
(2006) 11 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

Bholasons Exports

APPELLANT

Vs

Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision : 22-11-2006

Acts Referred:

Citation : 2006 4 CPJ 434 : 2007 1 CLT 235

Hon'ble Judges : M.B.Shah , Rajyalakshmi Rao J.

Final Decision : Complaint allowed

Judgement

1. MR. Justice M.B. Shah, President-The facts in this case are similar to the facts narrated in OP 217 of 1997, OP 47 of 1998 and OP 296 of 1998. In all the three cases, this Commission, on 29th September, 2006, pronounced a common order granting relief to the complainants. This is the fourth case.

2. IN all these four cases, the complainants are jewellers. Consignments of jewellery were exported at about the same time by the said four jewellers by air, i.e. through KLM Cargo and in all the four cases, the notified party/purchaser of the jewellery was F.M. Mir Jewellers of the United Kingdom. IN all the four cases, there was total loss/misdelivery of the consignments of jewellery and all the four complainants/exporters did not receive any payments through the bank, namely National Westminster Bank (Nat West Bank, in short) to which all the export documents were sent by the complainants/exporters through banks in Delhi. IN all the four cases, the Nat West bank misplaced/lost the documents. In the present case the complainant firm exported 6.512727 kgs of plain gold jewellery of fineness 22 kt (kdm soldered) as per invoice No. NEPZ/BSE/96-97/767 dated 9.10.1996 of CIF value US \$ 82,690.00 from Delhi to Birmingham.

It was shipped vide Airway Bill No. 074-7423 3191 dated 11.10.1996 through KLM Cargo (OP No. 2). The consignee was Nat West Bank (OP No. 4) and the notified party was F M Mir Jewellers (OP No. 5). The consignment was sent on COD (Cash on Delivery) basis with the price to be collected in the UK through Nat West Bank and to be remitted to the Oriental Bank of Commerce (OP No. 3)

3. THE consignment was insured with Oriental Insurance Company Ltd. (OP No. 1) (hereinafter referred to as the Insurance Company) for US \$ 90,959 (being CIF value of US \$ 82,690 + 10% thereof being US \$ 8269) equivalent to Rs. 32,24,500 vide marine insurance policy. THE insurance policy was "Cover Type A", namely All Risks. Though the Insurance Company prepared the policy on the basis of the invoice, which showed shipment from Delhi to Birmingham, due to oversight on the part of the Insurance Company, it was mentioned in the policy as from Delhi to London though the insurance policy also stated "details as per invoice of the complainant which clearly showed Birmingham as the destination airport. THE policy was clearly made "Door to Door", namely from the Delhi premises of the exporter to the premises of the importer in the UK, for which additional premium of 0.1% was charged. This means that the all risks insurance policy covered upto the premises of the importer in UK whether the airport of destination was London or Birmingham. THE insurance policy covered the consignment from the premises of the complainant in Delhi to the premises of the importer in UK, whether the port of discharge in UK was London or Birmingham. On 15th October, 1996, the complainant sent the original documents of title, namely, the invoice, the packing list, the airway bill, purchase certificate, insurance certificate, bill of exchange, etc. to its banker Oriental Bank of Commerce which in turn forwarded them to the collecting Bank, Nat West Bank, Lincoln Road Mill Field, Branch Peterborough for delivery/release to the notified party F.M. Mir Jewellers after collecting the payment. On 18th November, 1996, Nat West Bank confirmed the receipt of the documents but stated that the collection remained unpaid.

4. KLM delivered the shipment in question on 16th October, 1996 and conveyed the same to the complainant. KLM made the delivery without obtaining the documents of title and the bank release order from the recipient. Till now, in the proceedings before this Commission, KLM has not produced the bank release order or the receipt of the recipient for having received the consignment of gold jewellery. The facts in this case do not prove that Nat West had issued any bank release order. All the complainants including the complainant in this case, were subsequently informed by the Cambridgeshire Constabulary that the Police had arrested the persons who had committed the fraud. The complainants were called for investigation to UK where their statements were recorded. The Cambridgeshire Constabulary prosecuted the accused persons. The relevant documents with respect to the police investigation and trial are on record. The accused persons have been convicted and sentenced by the Crown Court at Northampton. The original certificate dated 22nd August, 2003 issued by the Crown Court at Northampton Ex P117 reads as under: "This is to certify that in the Crown Court at Northampton on 31st March, 1999 Abdul Rauf was convicted upon indictment of- 1. Conspiracy to defraud And on 14th May, 1999 was sentenced to: 4 years imprisonment. To pay compensation of 7710.86 to Arun Chopra, ANK Jewellers, 118, High Street, Edgeware, Ha8 7EL. To pay compensation of 1796.14 to Satpreet Singh Khandpur, Lilium Interna-tional, 2a

