SHIPPING CORPORATION OF INDIA LTD. A

v.

M/S. BHARAT EARTH MOVERS LTD. & ANR.

DECEMBER 5, 2007

B

[S.B. SINHA AND G.S. SINGHVI, JJ.]

Maritime Law—Contract of carriage of goods by sea—From Japan to India—Consignment of 16 cases—Damage to consignment—Suit, claiming damages, filed in India in respect of 2 cases only—Courts C *below holding that Indian Law was applicable to the case and not Japanese law; and that claimant was entitled to damages higher than the maximum liability after calculating the same taking into consideration all the 16 cases—On appeal, held: Japanese law was applicable and not Indian Law—Liability of the defendant was limited* D *in respect of two cases only—Matter remitted for fresh consideration—Carriage of Goods by Sea Act, 1925—s. 2—Japanese Carriage of Goods by Sea Act, 1992—Articles 1, 2 and 13—International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (Hague Rules)—Clauses 5 and 6.* E

Appellant was owner of a fleet of vessels. A consignment containing 16 packages was entrusted to appellant by respondent No. 1 for carriage thereof from Japan to India. On arrival of the consignment at the Port in India, five cases thereof were found in F **damaged condition. The Respondent filed a suit for damages, against the appellant in respect of only two cases. Trial Court held the appellant liable for payment of damages on the ground that it was responsible for causing loss to the consignment as the same had occurred when the cargo was in its charge. It held that respondent** G **was entitled to damages higher than the maximum liability provided for therein as the quantum of damages was to be calculated upon taking into consideration the weight of all 16 cases and not of 2 cases alone. It further held that the contract was governed by Indian**

H

A Carriage of Goods by Sea Act, 1925 and not by Japanese Carriage of Goods by Sea Act, 1992. In intra-court appeal, the Division Bench of High Court affirmed the order of trial court.

B In appeal to this Court, appellant contended that price of the cargo having not been disclosed in the Bill of Lading, the liability of the appellant was confined only to the amount specified therein; and that Indian law was wrongly applied in the case.

Partly allowing the appeal and remitting the matter to the trial court, the Court

C HELD: 1.1. A bare perusal of Section 2 of the Indian Carriage of Goods by Sea Act, 1925, would clearly demonstrate that the same applies to the carriage of goods by sea in ships carrying goods from any port in India to any other port whether in or outside India which would mean that the Indian Act shall apply only when the carriage D of goods by sea in ships takes place from a port situate within India and not a port outside India. As the originating port is outside India, Section 2 of the Indian Act, will have no application. The Japanese Carriage of Goods by Sea Act, 1992 on the other hand, applies in a situation where carriage of goods by a ship is either from a loading E Port or to a discharging Port, either of which is located outside Japan. Therefore, Japanese Act will clearly be applicable in the instant case. [Para 17] [931-D-E]

1.2. The High Court, applied the provisions of the Indian law. F Clause 6 of the Bill of Lading merely raises a legal fiction. It applies to a case where the place of occurrence of loss or damage is not known. It merely provides that in such an event the *quantum* of loss shall not exceed the monetary limit provided for in any international convention or national law. No reason has been assigned in support G of its findings by the High Court. Clause 7 of International Covention for the Unification of Certain Rules of Law relating to Bills of Lading (Hague Rules) also should be read with Clause 6 thereof.

[Para 17] [931-F-H]

2.1. The approach of the High Court that the plaintiff-

H

respondent was entitled to damages higher than the maximum liability provided for therein as the *quantum* of damages was to be calculated upon taking into consideration the weight of all the 16 cases and not only of two cases, is wrong. If the plaintiff - respondent confined its claim of damages only for two cases, there was no room for making the observation that the liability must be calculated taking into consideration the weight of 16 cases. Even in support of the said conclusion, no reason has been assigned. The discussions of the High Court end with the said finding which apparently is contrary to the statutory provisions. [Para 18] [932-B-D]

2.2. It cannot be said that the value of the goods had been declared in the Bill of Lading. It is based on the premise that Bill of Lading refers to the invoice. Invoice is not a part of the Bill of Lading. The value of the goods is required to be stated on the Bill of Lading so as to enable the shipping concern to calculate the *quantum* of freight. It cannot, in absence of any statutory provisions, be held to be incorporated therein by necessary implication or otherwise. Moreover, this contention has been raised before this Court for the first time. The liability of the appellant being limited and that too in respect of the two cases, the matter should be considered afresh. [Paras 19 and 20] [932-E-G]

3. The provisions of the Multimodal Transportation of Goods Act, 1993 whereto reference has been made by the parties before the High Court are not applicable as admittedly the mode of transport was by sea only and did not involve any multimodal transportation as defined in Section 2(k) thereof. [Para 11] [928-B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5638 of 2007.

From the Judgment and final Order dated 2.12.2004 of the High Court of Judicature at Madras in O.S.A. No. 247/2000.

