

**(1906) 09 MAD CK 0007**  
**In the Madras High Court**

K.V.S. Sheik Mahamad Ravuthar

APPELLANT

Vs

The British India Steam Navigation Company Limited

RESPONDENT

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**Date of Decision :** 05-09-1906

**Acts Referred:**

**Citation :** (1907) ILR (Mad) 79 : (1906) 16 MLJ 573

**Hon'ble Judges :** Subrahmania Aiyar, J; Miller, J

**Bench :** Full Bench

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## **Judgement**

Subrahmania Aiyar, J.—This is a suit for the recovery or Rs. 2,400 odd, the value of 246 bags of rice, being part of the, rice shipped in

Rangoon, in the S.S. "Thorndale," belonging to the first defendant Company for delivery at the port of Tuticorin to the 2nd and 3rd plaintiffs, agents

of the 1st plaintiff. The goods arrived at Tuticorin and were landed by the Company and placed on the foreshore. About 1098 bags of rice out of

the total cargo, belonging to various parties, brought by the ship and placed on the foreshore, were destroyed under the orders of the Municipal

authorities on the ground that they had become damaged by rain and unfit for consumption. Among them were the bags with reference to which the

present claim is made. That the bags became damaged by rain and liable to destruction is not disputed. Admittedly the monsoon set in from the

night of the 27th October, and it continued to rain heavily off and on up to the 30th idem. The landing of the rice cargo had, no doubt, commenced

on the 24th, but it was continued even after the rains had set in and until the 30th. Though some default was imputed to the plaintiffs, the District

Judge's opinion must be taken to be in their favour, for while he thought there was apathy and negligence on the part of the consignees, speaking

generally, he found it impossible to say that the plaintiffs themselves were among those that were in any way to blame. As regards the charge of

negligence against the company the District Judge expressed himself thus:

There is no evidence that the cargo was put out of the ship during rain, but if it happened to begin raining while" the boats 1 were between the ship

and shore, the boats naturally went on the wetting received by the bags in these circumstances would have caused no damage had the consignees

taken delivery at once. The damage was caused on the foreshore, and the fact that the bags had to""stay there a long time was entirely due to the

negligence of consignees, for defendants did all they could to clear the cargo quickly.

2. Reading these observations with the conclusion of the Judge that it was impossible to find, negligence on the part of the plaintiffs themselves, the

only possible view with reference to the bags in dispute is that they, having got wet while being landed, were allowed to remain on the foreshore in

such condition that the wetting ultimately resulted in their being completely damaged, and this without any default on the part of the plaintiffs. The

other matters relevant in this connection are (1) that after the bags in question left the ship nothing was done by the company to protect them from

exposure to rain either during transit or on the foreshore, and (2) that the company are unable to show the specific date or dates on which they

were landed and, if stacked at all, when that was done so as to enable the plaintiffs to take delivery.

3. In these circumstances I am of opinion that the company in landing the goods as they did without precautions to prevent damage to them failed

to take the same care of the plaintiffs" goods as a prudent person would, in similar circumstances, have taken of like goods of his own and that the

damage was therefore the result of the company"s negligence.

4. The question, therefore, is whether the company is exempted from liability by the terms of the Bill of Lading. Mr. Chamier, on behalf of the

company, relied, in support of his contention that they were not liable, on the exception contained in the body of the instrument as to ""accidents,

loss or damage from any act, neglect or default whatsoever of the Pilot, Master or Mariners or other servant of the company"" and also upon the

"following passage in the concluding Dart of paragraph 9 of the conditions

appearing at the foot of the bill of lading : ""In all cases and under all circumstances the liability of the company shall absolutely cease when the goods are free of the ship's tackle, and thereupon the goods shall be at the risk for all purposes and in every respect of the shipper or consignee.

