
(1969) 02 CAL CK 0024
In the Calcutta High Court
Case No : Suit No. 1475 of 1965

Union Carbide India Ltd. and Another	APPELLANT
Vs	
Jayanti Shipping Co. (P.) Ltd.	RESPONDENT

Date of Decision : 25-02-1969

Acts Referred:

Bills of Lading Act, 1856 — Section 3

Citation : 74 CWN 5

Hon'ble Judges : R.M. Datta, J

Bench : Single Bench

Advocate : Gautam Chakravorty and Rajat Ghose, for the Appellant; Tapas Kumar Banerjee and C.R. Datta, for the Respondent

Judgement

R.M. Datta, J.—This is a suit for the recovery of a sum of Rs. 12,782.83 paise, alternatively, for an enquiry into the sum due and a decree for the sum to be found due upon such enquiry, on account of loss and damages due to shortage, non-delivery and damage to the goods. The case of the plaintiff No. 1 is that a consignment of 499 paper bags of Indian Polythylene weighing 12735 Kgs. was shipped on board the defendant's vessel s.s. "Krishna Jayanti" for carriage from Bombay Port to Calcutta Port under the Bill of Lading No. 5 dated July 27, 1964. On August 19, 1964, the said vessel arrived at the Port of Calcutta and completed the discharge of the cargo on or about September 2, 1964. The defendant failed and neglected to deliver 52 bags of Polyethylene weighing 1300 kgs. out of the said consignment. In respect of the goods delivered, there was a shortage to the extent of 607 kgs. of Polyethylene. A further 293 Kgs. were delivered in a damaged and deteriorated condition.

2. The plaintiff No. 1 made a request for ship's survey and about 57 Polyethylene bags were surveyed by Messrs. Norman Stewart & Co., the marine surveyors, on two different dates at the Kidderpore docks.

3. The goods were thereupon taken to the consignee's premises where they were again surveyed but this time by K. Vinee & Co., a firm of surveyors

employed by the consignee. It was found on survey that the loss and damages suffered by the plaintiff No. 1 was to the extent of Rs. 12,782.83 paise. On the basis of this survey report made by M/s. K. Vinee & Co., the plaintiffs filed this suit.

4. The goods were insured by an open insurance policy which was issued by the plaintiff No. 2 covering the aforesaid risk of non-delivery, shortage and damages. The plaintiff No. 1 preferred its claim on the Insurance Company and received the full amount of the claim in full and final settlement under the said open policy. The plaintiff No. 1 executed a deed of subrogation whereby the plaintiff No. 2 became subrogated to all the rights of the plaintiff No. 1 on account of any and all such damages in respect of the goods covered by the said Bill of Lading.

5. The defendant filed its written statement on December 22, 1965. The defendant admitted the bill of lading but did not admit the particulars of the goods mentioned therein. In other words, neither the number of bags nor the contents thereof nor the weight of the said goods were admitted by the defendant. The defendant sought to protect itself from liability by relying on the various terms of the bill of lading. The defendant denied its liability for the shortage in respect of the number of bags or the quantity of the damaged goods. The defendant also alleged that the terms and conditions of the bill of lading had not been complied with by and on behalf of the plaintiff No. 1 and denied its liability to pay any amount whatsoever.

6. The following issues were settled at the trial:-

1. Did Carbide Chemicals Co. book 499 paper bags of India Polyethylene weighing 12735 Kgs. gross per s.s. Krishna Jay anti under the said Bill of Lading, as alleged in the plaint?

If not, what quantity was shipped?

2. (a) Did the defendant fail to deliver 52 bags as alleged in paragraph 7 of the plaint?

(b) Was there a shortage of 607 Kgs. of goods as alleged in the plaint?

(c) Were 293 Kgs. of goods damaged as alleged in the plaint?

(d) Was the non-delivery of damage or shortage caused by negligence or by breach of contract?

(e) If so, to what effect?

3. Is the defendant bound by the Short Landing Advice dated October 10, 1964?

4. (a) Did the plaintiff notify in writing the carrier or its agents its alleged claim for damages before the goods were removed from the Port Commissioner's custody?