C.A. Sundaram, P.B. Suresh and Vipin Nair (for Temple Law Firm) for the Appellant.

P.R. Sikka and Chander Shekhar Ashri for the Respondents.

A The Judgment of the Court was delivered by

S.B. SINHA, J . 1. Leave granted.

2. Application of the Indian Carriage of Goods by Sea Act, 1925 (for short "the Indian Act") *vis-à-vis* the Japanese Carriage of Goods by B Sea Act, 1992 (for short "the Japanese Act") is in question in this appeal which arises out of a judgment and order dated 2.12.2004 passed by a Division Bench of the High Court of Judicature at Madras in OSA No. 247 of 2000 affirming the judgment and decree dated 7.03.2000 passed by a learned Single Judge thereof in CS No. 75 of 1996.

C 3. Appellant is an owner of a fleet of vessels. A consignment of six sets of Sub Assemblies for PC 650 H.E. was entrusted by the respondent No. 1 for carriage thereof from Kobe, Japan to Madras. It contained 16 packages. It arrived at the Port of Madras on 17.12.1994.

4. A part of the consignment was found in damaged condition. An D inspection therefor was made. Some damage was noticed in five cases. On the premise that the damage of short delivery had been caused due to negligence on the part of the employees of the appellant, a suit was filed on the original side of the Madras High Court. Claim of damage, however, was therein confined to two cases only, viz., case Nos. 00002 E and 0013. In the said suit, the following relief was prayed for:

> "(a) A sum of Rs.16,72,143.87 with interest from the date of plaint all the date of realization (interest of 18%) at 18% p.a as the transaction being commercial one under Section 34 CPC."

F 5. In the written statement, the respondents *inter alia* pleaded 'limited liability' on their part.

A learned Single Judge of the said Court held the appellant liable for payment of damages being responsible for causing damage and loss to the consignment which had occurred at a time when the cargo was in G its charge.

6. In regard to the contention of the appellant that the contract of carriage having been concluded in Japan, the Japanese Act shall apply and not the Indian Act, it was opined:

H "Another contention is raised on the side of the defendant that

Indian Carriage of Goods by Sea Act has been amended by the Multi Model Goods Transportation Act of 1993 and the maximum liability of the carrier per package is not 100/- as contended by the plaintiff and the maximum liability is 666.67 Special Drawing Rights per package or two special drawing rights per kg of gross weight of the goods lost of damaged, whichever is higher, Calculated thus, according to the defendant, the maximum liability of the defendant will be only Rs. 1,31,471.11/- . Even assuming that the liability of the defendant has to be calculated thus, the liability must be calculated taking into weight of 16 cases which are governed by Ex.A-3 Bill of lading and in this case the liability will be more than what is claimed in the plaint. Therefore, the defendant cannot resist the claim of the plaintiff on this ground and the contract is governed by only Indian Carriage of Goods by Sea Act. Therefore, on issue No. 6 & 7. I hold that the contract is governed by Indian Carriage of Goods by Sea Act and the defendant is liable to the extent of the plaintiff's claim and these two issues are therefore answered against the defendant."

7. The Division Bench of the High Court in an intra-court appeal preferred by the appellant herein affirmed the said finding relying on or on the basis of Clause 6 of the Bill of Lading, stating:

"On the basis of above clause 6, the submission of the learned counsel for the appellant/defendant, that the Japanese Carriage of Goods by Sea Act is applicable to the facts of the case, cannot be countenanced."

8. A notice was issued by this Court confined to the question as to whether the appellant has a limited liability to the claim of the respondents.

9. Mr. C.A. Sundaram, learned senior counsel appearing on behalf of the appellant, placed before us the relevant provisions of the Indian Act, Japanese Act as also the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (Hague Rules) to contend that as the price of the cargo had not been disclosed in the Bill of Lading, the liability of the appellant must be held to be confined only to the amount specified therein. It was urged that the High Court

A committed a serious error in holding that the Indian Law would be applicable.

10. Mr. P.R. Sikka, learned counsel appearing on behalf of the respondents, however, supported the impugned judgment.

B 11. Before embarking on the questions raised before us, we at the outset may observe that the provisions of the Multimodal Transportation of Goods Act, 1993 whereto reference has been made by the parties before the High Court are not applicable as admittedly the mode of transport was by sea only and did not involve any multimodal C transportation as defined in Section 2(k) thereof.

12. The scope of the Japanese Act is stated in Article 1 thereof sating:

> "The provision of this Act (except article 20bis) shall apply to the carriage of goods by ship from a loading port or to a discharging D port, either of which is located outside Japan, and Article 20bis shall apply to the carrier's and his servant's liability for damage to goods caused by their tort."

