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Brief Note on the Judgment dated 16th March 2010 passed by the Supreme Court of India in

Contship Container Lines Ltd. v DK Lall & Ors.

Civil Appeal No. 3245 of 2005, 6232 of 2004 and 8276 of 2003

Respondent No.1 ran a sole proprietorship firm in the name of M/s DK Lall Enterprises and received an order for export of iron furniture and iron handicrafts from a Spanish buyer M/s Natural Selection International. Another order for export of miniature paintings was received from a Spanish concern viz. M/s Pindikas. Respondent packed all items in 122 cartons where one carton contained the paintings and the remaining cartons contained the furniture and handicrafts etc. Respondent hired services of one M/s Samrat Shipping and Transport Systems (P) Ltd and the cartons were stuffed in a container which was loaded onto *M.V CMBT Himalaya* a vessel belonging to the Appellant M/s Contship Container Lines Ltd. Respondent No.1 had also taken out an Insurance policy for the goods. When the consignment reached Barcelona, Spain on 1.03.1997, consignment of 121 cartons belonging to M/s Natural Selection International were duly delivered however one carton marked for M/s Pindikas could not be delivered. As a result, the Respondent No.1 filed a complaint O.P No. 272 of 1997 before the National Consumer Disputes Redressal Commission, New Delhi seeking compensation in the amount of Rs. 39,23,225 being the value of paintings along with the interest on account of deficiency of service on the part of Insurance Company, Carrier and the forwarding agent. The claim was contested by the parties inter alia on the ground that the Respondent No.1 was not a consumer and that the paintings were never stuffed in the container. Furthermore the parties also relied upon the Limitation of Liability clause and Article IV Rule 5 of the Carriage of Goods by the Sea Act, 1930 which limits the liability of the carrier by 2 SDR's (Special Drawing Rights) per kg and for the cargo of 200 kgs, the amount came to be only Rs. 21,428 only. The insurance company contended that the Respondent No.1 was in collusion with the buyers and was trying to make an undeserved financial gain. It was also contended that the value of goods indicated in the policy was C.I.F + 10 % whereas the goods were shipped F.O.B. and the Bill of Lading was clean. It was further contended that the liability of the seller came to an end as soon as the goods were loaded on the vessel and the seller was left with no insurable interest in the goods.

The Commission vide its order dated 14.07.2003 held that there was no deficiency on the part of Insurance company since the insurance was taken out on the representation that the goods were being sold on C.I.F basis whereas the goods were actually sold on F.O.B basis which absolved the insurer of any liability as the insured failed to maintain utmost good faith. It was further held by the Commission that the policy covered risks only at the sea and that "warehouse to warehouse" coverage was limited to inland transit alone and the terms of the policy did not cover the risk till delivery was made. On the issue of claim against the carrier, the commission held that the services provided by the carrier were deficient but the liability of the carrier to pay compensation was limited by the provisions of Carriage of Goods be Sea Act. It was also held by the Commission that since no value of goods were given in the Bill of Lading, the Respondent No.1 was only entitled to US $1800 with 9 % interest. The Commission dismissed the complaint against the freight forwarding agency M/s Samrat Shipping and Transport Systems (P) Ltd. by holding that the forwarding agent was acting as an agent of the carrier. The Respondent No.1 filed a Review before the Commission which was also dismissed.

Appeals were filed before the Supreme Court by the Respondent No.1 on account of the dismissal of claim against the Insurance Company and the carrier also preferred an appeal against the order passed by the Commission. Insurance company contended since the transaction between the Respondent No.1 and the buyer was on F.O.B terms therefore the seller had no interest in the goods once the goods were delivered to the carrier as the risk in the goods passed on to the buyer and buyer only could claim or the insurance company. It was further contended that the seller had failed to observe utmost good faith as required under section 19 of the Marine Insurance Act, 1963 by falsely representing to the Insurance company at the time of taking insurance that the goods were being shipped on C.I.F basis whereas in reality goods were shipped F.O.B basis.