5. According to the opening part of the said condition No. 9, it was optional with the company to deliver the goods into a receiving ship, or, as the company did on the present occasion, to land them for delivery at the expense of the consignee on a scale of charges fixed by the company. The

bill of lading here is with one exception not material, identical with the bill of lading of the" same company which had to be construed in British

India Steam Navigation Co. v. Ratansi I.L.R(1896) B.184 and the observations of Farran C.J., at page 187 are applicable. He said : ""When

examined it will be found to provide for the carriage of the goods on the voyage, (2) for the landing of the goods, (3) for storing them on the wharf

or in a godown, and (4) for their delivery and appropriate exemptions from liability are inserted to cover each stage of the defendant

responsibility.

6. We are here concerned only with those provisions of the bill of lading which provide for matters arising after the goods leave the ship's tackle

and these are exclusively dealt with by the second passage relied on by Mr. Chamier. The liability or non-liability of the company has therefore to

be decided not with reference to the exemption relied on in the body of the document but solely with reference to the other exemption contained in

the condition No. 9. Mitchell v. Lancashire and Yorkshire Railway Co. L.R. 10 Q.B. 256 cited by Mr. Sudhara Aiyar, seems to me a clear

authority against the construction which Mr. Chamier sought to place upon it. The fact that there the defendants were land carriers makes no

difference. The Railway Company, the defendants in that case, notified the consignee of the arrival of some flax and required him to remove it

stating that they would hold it ""not as common carriers but as warehousemen at owner's risk and subject to the usual warehouse charges."" Part of

the flax was not taken by the consignee for a considerable time and remained in the station on open ground, there being no warehouses in the

place. They were insufficiently covered and got damaged by wet. Treating the advice-note acquiesced in by the consignee as the contract between

the parties, it was held that the company was liable for negligence. The following observations of Blackburn, J. are much in point:

I take it the law is very clear to this extent, that where a carrier receives goods to carry to their destination with a liability as carrier (except so far

as that duty, is qualified by exceptions), he may be said to be an insurer. The goods are then to be carried at the risk of the carrier to the end of

the journey, and when they arrive at the station to which they were forwarded, the carrier has then complied with his duty when he has given notice

to the consignee of their arrival. And after this notice, if the consignee does not fetch the goods away, and becomes in mora, then I think the carrier

ceases to incur any liability as carrier, but is subject only to the ordinary liability of bailee. There are several cases in which the question has been

very much discussed as to when a carrier's liability ceases as an insurer and his liability is changed into that of warehouseman. \* \* \* But I do not

think there has been any case decided to this extent that because the owner of goods was idle and blameable for leaving them in the carrier's

hands therefore he as bailee held them under no responsibility whatever. \* \* \* I think that the words of that note mean to point out that they (the

company) would hold them as warehousemen and therefore they would be bound to take care of them; and at the owner's risk so far as this, that

they did not hold as carriers with a liability as absolute insurers (pages 260 & 262).

7. This advice-note differed from the condition in the present case in that the note in terms stated that carrier's liability had ceased and that the

holding was only in the character of warehousemen. That no such sharp line is drawn in the present case by the provisions under consideration is

not a circumstance making the case of the company better. It is well established that general words of this description used by a carrier, are to be

taken as far as possible against him. *Taubman v. Pacific Steam Navigation Co.* 26 L.T. 704 cited by Mr. Chamier no doubt seems to go the other

way, but, assuming that the language of the contract there is not more specific than that of the condition here, it would, if undistinguishable on the

ground that it related to passengers' baggage, be a decision difficult to follow as not conforming, as suggested in *Beven on Negligence* (p. 1178),

to the rule just stated, according to which ambiguous expressions employed by a company for the purpose of limiting their common law liability

have to be construed against the company. Be this as it may, having regard to the later case referred to above which in many respects bears a

closer resemblance to the present instance, I am of opinion that the defendants here are not by the passage in the condition relied on exonerated

from liability for the negligence established against them. The passage might be taken as going the length of supporting the company's present

contention, if, on the goods having this ship's tackle, they had altogether passed out of the company's charge. But that was clearly not the case in

as much as there was no delivery by the ship's side but only a transit of the goods for delivery on land. Until their duty to deliver in this way was