(b) Did the plaintiff notify in writing to the carrier or its agents its alleged claim

for short-delivery or short landing within one month from the date of completion of the vessel's discharge?

If not, has the plaintiff forfeited its alleged claim against the defendant?

(c) If not, to what effect?

5. Is the plaintiff entitled to recover damages to the extent of Rs. 12,782.83 P. or any other sum on the basis as alleged in paragraph 8 of the plaint?

6. To what relief, if any, is the plaintiff entitled?

Issue No. 1: The plaintiffs relied on the bill of lading to prove what goods were actually booked and the quantity in respect thereto.

7. The said bill of lading inter alia provided as follows:

Particulars of the pieces and/or/merchandise/packages declared by the shipper.

Marks and Numbers

No. of Packages

Description of Goods

Said to weigh

Rate per Ton

Freight

UCIL Calcutta

499

6 Ply Paper Bags Indian Polyethylene

12735 Kgs. gross

49.25 per 1000 Kgs.

627.20

It is further mentioned in the bill of lading that the freight was payable in Bombay and that the goods were shipped in apparent good order and condition on board the said vessel.

8. On the basis of the said particulars and the terms and conditions thereof the plaintiffs claimed that the particulars of the goods and the weight thereof could not be disputed by the defendant and the Court should come to the finding that the polyethylene weighing 12735 Kgs. were booked in 499 paper bags.

9. In support of the plaintiff's contention reliance was placed on the amount of the freight to the extent of Rs. 627.20 paise which must have been arrived at on the basis of the quantity mentioned in the bill of lading. According to the

plaintiffs, the quantity of India Polyethylene mentioned in the said bill of lading must have been found to be correct by the defendant otherwise the freight could not have been arrived at a definite figure. The plaintiff also relied on the Carriage of Goods by Sea Act 1925 and the Rules framed thereunder and contended that the defendant was precluded from denying the particulars mentioned in the said bill of lading.

10. As against the aforesaid, the defendant contended that the weight mentioned in the bill of lading was not admitted and the same was mentioned on the basis of the particulars declared by the shippers. Moreover, the bill of lading would itself show that the weight of the goods was not admitted and as such it was specifically mentioned therein that the goods were "said to weigh" 12735 kgs. gross. Furthermore, it was printed in the body of the bill of lading to the effect that the counter-marks and the numbers were unknown. The defendant also relied on condition No. 6 of the bill of lading which inter alia provided that the weight, contents and value of the goods when so shipped were unknown and as such it was incumbent upon the plaintiff to prove the same.

11. In paragraph 11 of the written statement the defendant pleaded inter alia, that during this particular voyage the said vessel did not carry any consignment of polyethylene save and except those mentioned in the said bill of lading.

12. In my opinion, this constitutes a clear admission on the part of the defendant that the goods were polyethylene and the weight mentioned in the bill of lading were correctly loaded on board the said ship.

13. In my opinion, the bill of lading has to be construed as a whole and the printed terms and conditions have to be read subject to the description and number of packets and the weights mentioned in the said bill of lading. The defendant could not have arrived at the freight unless the defendant was satisfied about the quantity, quality and the weight of the goods shipped and as declared by the shipper.

14. Article III Rule 3 of the Rules relating to bills of lading as contained in the schedule to the Indian Carriage of Goods by Sea Act 1925 provided as follows:-

3. After receiving the goods into his charge, the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper bill of lading showing among other things-

(a) The loading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained in such a manner as should ordinarily remain legible until the end of the voyage;

(b) Either the number of packages or prices, or the quantity or weight, as the case may be as furnished in writing by the shipper;

(c) The apparent order and condition of the goods;

Provided that no carrier, master or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he had reasonable grounds for suspecting not accurately to represent the goods actually received or which he has had no reasonable means of checking.

15. The above Rule clearly contemplates that it is only when the carrier would be satisfied upon checking them only the carrier would be bound to state or show in the bill of lading the marks, number, quantity or weight of the goods. Rule 4 thereof provides that in such event the bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3(a), (b) and (c) above. The above Rules 3 and 4 of Article III came into existence by the Indian enactment of the Carriage of Goods by Sea Act XXVI of 1925 whereby the law relating to the Carriage of Goods by Sea was amended in India.