West End Road, Southall, Middx. To pay compensation of 4398.77 to Dhiraj Kotecha, Rajesh Imports, 33 West Town Drive, Stanmore, London. To pay compensation of 12272.34 to Amit Gupta, PP Jewellers, A 13 CC Colony, Pratap Bagh, Delhi, India. To pay compensation of 8854.79 to Rajendra Bhola, Bholasons Exports, 21/51 Punjabi Bagh, West, New Delhi 110027, India. To pay compensation of 14967.10 to Ashok Kumar Chandani, Yellow Metal Inc. 159 Noida 201 305, District Ghaziabad, Uttar Pradesh, India. Total Sentence: To pay total compensation of 50,000.00. To be paid within one month. Decision of the Court of Appeal: SENTENCE QUASHED. TOTAL SENTENCE NOW: 3 YEARS, 6 MONTHS IMPRISONMENT AND 50,000.00 COMPENSATION. An Officer of the Crown Court Date : 22nd August, 2003 It is to be stated that no amount of compensation has been received by any of the complainants, including the present complainant.

5. THE complainant lodged a claim for wrongful delivery with the KLM on 14th November, 1996. After some further correspondence, KLM wrote letter dated 6th March, 1998, to the complainant stating, inter alia, regarding the delivery, that they failed in that respect and offered to pay Rs. 1,46,000 in full and final settlement. However, vide letter dated 11th March, 1998 the complainant declined to accept the said amount as the liability of the KLM was absolute and comprehensive for the full amount of the loss and other consequential reliefs.

6. IT is relevant to mention that till now KLM Cargo has not produced the bank release order or even the receipt of the person to whom delivery was made. The complainant intimated the loss to the Insurance Company on 16th November, 1996 and registered its claim against the Insurance Company. Thereafter the complainant regularly submitted to the Insurance Company all the available information and documents vide letters dated 23rd November, 1996, three letters in December 1996, 9th January, 1997, 12th February, 1997, 21st February, 1997, 26th May, 1997, 9th March, 1998 and 1st April, 1998. In spite of all these efforts by the complainant there was no valid or timely repudiation of the claim by the Insurance Company till the filing of the complaint on 27th May, 1998. It was only after a copy of the complaint was served on the Insurance Company that the Insurance Company sent a highly belated letter of repudiation dated 11th March, 1999. This was 2 years and 4 months after the claim dated 16.11.1996 was lodged with the Insurance Company and more than 9 months after complaint was filed.

The Insurance Company has admitted the loss of the jewellery but contested the claim mainly on the ground that the policy was from Delhi to London and not from Delhi to Birmingham. The complainant submits that there is no substance in this defence as the wrong mentioning of "London" instead of "Birmingham" in the policy itself amounts to deficiency in service as the invoice and the airway bill on the basis of which the policy was prepared and issued clearly mentioned the destination airport as "Birmingham". Besides, the policy was an "all risks policy". Also, the policy was "door to door" and, therefore, port of discharge is not

relevant at all. It is therefore submitted that the Insurance Company along with KLM is also liable to compensate the loss caused to the complainant. The insured value in the policy as mentioned was US \$ 90,959, equivalent to Rs. 32,24,500.

7. THE complainant has prayed as under: (a) the complaint may be allowed; (b) the Insurance Company and the KLM shall jointly and severally pay in foreign exchange to the complainant US \$ 90,959, namely the amount of the insurance policy; (c) that they are also jointly and severally liable to pay in foreign exchange to the complainant interest on the said amount at the rate of 18% per annum from 16th October, 1996 till the date of payment; (d) that they shall also pay to the complainant in foreign exchange jointly and severally an amount of US \$ 25,000 per year from 16th October, 1996 till the date of payment of (b) and (c) above to compensate for business losses incurred due to the non-availability of the funds involved in the case from 16th October, 1996 and the consequential harassment and mental agony; (e) that they shall also pay in foreign exchange jointly and severally the expenses incurred in pursuing this case including by visiting to UK; (f) costs of legal proceedings Admission: In this case also KLM admitted its liability by letter dated 6th March, 1998. The relevant part of the letter is as under: "We acknowledge receipt of your letter No. 238 dated March 2, 1998 in connection with subject shipment. We would like to inform you that this shipment was delivered against a clean receipt but so far we could not trace the copy of the bank. This would lead to the conclusion that we failed in this respect. Therefore, we herewith decide to offer the amount as declared value for carriage on the airway bill i.e. Rs. 1,46,000.00 in full and final settlement. Please return the enclosed final release in triplicate signed and completed to our department, after which payment will be effected as soon as possible".