Before the Supreme Court the issues arose viz. the liability of the carrier and the liability of the insurer. Besides this other issue that arose was whether a seller of goods sold on F.O.B basis such as the Respondent No.1 could be said to have an interest in marine adventure as defined under section 7 of Marine Insurance

Act, 1963. Supreme Court upheld the judgment passed by the National Commission in so far as the services of carrier were found to be deficient for mis-delivery of the cargo meant for M/s Pindikas. However the compensation of US$ 1800 awarded by the National Commission was reduced by the Supreme Court as it was awarded by the National Commission by taking into account the packing list and not the bill of lading which mentioned only one package. The other notable points are as follows;

a. The Court looked into the definition of "Insurable Interest" and whether the seller retains any insurable interest. Sections 19, 20 to 24 of Sale of Goods Act were also considered by the Court particularly section 23 according to which, in case of unascertained or future goods by description when such goods are unconditionally appropriated to the contract either by the buyer or seller, the property in the goods passes to the buyer. Similarly when the seller delivers the goods to the buyer or to the carrier or to a bailee for the purposes of transmission to the buyer and does not deserve the right of disposal, then the seller is deemed to have unconditionally appropriated goods to the contract. The court also referred to section 26 and 39 of Sale of Goods Act. According to section 26 when the property in goods is transferred to the buyer the goods are at buyers risk whether delivery has been made or not and according to section 39 the delivery of goods to the carrier whether named or not is deemed to be the delivery to the buyer. Lastly the court referred to section 49 according to which the lien stands terminated when the goods are delivered to a carrier for transportation to the buyer without reserving the right of disposal of goods.
b. The Court noted the fact that the contract between the parties was on F.O.B basis and the insurance cover taken by showing the contract to be on C.I.F basis and observed that "*The distinction between c.i.f. (cost, insurance and freight) and f.o.b. (free on board) contracts is well recognised in the commercial world. While in the case of c.i.f. contract the seller in the absence of any special contract is bound to do certain things like making an invoice of the goods sold, shipping the goods at the port of shipment, procuring a contract of insurance under which the goods will be delivered at the destination, etc., in the case of f.o.b. contracts the goods are delivered free on board the ship. Once the seller has placed the goods safely on board at his cost and thereby handed over the possession of the goods to the ship in terms of the bill of lading or other documents, the responsibility of the seller ceases and the delivery of the goods to the buyer is complete. The goods are from that stage onwards at the risk of the buyer.*" The Court further noted the fact that the Respondent No.1 had not reserved any right or lien qua the goods in question and in absence of contract to the contrary, the sellers' lien stood terminated upon the delivery of the goods to the carrier. Referring to the decision of a constitution bench in *B.K Wadeyar v Daulatram Rameshwar Lal AIR 1961 SC 311,* where the Supreme Court had held that in case of F.O.B contracts the property in goods passes on the shipment of goods. The Court then went on to uphold the dismissal of claim against the Insurance Company on the ground that the seller had no insurable interest in the goods which absolved the insurance company of liability to reimburse the loss arising out of mis-delivery of goods.
c. On the issue of failure of the Respondent No.1 in maintaining utmost good faith while taking insurance cover, the Supreme Court upheld the finding of the National Commission. Section 9 of the Sale of Goods Act was referred by the court which deals with the principle that a contract of insurance of of utmost good faith. The Court noted that the fact that the good were shipped on F.O.B basis and the insurance cover was taken out on C.I.F basis was a material departure and was a breach of duty of the assured towards the insurer.
d. On the issue of deficiency of services on the part of carrier, the Court upheld the finding of the National Commission that the carrier was liable for mi-delivery of a carton meant for M/s Pindikas. The court rejected the contention of the carrier that the carton was not properly marked which made it difficult for the shipping company to separate the same from other cartons. However the compensation of US $ 1800 awarded by the National Commission was found to be calculated erroneously on the ground that compensation should have been determined by taking into account the Bill of Lading. The court further noted Rule 5 of Article IV of Hague-Visby Rules and concluded that "*A careful reading of the above would show that in cases where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading and as packed in such article of transport shall be deemed to be the number of packages or units for purposes of Rule 5 as far as these packages or*

units are concerned." It was also held that the National Commission ought to have taken the number of packages as one, as mentioned in the Bill of Lading. The Court set aside the calculation of compensation by the National Commission and held that the shipper would be entitled to compensation of 666.67 Special Drawing Rights per package or two special drawing rights per kilogram whichever is higher and since the single package which was mis-delivered weighed 200 kilograms the compensation would come to 400 special drawing rights and the amount of compensation payable would be 666.67 special drawing rights being the higher. The claim of the Respondent No.1 for an amount of Rs. 39,23,225 was rejected by the court on the ground that compensation for value of goods lost or damaged can be claimed only if the nature and value of goods has been declared by the shipper before shipment and mentioned in the Bill of Lading which was not in the case here.

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