16. On behalf of the defendant reliance was placed on the case of (1) New Chinese Antimony Company Limited v. Ocean Steamship Company Limited reported in L.R. (1917) 2 K.B.D. 664 where such a clause in the bill of lading was construed and the Court found that the same could not be considered as a prima facie evidence. In the case of (1) New Chinese Antimony Co. Ltd. v. Ocean Steamship Co. Ltd. (ante) the bill of lading as qualified by the words "weight or quantity unknown". Accordingly the bill of lading was held to be not even prima facie evidence against the ship owner of the amount or quantity thereto. In any event, (1) New Chinese Antimony Co.'s case was decided before the coming into force of the Hague Rules, 1921 which ultimately resulted in the enactment of the Carriage of Goods by Sea Act 1924 in England. The provisions of the English Carriage of Goods by Sea Act 1924 and the Rules framed thereunder, it appears, have been embodied in India in the Indian Carriage of Goods by Sea Act 1925 and the language provided in both the enactments are practically the same. Accordingly, the following passage in Scrutton on Charter-parties 17th Edition, at page 157 can be conveniently relied on to appreciate the correct position.

Where the Carriage of Goods by Sea Act, 1924, applies the use of such phrases as "Weight unknown"? or "quantity unknown" of no effect in qualifying admissions in the bill of lading. For, by Rule III in its Schedule, the carrier must (but only on demand of the shipper) state the quantity or weight as furnished in writing by the shipper unless he has reasonable grounds for suspecting that they are inaccurate or unless he has had no reasonable means of checking them, and by Rule 4 this statement is to be prima facie evidence of the receipt of such quantity or weight. But the carrier need only state the number of packages or the quantity or the weight. And in the case of bulk cargoes even this may not be necessary. See section 5 of the Act and Article III, Rule 3 in Section III.

17. It follows, therefore, that the bill of lading in suit is prima facie evidence of the booking of 499 paper bags of Indian Polyethylene weighing 12735 Kgs. gross.

18. Section 3 of the Bills of Lading Act 1856 also provides in effect that the bill of lading is evidence of shipment of the goods on board the ship. The case of (2) Home Insurance Co. Ltd., New York and another v. Ramnath and Co. reported in AIR 1955 Mad 602 also supports the view I have taken.

19. On behalf of the defendant reliance has been placed on the case of (3) Pannalal Kishanlal Vs. Osaka Shosen Kaisha and Another, in which A.N. Roy, J. considered a case where on the facts of the case it was found that there was specific disclaimer as to the number of packages. Accordingly, the Court came to the conclusion that the bill of lading was not conclusive evidence against the ship-owner.

20. As indicated above, the bill of lading in the suit before me contained a printed clause being clause 6 which provided to the effect that the contents, weight and value of the goods when so shipped were unknown. But the main part of the bill of lading which contained the particulars of shipment of the goods provided, inter alia, that there were 499 packages of Indian polyethylene packed in 6 ply paper bags and the same were said to weigh the quantity mentioned above. Moreover, in the facts and circumstances of this case I have already indicated that paragraph 11 of the written statement contained a clear admission on the part of the defendant that the goods shipped were polyethylene and the quantity and weight mentioned in the bill of lading were correctly loaded on board the ship. Accordingly the judgment of Ray, J. is distinguishable from the fact of the case before me.

21. In the case (4) Canada and Dominion Sugar Co. Ltd. v. Canadian National (West Indies) Steamships, Ltd., reported in AIR 1947 P.C. 40 the Judicial Committee observed that the bill of lading must be construed as a whole. In the said case the Judicial Committee also considered the similar provisions as are provided in Article III, rule 4 and it was held that rule 3 would expressly apply only when the ship owner would demand a bill of lading showing the apparent order and condition of the goods. It was found that rule 4 had no practical application in that case. The bill of lading in that case did not describe the goods as being received in apparent good order condition whereas in the bill of lading in this suit there is such a description. The Judicial Committee followed the view expressed by Scrutton L.J. in the case of (5) Silver v. Ocean Steamship Co. Ltd. reported in L.R. (1930) I. K.B. 416 at page 425, that rule 4 of article III had not the effect of allowing the shipowner to prove that goods which he had stated in apparent good order and condition on shipment were not really in apparent good order and condition as against the people who accepted the bill of lading on the faith of the statement contained in it.