8. THIS offer was not however accepted by the complainant. The aforesaid admission is no doubt restricted to limit to liability. The question which requires consideration is whether the liability is limited or would be to the extent of loss suffered by the complainant. All these points were considered in our previous order dated 29th September, 2006 passed in O.P. No. 217/97, O.P. No. 47/98 and O.P. No. 246/98 and it was held that KLM would be liable and the relevant findings are as under: Findings:

9. FROM the facts stated above, it is apparent that the release of goods/consignment by the Carrier or its agent was totally unjustified. It was done without there being any original document, including the bank release note and without the knowledge/consent of the consignee, namely, Nat West Bank (i.e. M/s. National Westminster Bank) and that too on the basis of the alleged fax letter without verification from the Bank and that too within a few minutes of the receipt of the goods after customs clearance. FROM the act of delivery of known valuable consignment and the omission in discharge of the duty on the part of the carrier it can be inferred that the carrier acted negligently in discharge of their functions. Carrier has also admitted their liability, as stated above, vide their letter dated 6th March, 1998.

10. THE question, therefore, would be: whether the carrier would be liable to pay the loss/damages suffered by the complainant as per Rule 25 or whether its liability is limited as provided in Rule 22(2) of Schedule II of the Carriage by Air Act, 1975. In the present case, as we are required to deal with the question under the Carriage by Air Act, 1972, we reproduce the relevant part of the Rules, which is as under: "22(2)(a). In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of 250 francs per kilogramme, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case, the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that the sum is greater than the passenger's or consignor's actual interest in delivery at destination". "25. THE limits of liability specified in Rule 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result: provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment." Rule 22(2)(a): Now, the question that requires consideration, in terms of Rule 22(2)(a) is: Whether the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination, and had paid a supplementary sum if the case so required?

With regard to special declaration of interest in delivery it has been pointed out that the complainants have paid 200 per cent of the normal freight charges by specifically declaring that it was gold jewellery and its value was as per the invoices. For the customs clearance also the value was mentioned at Rs. 19,66,218. In the column "handling information" it is specifically mentioned that it was "valued cargo, ensure security".

11. AS per the invoice, the CIF value is mentioned as US Dollars 55,845: FOB Value (in INR) is mentioned as Rs. 19,78,008. Freight and Forw. Charges, i.e. Rs. 10,701, and, Insurance at Rs. 19,91,991. It is, therefore, pointed out that the gold jewellery in package was handed over to the carrier with a special declaration of interest in delivery at destination and has paid 200 per cent of the normal freight charges. In such cases, as per rule, carrier will be liable to pay a sum not exceeding the declared sum, unless the carrier proves that the sum was greater than the consignor's actual interest in delivery at destination. In this case, there cannot be any dispute with regard to consignor's actual interest in the value of the goods. Hence, the carrier would be liable to pay a sum not exceeding the declared sum.

12. HOWEVER, it was contended that as per the bill, the declared value for carriage is mentioned as Rs. 99,000, and, therefore, there is non-compliance of the aforesaid Rule 22. In our view, the phrase used in the Rule is "special declaration of interest in delivery at destination" has not been explained in the

