or that of his servants or agents had caused or contributed to such loss, damage or delay in delivery.
- ❑ Moreover, the MTO shall not be liable for loss or damage arising out of delay in delivery including any consequential loss or damage arising from such delay unless the consignor had made a declaration of interest in timely delivery which has been accepted by the multimodal transport operator.

# Multimodal Transportation of Goods Act, 1993

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- ❑ **Section 15** provides that when the nature and value of the consignment have not been declared and the stage of transport where loss or damage occurred is not known, the liability of the MTO to pay compensation would not exceed 2 SDR per KG of the gross weight of the consignment lost or damaged or 666.67 SDR per package or per unit whichever is higher.
- ❑ If the multimodal transport does not include carriage of goods by sea or inland waterways, such liability would not exceed 8.33 SDR per KG of the gross weight of the consignment.
- ❑ Under **Section 16**, when the nature and value of the consignment have not been declared and the stage of transport where loss or damage occurred is known, the liability of the MTO is determined in accordance with the provisions of the relevant law in relation to the mode of transport when the consignment was lost or damaged.



- Assessment of compensation (Section 17): The compensation is assessed with reference to the value of the consignment at the place where, and the time at which, the consignment is delivered or should have been delivered. The value of the consignment is determined according to the current commodity exchange price, or, if there is no such price, according to the current market price, or, if the current market price is not ascertainable, with reference to the normal value of a consignment of the same kind and quantity.
- Loss of right of operator to limit liability (Section 18) - The limitation of liability does not apply in cases where the loss, damage or delay in delivery of consignment resulted from an act or omission of the MTO with intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result.
- Limitation of liability on total loss of goods (Section 19) - The MTO is not, in any case, liable for an amount greater than the liability for total loss of goods for which a person will be entitled to make a claim against him under the provisions of the Act.

# Multimodal Transportation of Goods Act, 1993

- ❑ **Section 20** requires that a notice should be given by the consignee to the MTO regarding the general nature of loss, or damage to the goods at the time of handing over of the consignment, or within a period 6 consecutive days if the damage is not apparent.
- ❑ **Section 22** provides for the MTO's right of lien over the consignment in case of non-payment of his dues as per the contract
- ❑ **Section 24** sets the limitation period of 9 months from the date (a) of delivery of the goods; (b) when the goods should have been delivered, and (c) on and from which the party entitled to receive delivery of goods has the right to treat the goods as lost under Section 13(2) of the Act.
- ❑ **Section 25** provides for the jurisdiction for instituting suits and includes:-
  - the principal place of business, or, in the absence thereof, the habitual residence, of the defendant; or
  - the place where the multimodal transport contract was made, provided that the defendant has a place of business, branch or agency at such place; or
  - the place of taking charge of the goods for multimodal transportation or the place of delivery thereof; or
  - any other place specified in the multimodal transport contract and evidenced in the multimodal transport document.



## The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act , 2015

- Under Section 12, the Specified Value of the subject-matter of the commercial dispute in a suit, appeal or application is determined in the following manner –
  - a) where the relief sought is for recovery of money, the money sought to be recovered in the suit or application inclusive of interest, if any, computed up to the date of filing of the suit or application;
  - (b) where the relief sought relates to movable property or to a right therein, the market value of the movable property as on the date of filing of the suit, appeal or application;
- Disputes arising out of carriage of goods, mostly pertain to recovery of money as compensation towards loss, damage or destruction of goods, or towards indemnity.
- Some disputes also arise out right to lien of the carrier, or an injunction against the carrier from exercising his right to sell the goods. In such cases, the value of the goods become relevant.

# The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act , 2015

- **Section 12(3)** bars an appeal or civil revision from an order of a Commercial Division or Commercial Court finding that it has jurisdiction to hear a commercial dispute under the Act.
- ❑ **Section 16** read with **Schedule I** amends the CPC with regard to Commercial Disputes. Some of the important changes include:
  - If written statement is not filed within a period of 30 days from the date of receipt of summons, the Defendant may be permitted to file the same within a period 120 days for reasons to be recorded in writing and upon payment of costs. After 120 days, the Defendant would lose its right to file the Written Statement;
  - Objections to jurisdiction and valuation of the Suit should be reasoned;
  - All relevant documents are required to be filed with the Plaint along with a declaration on oath that all documents in the power, possession, control or custody of the plaintiffs relevant to the dispute have been disclosed and produced. Only in cases of urgent filings, the Plaintiff can seek leave to rely on additional documents and file the same within a period of 30 days.
  - Case Management Hearing wherein the dates for the trial are fixed. While fixing such dates, the Court has to ensure that the arguments are concluded within a period of 6 months from the date of first Case Management Hearing.