22. In the case of (6) Attorney-General of Ceylon v. Scindia Steam Navigation Co. Ltd., India reported in L.R. (1962) A.C. 60 the probative value of the bill of lading was also considered. There a consignment of rice was shipped from Burma to Ceylon. The carriage of the cargo was to be governed by the terms and conditions of the bill of lading. There were three bills of lading and each one of

them provided that the bags of rice were shipped in apparent good order and condition as is the case here. The Indian Carriage of Goods by Sea Act 1925 and the schedule thereto were applied to the contracts contained in the bills. There was similar provision "weight, contents and value when shipped unknown." After considering rules 3 and 4 of article 111 of the Indian Carriage of Goods by Sea Act 1925 the Judicial Committee came to, the finding that although there was no evidence that any demand was made for the issue of the bills of lading as provided under rule 3 of Article 111 of the schedule to the Indian Carriage of Goods by Sea Act 1925, yet the statement in the bills of lading as to the number of bags shipped were strong prima facie evidence (though not conclusive evidence) that the stated number of bags had in fact been shipped. In that case also no evidence was adduced on behalf of the shipowner and as such the said prima facie evidence of the bills of lading was not dislodged. The case of (4) Canada & Dominion Sugar Co. Ltd., (ante) was also considered by the Judicial Committee.

As observed by the Judicial Committee at p. 74:

Even though the plaintiff called no evidence from Rangoon and took the possibly unusual course of depending in the main on the production of the bills of lading their Lordships conclude that the bills of lading did form strong prima facie evidence that as Jalaveera had received the stated numbers of bags for shipment to Colombo and delivery to the Director of Food Supplies (See (7) Henry Smith & Co. v. Bedouin Steam Navigation Co. 1896 A.C. 70). The shipowners would, however, be entitled to displace the prima facie evidence of the bills of lading by showing that the goods or some of them were never actually put on board; to do that would require very satisfactory evidence on their part.

23. The Judicial Committee distinguished (1) New Chinese Antimony's case (ante) and applied the case reported in (7) L.R. 1896 A.C. 70.

24. In the instant case before me no evidence has been called on behalf of the shipowners to dislodge the prima facie evidence of the bill of lading as to the number of packages. As regards the other descriptions, I have already indicated why in spite of the said condition in the bill of lading viz., "weight, contents and value when shipped were unknown", the description and weight of the goods should be considered as evidence in this case. Accordingly, I am satisfied from the evidence on record that Union Carbide booked 499 paper bags of polyethylene weighing 12735 Kgs., as described in the bill of lading and I answer Issue No. 1 in the affirmative and I hold that the aforesaid quantity was shipped.

25. Issue No. 2(a): Counsel for the plaintiff has conceded that in this case his client would not be able to substantiate its case for 52 bags as the quantity short landed and accordingly the case is confined to 33 bags as mentioned in the B form. The plaintiff has called a witness from the Port Commissioners and has proved a document which is commonly called B form issued by the Port Commissioners. The witness has stated that the said document was signed by

him and he prepared the same from the outturn report and the jetty challan. He has admitted that this document cannot be called the landing certificate but if such a certificate would be asked for the same would be prepared from this B form. On behalf of the defendant it is contended that the landing certificate should have been produced and this document being the B form is nothing but an advice and cannot be called a reliable document to prove the short landing. In any event this document shows that 33 bags were short landed and not 52 bags as led in the plaint. The further criticism is that the witness could not have any personal knowledge of the actual short landing and the B form as prepared by him could not show the actual position of landing.