Air Waybill. Declaration is already made with regard to the exact sum by mentioning that its declared value for customs Rs. 19,66,218, and, further, invoice is also delivered to the carrier wherein the contents of the package and its value is mentioned, as stated above. Learned Counsel for the parties were not in a position to point out what type of other special declaration of interest was required. In this view of the matter, in our view, the carrier (KLM) cannot contend that its liability is limited, as provided under Schedule II of Rule 22 of the Carriage by Air Act, 1972. Rule 25: In the alternative, presuming that even if there is no special declaration of interest as contemplated under Rule 22(2)(a), then, we have to find out whether there is compliance of all the ingredients of Rule 25. For the said purpose, Rule 25 can be devided as under: (a) Whether it is proved that the damage resulted from an "act" or omission of the carrier? (i) For this, there is no doubt that the damage has resulted from the "act" of the carrier in delivering the goods without there being the original bank release note. (ii) Further, it was omission on the part of the carrier in not verifying from the consignee (Bank) that someone was claiming the release of goods without bank release note. (b) Whether it was done recklessly or with the intent to cause damage? (i) It can be said without any reservation that it was a reckless act. (ii) With regard to intent to cause damage, it can be easily inferred that delivery of the valuable goods namely, jewellery, without bank release note or original documents would cause damage to the consignee and/or to the consignor. (c) Whether knowledge can be inferred that damage would probably result? As stated above, with regard to valuable gold jewellery of which value is more than about Rs. 20 lakh knowledge can be inferred that wrong delivery would cause damage. The person who was taking the delivery was not identified and was not known to the carrier. Submissions of the Learned Counsel for the K.L.M:

13. THE Learned Counsel appearing on behalf of the KLM (the Carrier), referred to various decisions giving meaning to the words "recklessness", "wilful", etc.

14. IN our view, in the present case, the facts speak for themselves and the maxim *res ipsa loquitur* would be applicable. However, we would refer to some of the judgments relied upon by the learned Counsel for the KLM. At the outset, we make it clear that Schedule II of Rule 25 of the Act uses the words "act" or "omission" which is "reckless" and not the expression "wilful default". Therefore, interpretation given to the expression "wilful default" would not have much bearing on the facts of the case. Therefore, we would consider how the word reckless is interpreted.

The word "reckless" is considered by this Commission in *Manager, Air India Ltd. & Anr. v. India Everbright Shipping & Trading Co.*, First Appeal No. 451 of 1994 reported in I (2002) CPJ 51 (NC), wherein the Commission has referred to the dictionary meaning in the Black's Law Dictionary as well as the interpretation of the said word by the Court. The relevant discussion is as under: "With regard to the word "recklessly" the Black's Dictionary says, "A person acts recklessly with respect to a material element of an offence when he consciously disregards a

substantial and unjustifiable risk that the material element exists or will result from his conduct. This risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation". In *Shawinigan Ltd. v. Vokins & Co. Ltd.*, (1961) 3 All ER 396, this is how Megaw, J. described recklessly: "In my view, "recklessly" means grossly careless. Recklessness is gross carelessness-the doing of something which in fact involves a risk, whether the doer realises it or not; and the risk being such having regard to all the circumstances, that the taking of that risk would be described as "reckless". The likelihood or otherwise that damage will follow is one element to be considered, not whether the doer of the act actually realised the likelihood. The extent of the damage which is likely to follow is another element, not the extent which the doer of the act, in his wisdom or folly, happens to foresee. If the risk is slight and the damage which will follow if things go wrong is small, it may not be reckless, however unjustified the doing of the act may be. If the risk is great, and the probable damage great, recklessness may readily be a fair description, however much the doer may regard the action as justified and reasonable. Each case has to be viewed on its own particular facts and not by reference to any formula. The only test, in my view, is an objective one. Would a reasonable man, knowing all the facts and circumstances which the doer of the act knew or ought to have known, describe the act as "reckless" in the ordinary meaning of that word in ordinary speech? As I have said, my understanding of the ordinary meaning of that word is a high degree of carelessness, I do not say "negligence", because "negligence" connotes a legal duty."

15. FROM the law as stated above, it can be held that recklessness ordinarily would mean "high degree of carelessness". The other objective test can be, would a reasonable man, knowing all the facts and circumstances, consider the said act as "reckless"? From the facts as stated above, it can be held that the act of delivery of the gold jewellery without the bank release note was an act of gross carelessness and may indicate that it was intentional misconduct. Because, a prudent employee of the KLM knowing the fact that the small packet, containing gold jewellery, valued more than Rs. 20 lakh, as described in the invoice, in ordinary course of business, would not deliver such goods in the manner in which it is done, and, that too, in breach of all requirements. The extent of damage which was likely to follow was also known to the doer. In such cases, it can be said that carrier/employees are guilty of wilful default as it has disregarded the normal procedure of taking care in handling such a consignment.