discharged, the company's possession continued. To say that during such possession they held the property in one character or another, but

without the responsibilities incidental to such character under the law, would be, to say the least, spelling out of the indefinite expression "at the risk

for all purposes and in every respect," an agreement which, if intended to be made, should be in language so explicit as to exclude any other

meaning. For, if the general words here are to be read in the comprehensive way suggested on behalf of the company, they would exempt them

from wilful misconduct on the part of the company's servants. Except when the words leave no option to the Court to construe them as otherwise

than making out an agreement that the party holding the goods in a legal character contracts not be responsible for a breach of any of the incidents

attaching to it in law, the agreement should, I think, be taken to provide only for some definite matter or matters in connection with the legal relation

subsisting between the parties to the agreement. This is implied in the decision in *Mitchell v. Lancashire and Yorkshire Railway Co.* L.R. 10 Q.B.

256. Hence the only tenable view seems to be that the passage in the condition in question puts an end to the company's liability as carriers when

the goods leave the ship's tackle and constitutes their subsequent possession until delivery as that of bailees.

8. In this view it is unnecessary for me to consider whether, if the passage in question were to be construed as operating to exonerate the company

from all possible liability - even for wilful misconduct on the part of their servants" - such an agreement would be sustainable in law.

9. I would accordingly allow, the appeal, reverse the decree of the lower Courts and grant the relief prayed for with costs for the plaintiffs

throughout.

Miller, J

10. I think, having been found to have landed and stacked the rice upon the foreshore during heavy rains, without taking any precaution to protect

the bags, the defendants should have been held by the District Judge to be guilty of negligence. It is not shown that they had any cargo of their own

to land on this occasion, and it is found that they lent to the consignees all the tarpaulins which they had and that they did what they could to

expedite the removal of their property by the consignees, but these facts would not exonerate them. They are negligent if they did not take

reasonable care, and the stacking of bags of rice uncovered on the open foreshore exposed to rain is not prima facie taking reasonable care. The

District Judge's finding must be taken to be that the plaintiffs were not guilty of negligence. Unless then they are protected by the bill of lading the

defendants are liable.

11. My view of the bill of lading is this. The general exception of negligence will apply to all stages of the transaction covered by the contract, and

is not restricted to that stage during which the goods are actually in the ship Cf. *Hassambhoy Visram v. British India Steam Navigation Co. Limited*

*I.L.R(1889) B. 571 Jellicoe v. The British India Steam Navigation Co. I.L.R(1884) C. 489* but if there is a special clause dealing with a particular

stage of the transaction that must be applied, to the exclusion of the general exception Cf. *British India Steam Navigation Co. v. Retansi*

*I.L.R(1896) B. 184*. Here the stage of landing and storing is covered by the comprehensive condition freeing the company from all liability in all

cases after the goods have left the ship's side. Such a condition is intended evidently to exclude all other conditions less wide and comprehensive

than itself, and must be taken to be the sole condition in the bill of lading governing the landing of, and subsequent dealing with the cargo so long as

it stands in the bill of lading. I say the sole condition, because it stems to me that the sentence immediately following "'And thereupon the goods shall

be for all purposes and in every respect at the risk of the shipper or consignee"' does not constitute a second condition but merely reiterates and

explains the first.

12. Now the condition runs as follows: - In all cases and under all circumstances

the liability of the company shall absolutely cease when the goods are free of the ship's tackle, and thereupon the goods shall be for all purposes and in every respect at the risk of the shipper or consignee.