26. On behalf of the plaintiff it is contended that the outturn report was also prepared under the supervision of this witness and as such he had knowledge of the outturn report. If a certificate would be asked for the same would also be prepared by this witness from this B form and they are practically the same. Accordingly, the B form is the primary document in relation to the landing certificate. There was no suggestion made on behalf of the defendant that this B form was in any manner incorrect. No evidence was called on behalf of the defendant to prove to the contrary. Even at the time the B form was tendered no objection was taken on behalf of the defendant on the ground or to suggest that the document was not the primary evidence. It appears from the correspondence that the agents of the defendant by their letter dated 5th May 1965 addressed a letter to Union Carbide India Ltd. asking it to produce the original Port Commissioner's B form and two certified copies thereof to satisfy itself about the alleged short landing and they intimated by the said letter that on receipt of the said document amongst others they would register the plaintiff's claim in their books and would start their investigation. Lastly, it is contended on behalf of the plaintiff that under the Commercial Documents Evidence Act (Act XXX of 1939) the Court may presume that the contents of the said B form is correct.

27. In my opinion, the plaintiff has discharged its onus in proving through an independent witness that there was a short landing to the extent of 33 bags. The defendant had the opportunity to produce evidence which were available to it to show that the defendant actually delivered the entire quantity to the Port Commissioners and/or unloaded the said entire quantity into the Lighters. The ship's manifest could have been produced to show what was the actual position. Even no oral evidence has been adduced on behalf of the defendant. I have no hesitation to conclude that those documents have been deliberately withheld because had they been produced they would have corroborated the plaintiff's case.

28. Considering all the points as above, I have come to the finding that the defendant failed to deliver 33 bags out of the said consignment and there was short landing to that extent.

29. Issue No. 2(b) and (c); on the question of shortage out of the goods delivered and of the damaged goods, it appears that at the Kidderpore Docks the

goods were surveyed by Messrs. Norman Stewart & Co. The survey report was also signed on behalf of the defendant. It appears from the two survey reports of the said Norman Stewart & Co. that the goods were surveyed on two different dates, firstly, on 10th September 1964 and secondly on 19th September 1964. It appears from the said two survey reports that two different lots of 35 multiply paper bags and 25 multiply paper bags only were surveyed. In other words a total number of 57 bags were surveyed and the condition of the bags so surveyed was slated to be burst and/or torn and placed in gunny bags.

30. It is difficult to appreciate why only 57 bags were surveyed and not the balance quantity. No body was called on behalf of the defendant to prove these two documents.

31. On behalf of the plaintiff one Rabin Banerjee, an assistant surveyor of Messrs. K. Vinee & Co. was called to give evidence. This firm of K. Vinee & Co. were employed on behalf of the plaintiff to survey the goods while the consignment was lying in the plaintiff's premises No. 2, Turner Road, Calcutta-2. It appears that on the basis of this survey report the plaintiff has put forward its claim in the suit. The witness was personally present at the time of survey and had direct knowledge of the goods surveyed. According to the witness the bags contained different grades of polyethylene. The sweepings were mixed up with all foreign materials. There were bags which were just sweeping only. The bags got burst by the hooks which were used in loading and unloading them. The bags were roughly handled by using hooks for removing them from place to place. The witness when asked was definite that the damage had been caused at the port or it might be that it was caused during transit also but it could not be in the consignee's godown. On behalf of the defendant it was suggested to the witness that the goods were damaged while they were in transit from the port to the consignee's godown and/or while they were in the plaintiff's custody.

32. In cross examination, Banerjee was definite that the goods were not damaged or the shortage did not occur at the consignee's godown as suggested. According to him whenever any incoming consignment would come that would be kept in the inspection bed and there would be a security guard posted there. Nobody would be able to pilfer or tamper with the consignment in the consignee's premises. Further, according to him, although he was not present all the time at the consignee's godown yet according to his experience he could say that all the incoming consignments were kept apart and were under strict security guard. Nobody would be allowed to handle that. The difference in dates would be due to customs formalities or due to clearance of the goods. He was definite that the report of K. Vinee & Co. was correct in every respect.