16. THE learned Counsel for the KLM relied upon what is meant by the expression "wilful default". He submitted that the agent of the KLM has released the goods on the basis of alleged fax message, and therefore, it cannot be said to be a wilful act so as to be covered by Rule 25. He referred to the decision in *S. Sundaram Pillai v. V.R. Pattabiraman*, AIR 1985 SC 582. In that case the Court was concerned with the interpretation of the expression "wilful default" used

under Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. In our view, as such, the said judgment would have no bearing on the facts of the present case. But, still, we would refer to the ratio laid down therein which would establish that it was a wilful default on the part of the carrier. THE relevant part is as under: "25. Thus, a consensus of the meaning of the words "wilful default" appears to indicate that default in order to be wilful must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom. Taking for instance a case where a tenant commits default after default despite oral demands or reminders and fails to pay the rent without any just or lawful cause, it cannot be said that he is not guilty of wilful default because such a course of conduct manifestly amounts to wilful default as contemplated either by the Act or by other Acts referred to above." Applying the aforesaid ratio it would be apparent that the "agents" or "employees" of the KLM committed "wilful default" in not verifying the veracity of the fax message or identity of the person from the bank which was the consignee and released the goods without "Bank Release Note". The dictionary meaning of "wilful default" which is as under: "22. In other words, "wilful default" would mean a deliberate and intentional default knowing fully well the legal consequences thereof. In Words and Phrases, Vol. 11-A (Permanent Edn.) at p. 268 the word "default" has been defined as the non-performance of a duty, a failure to perform a legal duty or an omission to do something required. In Vol. 45 of Words and Phrases, the word "wilful" has been very clearly defined thus- "Wilful" - intentional; not incidental or involuntary; -done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly; thoughtlessly, heedlessly or inadvertently; - in common parlance word "wilful" is used in sense of intentional, as distinguished from accidental or involuntary. p. 296-"Wilful" refers to act consciously and deliberately done and signifies course of conduct marked by exercise of volition rather than which is accidental, negligent or involuntary." 22A. In Vol. III of Webster's Third New International Dictionary at p. 2617, the word "wilful" has been defined thus- "governed by will without yielding to reason or without regard to reason: obstinately or perversely self-willed." 23. The word "default" has been defined in Vol. I of Webster's Third New International Dictionary at p. 590 thus: "to fail to fulfil a contract or agreement, to accept a responsibility; to fail to meet a financial obligation." 24. In Black's Law Dictionary (4th Edn.), at p. 1773 the word "wilful" has been defined thus: "Wilfulness" implies an act done intentionally and designedly; a conscious failure to observe care; conscious; knowing; done with stubborn purpose, but not with malice. The word "reckless" as applied to negligence, is the legal equivalent of "wilful" or "wanton"." Applying the aforesaid dictionary meaning, it would be a "wilful" act because, the "act" or "omission" of the employees of the KLM were without regard to reason or were perverse, and self-willed. It can also be said to be wilful failure to fulfil a contract or agreement or conscious failure to observe care. The learned Counsel Mr. Aggarwal referred to the decision in Rakapalli Raja Rama Gopala Rao v. Naragani Govinda Sehara Rao, (1989) 4 SCC 255, wherein the Court has observed that "an act is said to be wilful if it is intentional,

conscious an deliberate". In that case also, the Court has followed earlier decision in S. Sundaram Pillai (supra) and no different ratio is laid down. Hence, it is of no use to refer to the other decisions in view of the established facts of the present case and the law as discussed above. Learned Counsel for the KLM further referred to the decision rendered by the Delhi State Consumer Disputes Redressal Commission in Ms. Gargi Parsai v. KLM Royal Dutch Airlines, I(1996) CPJ 2. In our view, the aforesaid judgment is not required to be discussed, because the wordings in Rule 25 of Second Schedule and Rule 25 of the First Schedule are altogether different. Rule 25(1) of Schedule-I, inter alia, provides that if the damage is caused by "wilful misconduct" or by such default on his part as is in the opinion of the Court equivalent to wilful misconduct. As against this, Rule 25(1) of Schedule II, as quoted above, does not talk of wilful misconduct, but covers reckless act or omission. Therefore, the rest of the judgments which are on the same point are not required to be dealt with. Finally, we hold that when employees of a carrier are dealing with goods worth crores of rupees, they are expected to be cautious in delivering the goods to a layman and ought not to have delivered without ascertaining his identity, without verification of proper documents and without the knowledge of the consignee or the consignor. In such a case, a man of prudence would certainly arrive at the conclusion that the act or omission on the part of the employees was reckless and knowledge can easily be inferred that it would cause damage to the consignor/consignee. In view of the above discussion, we hold the K.L.M. responsible for the "deficiency in service". For the reasons stated above, the similar direction is required to be given in the present case by holding that the KLM, respondent No. 2, would be liable to compensate the Complainant for the deficiency in service. Liability of the Insurance Co. (O.P.No.1): Submissions:

