
(1968) 09 KL CK 0007

In the High Court Of Kerala

Case No : Second Appeal No. 1111 of 1965

State of Kerala

APPELLANT

Vs

New Dholaru Steamships Ltd.

RESPONDENT

Date of Decision : 11-09-1968

Acts Referred:

Citation : AIR 1969 Ker 308

Hon'ble Judges : P. Narayana Pillai, J

Bench : Single Bench

Advocate : Govt. Pleader, for the Appellant; P.K. Kurien, V. Desikan, K.A. Nayar, K. Sukumaran and C.M. Ramachandra Menon, for the Respondent

Judgement

P. Narayana Pillai, J.—The question in this appeal depends upon what is the true reading of the 3rd clause of paragraph 6 of Article III in the Schedule of the Carriage of Goods by Sea Act, Central Act XXVI of 1925, (hereinafter referred to as the Act) and is whether, when on the date of suit more than one year has elapsed from the date of departure from the port of delivery of the ship which carried the contracted goods but not from the last date of actual delivery of a portion of them the consignee has a subsisting right to claim compensation for short delivery.

2. Paragraph 6 of the aforesaid Article reads as follows:

"6, Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given: if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods,"

3. The suit out of which this appeal arises, was filed on 7-4-1962 by the appellant, the State of Kerala, against a shipping company, the New Dholaru Steamships Ltd., for damages for short delivery of 10 and odd tons of M. S. Hods valued at Rs. 7,600 and odd. The goods were shipped at Calcutta on board "S. S. Jayalakshmi" under 2 bills of lading for delivery at Cochin. The ship arrived at Cochin on 7-7-1960 and left that port on 12-7-1960. Except 10 and odd tons covered by the suit the rest of the goods was delivered by the defendant to the plaintiff on several dates, the last of which was 28-7-1961. The suit was resisted by the defendant on various grounds one of which based on paragraph 6(3) of the aforesaid Article was that the plaintiff had no subsisting enforceable right to claim compensation. Issues 4 and 5 raised in the suit related to it and they were heard preliminarily and disposed of. The decision of both the trial and lower appellate courts, on them was against the plaintiff.

4. Both the lower courts relied upon the decision in *The East and West Steamship Company, George Town, Madras Vs. S.K. Ramalingam Chettiar*, in support of their conclusion. What directly falls for decision in the instant case is when the 2 dates, the date of actual delivery of goods and the date when they should have been delivered are different and one of them falls within one year before suit and the other outside it which of them should be taken as the starting point for calculation of the period of one year mentioned in paragraph 6(3) of the aforesaid Article. If delivery of goods is made on several dates the question also arises as to whether it is not the last of those dates that has to be taken as the starting point. These questions did not arise for consideration and were not considered in *The East and West Steamship Company, George Town, Madras Vs. S.K. Ramalingam Chettiar*, . Only 3 points arose for decision in that case and they were whether the word "loss" as used in paragraph 6(3) of the Article included failure to supply goods also, whether the period of one year fixed in that paragraph was a period of limitation for suit or for extinction of right and what was the import of the words "the date when the goods should have been delivered" as used there. The Supreme Court held that the word "loss" was wide enough to include failure to deliver goods also, that the period of one year fixed was one for extinction of the right to claim compensation and that the last date when the goods should have been delivered was the date of departure of the ship from the port. No opinion whatsoever was expressed in that decision as to which date had to be taken as the basis for calculation of the period of one year when the date of delivery of goods was different from that when they should have been delivered. In the present case the trial Court ignoring the dates of delivery of

goods took the starting point for calculating the period of one year as the date when the ship left Cochin and that Court's decision was affirmed by the lower appellate Court.

5. I now come to the Act itself and the circumstances under which it happened to be passed. The rights and liabilities of the carriers by sea whose activities were widespread, were not uniform in all countries. Consequently merchants were put to great difficulties. To remedy their grievances it became necessary to have a set of uniform rules. At a meeting of the International Law Association at Hague in 1921 certain Rules known as the "Hague Rules" were approved, In the next year with certain modifications those rules were recommended by the delegates to the Diplomatic Conference on Maritime Law held at Brussels to their respective Governments for adoption. Thereafter on the recommendation of the Imperial Economic Conference held in 1923 most of the then British dominions including India passed the necessary Acts. These matters are clear from pages 439 to 441 of the 15th Edition of Scrutton on Charter Parties, the Preamble to the Act and The East and West Steamship Company, George Town, Madras Vs. S.K. Ramalingam Chettiar, -

6. The Act applies only to outward as distinguished from homeward bills of lading. Consequently the provisions in bills of lading, which though outwardly are only receipts for goods shipped on board ships showing the terms on which the goods were delivered to and received by the ships are realty documents of title and form part of the currency of trade, issued from our country and the provisions in the Act would have to be interpreted in foreign countries and the provisions in the bills of lading issued from foreign countries and the provisions in the corresponding Acts of those countries would have to be interpreted in our courts. This involves a serious responsibility on our part and that is emphasised in AIR 1960 SC 1058. One of the decisions cited in that case is Stag Line Limited v. Foscolo Mango and Company 1932 AC 328 where Lord Atkin observed that as the English Act was the result of an International Conference intended to unify rules relating to bills of lading, in construing the provisions of that Act words had to be given their plain meaning and that one should not allow to colour his interpretation by considering whether a meaning otherwise plain should be avoided if it altered the previous law and Lord Macmillan said:

"It is important to remember that the Act of 1924 was the outcome of an International Conference and that the rules in the Schedule have an international currency. As these rules must come under the consideration of foreign Courts it is desirable in the interests of uniformity that their interpretation should not be rigidly controlled by domestic precedents of antecedent date, but rather that the language of the rules should be construed on broad principles of general acceptance."

7. To turn now to Article III in the Schedule of the Act, Paragraph 6 (3) provides for extinction of the right of the consignee to claim compensation for loss and damage if one year has passed after the delivery of goods or the date when the

goods should have been delivered, For calculating the period of one year two starting points are given and that in the alternative. There may be cases where the two starting points synchronise. There may also be cases where one of them may be earlier than the other. In such cases it is to the advantage of the consignee that the later date is adopted as the starting point for calculation of the period of one year. Both the starting points are equally applicable to the instant case. None of them can be said to be more general or more specific than the other. In such cases it is only a fair rule of construction that that which keeps alive the right should be preferred and that as much time as the language admits of should be given in the matter of computation of the period, If the goods are delivered on several days it is from the last of those days that the period of one year has to be calculated because only on that day inclusive of the delivery of goods on that day can the total loss and damage be assessed. From all these it follows that in the present case the plaintiff's right to claim compensation for short delivery had not become extinguished on the date of suit as one year had not passed after the last date of delivery of some of that goods.

8. In the result, the judgments and decrees of the lower courts are set aside, issues 4 and 6 raised in the suit are found in favour of the plaintiff and the case is remanded to the trial court for trial and disposal according to law of the remaining issues raised in the suit. This Second Appeal is allowed as mentioned above. The plaintiff is allowed to recover the costs hitherto incurred by it in all the three courts from the defendant.