33. At the request of the plaintiff No. 1 the defendant agreed to the goods being surveyed by the said Norman Stewart & Co. The said marine surveyors made their reports which had been exhibited in this case and the conditions of the said paper bags in both the said reports were described as burst and/or torn and about 20 bags were said to have been replaced or repacked in gunny bags. The

said two reports of Norman Stewart & Co. were signed both by the plaintiff No. 1 and by the defendant. It appears that the shortage, if any, occurred before the ship's survey was held by Norman Stewart & Co. Accordingly, the suggestion that the goods might have been damaged or the shortage might have been occurred while the goods were being taken from the Port Commissioner's shed to the consignee's godown cannot, in my opinion, hold good. In my opinion, the two survey reports of Norman Stewart & Co. go to support Banerjee's evidence to the effect that the shortage or the damage did not occur at the consignee's premises.

34. In the written statement the defendant has stated that the entire cargo mentioned in the said bill of lading was landed at the Calcutta Port. The defendant deliberately withheld all evidence from the Court about the period before and during the landing of the goods. In my opinion, if the defendant had produced its relevant documents and witnesses that were within the control and possession of the defendant, the exact position would have been revealed. In any event, the persons responsible in surveying the goods on behalf of Messrs. Norman Stewart & Co. should have been called by the defendant to prove the condition of the entire consignment at the time of the landing thereof. Surely the witnesses of the Shipping Company could have stated under what circumstances and why and who put the polyethylene from the damaged paper bags to the gunny bags. Had they been called and the documents produced the exact position might have been fully revealed. Under those circumstances it would not be unreasonable to presume and my finding is that the shortage did occur while the goods were with the Shipping Company and before the landing thereof.

35. It has been suggested that the goods were landed from the vessel into lighters and for some days they were lying in the lighters and that the shortage or the damage might have occurred while the goods were on the said lighters.

36. From the oral and documentary evidence on record I am satisfied that the shortage claimed in the plaint did actually occur while the goods were in the custody and control of the Shipping Company.

37. Accordingly on the evidence on record I hold that there was a shortage of 607 Kgs. of goods as claimed in the plaint.

38. With regard to the damage to the bags I am not satisfied on the evidence on record as to the extent thereof and I hold that in order to entitle the plaintiff to claim the same much more evidence should have been adduced to enable the Court to come to the finding in favour of the plaintiff. Accordingly the claim in respect of the loss suffered for 293 Kgs. of goods cannot be upheld and the same is accordingly rejected.

39. Issues 2(d) and (e): As stated above the defendant did not choose to call any witness. It is argued on behalf of the defendant that inasmuch as the plaintiff has failed to prove the loading of the goods and the landing thereof there could be no obligation on the part of the defendant to adduce any evidence on

the question of negligence or for breach of contract. In my opinion, the defendants have failed to discharge the onus cast upon them on this issue. The defendants must disclose all evidence in their possession and must call the witnesses who would be in a position to say in what way the defendant had dealt with the goods while the same were in their possession, control and custody. It is only when the defendants would do so then from and out of the said evidence so adduced the plaintiff has to establish negligence. The facts relating to the dealing with the goods by the Shipping Company was within its special knowledge and as such the Shipping Company was to satisfy the Court by calling evidence and from the documentary evidence as to how they have dealt with the goods.

40. Under those circumstances, I decide this issue against the defendant and I answer the same in the affirmative by holding that the defendant was negligent in the matter of non-delivery of the goods or in respect of the shortage thereof. The effect of it is that the defendant would be liable to compensate the plaintiff for such negligence and for such breach of contract.

41. Issue No. 3. I have already held that the short landing advice dated October 10, 1964 was admissible as a secondary evidence and on that basis the same has been tendered in evidence. As to whether the defendant is bound by the said short landing advice or not is immaterial. The said short landing advice, in my opinion, is a good piece of evidence which would go to prove short landing in the facts and circumstances of this case.

42. Issue 4(a), (b) and (c): This issue has been raised because of the two conditions in the bill of lading in suit. The bill of lading provides that no claim for damage will be admitted unless notified in writing before the goods are removed. Then again, it also provides that no claim for short delivery, short landing, non-delivery, total loss, or any other claim whatsoever in respect of the goods mentioned in the said bill of lading will be entertained unless made in writing within one month from the date of completion of the vessel's discharge and subject to the condition in the said bill of lading. On the question of damage to the goods I have already held that the plaintiff is not entitled to the same for want of sufficient proof and accordingly the first clause in the bill of lading as indicated above need not be considered. With regard to short delivery or short landing a time has been fixed within which intimation was to be given in writing to the carrier or its agent. The main question is whether the particular clause in the bill of lading is bad in law.