17. FOR the liability of the Insurance Company, learned Counsel Mr. Mehra vehemently submitted that in the present case, destination mentioned in the policy is from Delhi to London and there is no mention with regard to "Bermingham" and the Cargo reached Bermingham and, therefore, the Insurance Company is not liable. It is his contention that there was deviation of the destination and, therefore, under Section 46 of the Marine Insurance Act, the insured is not entitled to get any reimbursement. Section 46 specifically provides that where the destination is specified in the policy and the ship, instead of sailing for that destination sails for any other destination, the risk does not attach. He, therefore, contended that the Insurance Company is not liable.

18. SECONDLY, he contended that the original documents are not delivered to the Insurance Company and, therefore, the Insurance Company rightly repudiated the claim. It is his submission that if the original documents are delivered to the Insurance Company, the Insurance Company could have followed the persons who have committed breach of the contract of not delivering the goods to the consignee. In any case, the Insurance Company would have pursued its remedy against the concerned party. Therefore, return of the documents was required. Thirdly, he submitted that in the present case, the

consignee bank would be liable because it is totally unbelievable that from the bank like "Nat West Bank", documents can be misplaced or taken away by someone else. He submitted that this had happened not in one case but in all four such other cases during the same period where the consignment was for the jewellery which was sent though Nat West Bank (as consignee).

As against this, learned Counsel, Mr. Madhavan, appearing on behalf of the complainant submitted that the policy is to be read along with the endorsement made on the policy; as that endorsement specifically provides that details are given in the invoice. Invoice number is also mentioned. He further pointed out that as per the policy, destination is from door to door and that is to be verified only from the invoice. Findings: Special declaration as required under Rule 22(2) (a):

19. FOR the application of Rule 22(2)(a) referred to in the order dated 29.9.2006 in the three other connected petitions, in this case also there was a special declaration of interest in the delivery and the complainant had paid 200% (as mentioned in the airway bill itself Ann A/Page 36) of the normal freight charges by specially declaring that it was gold jewellery and its value was as per the invoice. In fact, the airway bill clearly stated, "SAID TO CONTAIN : 22 KT. FINENESS GOLD JEWELLERY, VALUABLE CARGO". FOR Customs purposes/clearance also the value was mentioned in the airway bill as Rs. 29,19,536. In our view, in the present case, apparently in the policy, there is no mention about the consignee or the address of the consignee or the notified party. With regard to the details, it has been stated that "as per the invoice". The invoice states the name and address of the consignor as well the consignee. The consignee's name is as under: M/s. Nat West Bank, Lincon Road Mill Field, Branch Peter-borough PE 1 Z UR, England U.K.

20. THE name of the notified party is also mentioned. All the details of the articles which are consigned are also mentioned. THEREfore, in our view, mistake by mentioning the word "London" instead of "Birmingham" in the policy cannot be avoided. THE mistake is on the part of the concerned officer of the Insurance Company. Normally, in most of the policies, consignee's name and the destination is required to be mentioned. However, the respondent Insurance Company has adopted a different Form wherein there is no such column. Further, if the contention of the Insurance Company is accepted, the other terms of the policy would be redundant. The schedule of conditions, inter alia, provides: (a) "This insurance attaches from the time the parcel is taken from the premises of the senders and continues during the ordinary course of transit until delivery at the premises of the consignees as per address declared on the consignment." (b) There is another clause, namely, door to door clause which reads as under- "This insurance attaches from the time the goods leave the premises of the sender and continues in the ordinary course of transit whilst carried by the senders and/or their employees and/or Customs employee and/or Agents and whilst in the custody of Post Office and/or Bank and/or Customs and/or all other places

through which the goods have to pass in the ordinary course of transit and in the ordinary course of transit and terminates on delivery at the address of the consignee at destination." (c) Further, to the policy "institute cargo clause" is attached. That also provides as to for which risk is covered. It states - "this insurance covers all risk of loss or damage to the subject-matter insured except as provided in Clauses 2, 3 and 4." Admittedly, Clauses 2, 3 and 4 are not applicable in the present case. The duration clause specifically, inter alia, provides that the risk commences as soon as the subject matter insured leaves the warehouse of the consignee and continues during the ordinary course of transit and terminates either on the delivery to the consignees or other final warehouse, etc.