13. If this condition gives clear and unambiguous expression to a stipulation made by the one party to the contract and accepted by the other, we

are, to use the words of Cockburn, C.J. in *Stadhara v. Lee* 32 L.J. Q.B. 77 bound to give effect to that stipulation, without stopping to consider

how far it is reasonable or not. There does not seem to be here any ambiguity in the stipulation. In the case of *Mitchell v. Lancashire and Yorkshire*

*Railway Co.* L.R. 10 Q.B. 256 relied on by Mr. Sundara Aiyar, Field, J. felt himself bound to construe the words at the sole risk of the owner in

the contract before him as subject to the expressed admission that the company held as warehousemen, i.e., under a known character and

definition." And Lord Blackburn's judgment proceeded principally on the ground stated at the bottom of page 261 of the report, where he said:

What we have to consider is, whether defendants can have the benefit of receiving warehouse rent without any liability whatever, for that is what

Mr. Herschell's argument came to. We are to be paid warehouse rent and keep them as warehousemen but we are not bound to take any care of

them at all. It is but reasonable to suppose that if the defendants meant to express any such thing as that it should have been expressed clearly and

distinctly"; and the learned Judge was unable to import the meaning contended for into the words at owner's sole risk." Here there is no ambiguity

that I can see. The words, though general, are perfectly distinct and clear. The company does not say that it will hold as warehousemen or under

any other "known character and definition." It says simply that it will take absolutely no liability in any case or under any circumstance once the

goods have left the ship, and that from that time all risk for all purposes and in every respect shall be upon the owner. I do not think that anything

can be, clearer than this. It no doubt involves the position to which Lord Blackburn adverted, that the defendants repudiate liability while charging

landing charge and storage rents. But the repudiation is distinct and clear here and not qualified by any undertaking, and, however much I may

endeavour to read their words against the company, I cannot read into them an admission of any liability whatever for loss or damage done to the

goods while being landed or stored. Would a shipper reading this bill of lading think that he had any protection in the landing of his goods under it?

Surely he could not do so.

14. This case is, I think, practically on all fours with The case of Taubman v. Pacific Steam Navigation Co. 26 L.T. 704 in which the defendants

were exonerated from liability for loss by negligence of a passenger's luggage. Mr. Beven in his work on Negligence in Law (2nd Edition, p. 1310,

foot note) suggests that that case might not be followed in England, and would certainly not be followed in America, but if that be so the reason so

far as I can see would be that the defendants could not be allowed to contract themselves out of all liability. In the case of Le Blanche v. London

and North Western Railway Co. 1. C.P.D. p. 286 to which the learned author refers in his note, the Court does not refer to and does not seem to

me to throw doubt on Tub-man's case. There was an affirmative contract by the Railway Company to do what they could to ensure the punctual

running of the trains, and reading this as a part of the contract, the Court held that the further condition repudiating responsibility for delay or

detention could apply only to such delays and detentions as were not due to the company's default. That is reasonable enough, but is not the case

of Taubman v. Pacific Steam Navigation Co. 26 L.T. 704 where the contract was that the company would not be liable for the loss of luggage

under any circumstances.

15. It may no doubt be that the carrier ought not to be allowed to absolve himself from all liability for negligence, and here Mr. Sundara Aiyar

contended that the condition which I am considering should be struck out of the bill of lading on that ground, i.e., as being contrary to public policy.

It may be open to us to reject it on that ground, but not, I think, on the ground that it does not clearly repudiate all liability.

16. But it is not necessary for me to decide whether or not we can allow the condition to stand a part of the bill of lading, for if it be rejected the

contract to carry and deliver does not thereby fail, and in my view of the bill of lading which I have stated above, if the footnote is struck out the

general exception will come into operation and the company will be protected against the negligence of its servants.

17. It has been frequently held that an exception against negligence is valid if



clearly expressed and the cases in *Jellicoe v. The British India Steam Navigation Co.* I.L.R(1884) C. 489 and *Hussanbhoy Visram v. The British India Steam Navigation Co., Limited* I.L.R(1889) B.. 571 are authorities in India to that effect, from which I am not prepared to express dissent.

18. If then the condition as to landing be struck out, the general exception of negligence will protect defendants, and if the condition be allowed to remain the defendants are protected by it. In either event the second appeal fails and I would dismiss it with costs.

19. u/s 575 of the CPC the judgment of the Hon. Mr. Justice Miller prevails and the Second Appeal is dismissed with costs.