43. Article III paragraph 8 of the Rules relating to Bills of Lading as provided in the Schedule to the Indian Carriage of Goods by Sea Act 1925 provides as follows:-

Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall

be null and void and of no effect.

A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability.

44. The said paragraph in the said Article III was construed in the case of (8) The East and West Steamship Company, George Town, Madras Vs. S.K. Ramalingam Chettiar, . In the said case the Supreme Court held that such a clause in the bill of lading would be void as offending against paragraph 8 of Article III for it seeks at least to lessen otherwise than provided in the rules in the schedule, the liability of the ship or the carrier for loss or damage to the goods or in connection with the goods caused by the failure to deliver. In any event, a joint survey was held by Norman Stewart & Co. at the request of the plaintiff and accordingly the defendant had notice about the claim for short delivery or short landing. I accordingly answer the said issues as follows:-

45. Issue 4(a): In view of my finding that the plaintiff is not entitled to claim on account of the damage to the goods the decision of this issue has become immaterial. In any event such a clause is void.

46. Issue No. 4(b): Following the said Supreme Court case I decide that the provision of the notice in the bill of lading for short delivery or short landing is void and accordingly no notice was necessary to be served. Hence the question of the plaintiff's claim being forfeited cannot arise.

47. Issue No. 4(c): In view of the decision in issues Nos. 4(c) and 4(b) the question of deciding this issue does not arise.

48. Issue No. 5: On the question of the value of the goods it is in evidence before me that the Carbide Chemical Co., Bombay which is one of the departments of the plaintiff No. 1 despatched the said goods by stock transfer. An invoice dated 31st December 1964 being No. 43/3977 has been disclosed and tendered in evidence (Ext. I) on behalf of the plaintiff. The said document Exhibit I has been proved by the witness A.N. Shenoy. According to his evidence the manufacturing price of the said Polyethylene is Rs. 7.10 per kg. The market price is higher. The defendant has not called any evidence of market price to the contrary or at all. I am satisfied that the evidence given by Shenoy is reliable and satisfactory and the same should be accepted. Banerjee has also stated that he has knowledge about the value of the goods and he quoted the value at Rs. 7.16 per Kg. Of course, Banerjee has derived his knowledge about the value from the representative of the plaintiffs and as such I do not attach any importance to his evidence on the question of value. In any event, in my opinion, the evidence of Shenoy is acceptable and I accept the same.

49. Issue No. 6: The plaintiffs have put forward their claim in the particulars in paragraph 8 of the plaint. In clause (i) the value of 52 bags weighing 1300 Kgs. on account of nondelivery and/or for short landing was claimed at a sum of Rs. 9230/- but inasmuch as the plaintiff is only entitled to the value of 33 bags on

account of nondelivery and/or short landing the plaintiff would be entitled to a decree on this account to the extent of a sum of Rs. 5874/- calculated on the basis of the rate of Rs. 7.10 per Kg. The plaintiff would also be entitled to a sum of Rs. 4309.70 paise as claimed in clause (ii) in paragraph 8 of the plaint as value of 607 Kgs. which were found short from amongst the goods delivered. After adding the said figure the defendant is entitled to the credit to the extent of Rs. 1022.90 P. as admitted by the plaintiff on account of salvage for sweeping. This would bring the total figure to a sum of Rs. 9160.80 P. and on the said sum the survey fee as paid for surveying the goods to the extent of Rs. 58/- has to be added making it a total sum of Rs. 9218.80 as the decretal amount. Inasmuch as the plaintiff No. 2 the Home Insurance Company has paid off the claim of the plaintiff No. 1 and has been subrogated to its position I pass a decree in favour of the plaintiff No. 2 the Home Insurance Company against the defendant for the sum of Rs. 9218.80. The plaintiffs would be entitled to interest on decree and costs. Certified for two Counsel.