21. CONSIDERING these clauses together, we have to read the policy as a whole and, therefore, mere mistake in mentioning the destination instead of Birmingham as London would not vitiate the terms of the policy or it cannot be said that there was change of voyage which would attract Section 46 of the Marine Insurance Act.

22. IN support of the contention, learned Counsel, Mr. Madhavan referred to the Principles of General INSurance, INSurance INstitute of INdia (Code IC-10) published by the INSurance INstitute of INdia. IN the Chapter of Scope and Functions of INSurance, for the interpretation of policies, Para-57 provides as under: "Another feature of an insurance contract is that it is drafted by one party only viz. the insurer in the form of standard policies and endorsements. The insured usually has no say in the matter. Therefore, whenever there is an ambiguity in the wording of the policy, the Courts have given the benefit of doubt to the insured that is to say, the policy is interpreted by the Courts in favour of the insured and against the insurers, because the policy was drafted by the insurers." Further Para-59 specifically provides that the most important rule of transaction is that the intention of the parties must prevail and this intention is to be looked for in the policy itself.

One of the other important rules stated therein is, "(i) Printed and typed portions are to be construed together as far as possible but if there is contradiction between the two portions, the typed portion overrides the printed portion. The hand-written portion overrides the typed portions." In the present case, hand-written portion would override the typed portion mentioning the destination as London. Hand-written portion specifically provides , "details are as per the invoice". The invoice gives complete detail of the consignor, consignee and consignment.

23. TO the same effect, the Apex Court had laid down the law in Smt. Shashi Gupta v. Life Insurance Corporation of India, II (1995) CPJ 15 (SC)=AIR 1995 SC 1367: "As both the aforesaid interpretations are reasonably possible, we would accept the one which favours the Policy holder, as the same advances the purpose for which a Policy is taken and would be in consonance with the object to be achieved for getting lives assured". Similarly in United India Insurance Co.

Ltd. v. Pushpalaya Printers, I (2004) CPJ 22 (SC)=II (2004) SLT 263=(2004) 3 SCC 694: "If there is any ambiguity or a term is capable of two possible interpretations, one beneficial to the insured should be accepted consistent with the purpose for which the policy is taken, namely to cover the risk on the happening of a certain event" The contention that the original consignment note was baseless and fanciful and as such conjecture was unsupported by the facts. Hence, it does not deserve any further consideration. For the same reasons recorded in the earlier judgment in O.P. No. 217/97, 47/98 and 296/98, we reject the said contention. Bank's Liability (Opposite Party No. 4):

24. MR. Vishnu Mehra, learned Counsel for the Insurance Company submitted that the original documents are not delivered to the Insurance Company and, therefore, the Insurance Company rightly repudiated the claim. It is his submission that if the original documents were delivered to the Insurance Company, the Insurance Company could have followed the persons who have committed breach of the contract of not delivering the goods to the consignee. In any case, the Insurance Company would have pursued its remedy against the concerned party. Therefore, return of the documents was required. Similar contention was raised in the previous cases also wherein we have held that there is nothing on record to establish that officers of the Bank have taken any part in the alleged fraud. For the fraud, some persons were prosecuted before the Crown Court at Northampton. There is an elaborate judgment and nowhere it points out that the bank employees were involved in the said fraud. Further, it is the contention of the Bank that they have received the original documents on 18th October, 1996, and the goods were released prior to the receipt of the original documents. That means before the consignee-Bank received the documents, fraud was committed by some persons who were tried and convicted by the Crown Court. For this the liability would be that of KLM.

25. IN the previous cases it was held that that there is nothing on record to establish that officers of the Bank have taken any part in the alleged fraud. For the fraud, some persons were prosecuted before the Crown Court at Northampton. There is an elaborate judgment and nowhere it points out that the bank employees were involved in the said fraud.

26. HOWEVER, with regard to deficiency in service by the Bank (opposite party No. 4) we have discussed this aspect in the previous cases and held that: "Even though there is nothing against the officers of the Bank, or the Bank that the officers of the Bank were party to the alleged fraud, it is surprising to note that a Bank like the National Westminster Bank a known and established bank with all their system, computerization and documentation are modernized especially being in a country like the U.K., submit that the original documents pertaining to air waybill, invoice, etc., received by it from its counterpart in India are lost from the custody of the Bank, that too, not in one or two cases, but in all the four consignments, within a span of two weeks. There is no whisper as to how, suddenly, such documents were misplaced so that they could not be found out by

the bank officers. The bank has also not explained as to what are their internal instructions for maintaining such important documents and who are responsible for not maintaining them properly. Hence, an inference can be drawn that a reasonable care which is expected from a bank of high standard is not taken to protect the valuable documents which would be the basis of recovering a large amount for sale of jewellery. In our view, such a statement before the Court, is an admission of its deficiency in service. This deficiency on the part of the Bank cannot be condoned. Because, for want of original documents, the Insurance Company repudiated the claim and the complainants are without reimbursement for years for the loss suffered by them. In such circumstances, deficiency on the part of the Bank is established by its own admission that the documents are lost, which, according to us, is an unusual thing. No doubt, the loss of original documents has not played any part in release of the goods, because, the goods were released prior to the receipt of the original documents. In these set of circumstances, for the deficiency in service by the Bank in not protecting the valuable documents, we think that it would be just and reasonable to direct the bank to pay compensation/punitive damages as provided under Section 14 of the Consumer Protection Act, 1986. Hence, the Bank is directed to deposit the sum in rupees equivalent to 5,000 Pounds, with the National Consumer Disputes Redressal Commission. The said amount shall be deposited by the Registrar of the National Commission in the "Consumer Legal Aid Account" to be administered by this Commission". Valuation: In the present complaint the relevant details for valuation are as under: Airway Bill No. : 074-7423 3191 (Ann A/Page 36) Invoice dated : 9-10-1996 (Ann B/Page 37) Value of goods : US \$ 82,310.00 Freight : US \$ 229.70 Insurance : US \$ 150.30 Total : US \$ 82,690.00

Rate of conversion is not mentioned in the invoice. Therefore, the rate of conversion can be taken as US \$ 1 = Rs. 35.79 as taken in OP 296 of 1998 in which also the date of the invoice was 9.10.1996.

27. CALCULATED accordingly, the value works out to US \$ 82,690 = Rs. 29,59,475.10. Compensation: With regard to the compensation claimed by the complainants, we think that in such cases proper measure or yardstick for granting compensation would be award of appropriate rate of interest on the amount which the complainant would have received, had the consignment been delivered to the consignee (Bank). That means, the complainant would have received the amount on the basis of the invoices and in terms of US Dollars and was required to get them converted in terms of the rupees on receipt of the amount, if receipt was in Dollars or Pounds.

28. THEREFORE, award of reasonable rate of interest would cover the compensation payable to the complainant, as it was a commercial transaction and the prices of gold has escalated. Hence, we direct that the amount shall be paid with interest at the rate of 12% p.a. Conclusion: In the result it may kindly be ordered as in the other three cases that- (a) The opposite party No. 2, KLM Cargo, shall pay to the complainant a sum of Rs. 29,59,475 with interest at the

rate of 12% per annum from 1st November, 1996 till the date of payment, within a period of four weeks from the date of the order; (b) In case KLM fails to pay the amount as directed, it would be open to the complainant to recover from the Oriental Insurance Co. Ltd. (OP-1), the amount of Rs. 29,59,475 with interest at 12% per annum from 1st November, 1996 till its payment. (c) KLM Cargo shall also pay costs of litigation quantified at Rs. 1,00,000 which amount shall be deposited with the Registrar of this Commission within a period of four weeks from the date of the order. (d) Opposite party No. 4, National Westminster Bank, shall deposit a sum in rupees equivalent to British Pounds 5000 with the Registrar of the Commission within a period of four weeks from the date of the order. It is also directed that the amount which will be deposited by the National Westminster Bank and the cost of litigation which will be deposited by the KLM, with the Registrar of this Commission shall be deposited by the Registrar in the "Consumer Legal Aid Account" which is being administered by this Commission.

29. THE Original Petition is allowed accordingly. Complaint allowed.