Paragraph 4 of Article 2 defines "one unit of account" to mean "the amount equivalent to one Special Drawing Right as defined in paragraph E (1) of Article 3 of the International Monetary Fund Agreement". Article 4 confers a liability upon the carrier stating that it shall not be relieved therefrom unless exercise of due diligence under the said Article is proved.

The provision regarding limited liability is contained in Article 13 of F the Japanese Act, which reads as under:

> "(1) The carrier's liability for a package or unit of the goods shall be the higher of the following:
>
> 1. An amount equivalent to 666.67 units of account.;
>
> G 2. An amount equivalent to 2 units of account per kilo of gross weight of the goods lost, damaged or delayed.
>
> (2) The unit of account used in each item of the preceding paragraph shall be the final publicized one at the date on which the carrier H pays damages in respect of the goods.

A

(3) Where a container, pallet or similar article of transport (which as referred to as "containers and etc." in this paragraph) is used for the transportation of the goods, the number of containers and etc. or units shall be deemed to be the number of the packages or units of the goods for the purpose of the preceding paragraph unless the goods' number or volume or weight is enumerated in the bill of lading..."

B

13. Indian Act, however, in Section 2, provides for the application of Rules in the following terms:

C

"Subject to the provisions of this Act, the Rules set out in the Schedule (hereinafter referred to as "the Rules") shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in (India to any other port whether in or outside (India)."

D

14. Schedule appended thereto provides for the Rules relating to Bills of Lading. Article IV provides for rights and immunities, the relevant portion whereof reads as under:

E

"1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III.

F

Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this section."

G

Paragraph 5 of Article IV reads, thus:

"5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding 1001 per package or unit, or the equivalent of

H

A that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading..."

15. We may also notice that under the Special Drawing Rights as contained in the International Monetary Fund Special Drawing Rights B would mean 1.00XDR as equivalent to 64.0948 INR and 666.67XDR as equivalent to 42,730.20 INR.

16. Clause 5 of the Hague Rules, to which both India and Japan are parties, reads as under:

C "5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding 100 pounds sterling per package or unit, or the equivalent of that sum in other currency unless the nature and value of such goods have been declared by the shipper before shipment D and inserted in the bill of lading.

This declaration if embodied in the bill of lading shall be *prima facie* evidence, but shall not be binding or conclusive on the carrier."

E 17. Having noticed the relevant statutory provisions, we may also notice the relevant terms and conditions of Bill of Lading which are as under:

"Clause 6: Liability for loss or damage where the stage is not F known:

When in accordance with the condition 4 hereof, the CTO is liable to pay compensation in respect of loss or damage to the goods and the stage of transport where the loss or damage occurred is not known, the liability of the CTO in respect of such G loss or damage shall not exceed the monetary limit indicated in this regard, in any international convention or national law that would have applied, if the contract was for the carriage of goods from a seaport in India and had been covered by a ocean bill of lading. However, the CTO shall not in any case be liable for an amount H greater than the actual loss to the person entitled to make the

claim... A

Clause 7: Liability for loss or damage where the stage is known:

(A) When in accordance with the condition 4 hereof, the CTO is liable to pay compensation in respect of loss or damage to the goods and the stage of transport where the loss or damage B occurred is known, the liability of the CTO in respect of such loss or damage shall be determined by the provisions contained in any International Convention or National Law, which provisions would have applied if the claimant had made a separate and direct contract with the CTO in respect of the particular stage of transport C where the loss or damage occurred and received as evidence thereof any particular document which may be issued in order to make such International Convention or National Law applicable..."

A bare perusal of Section 2 of the Indian Act would clearly D demonstrate that the same applies to the carriage of goods by sea in ships carrying goods from any port in India to any other port whether in or outside India which would mean that the Indian Act shall apply only when the carriage of goods by sea in ships takes place from a port situate within India and not a port outside India. The Japanese Act, on the other hand, E applies in a situation where carriage of goods by a ship is either from a loading Port or to a discharging Port, either of which is located outside Japan. Therefore, Japanese Act will clearly be applicable in the instant case.

The High Court, as noticed hereinbefore, applied the provisions of F the Indian law. We may notice that Clause 6 of the Bill of Lading merely raises a legal fiction. It applies to a case where the place of occurrence of loss or damage is not known. It merely provides that in such an event the quantum of loss shall not exceed the monetary limit provided for in any international convention or national law. G

No reason has been assigned in support of its findings by the High Court. Clause 7 of the Bill of Lading also should be read with Clause 6 thereof. In this case, the vessel sailed from Japan; its destination being Chennai.

H

A As the originating port is outside India, Section 2 of the Indian Act, as noticed hereinbefore, will have no application. The High Court, in our opinion, misread the said provision.

18. The provisions noticed hereinbefore, whether of the Japanese Act or the Indian Act or the Hague Rules, provide for a limited liability. B Contention of the appellant had been rejected by the High Court *inter alia* on the premise that the plaintiff- respondent was entitled to damages higher than the maximum liability provided for therein as the *quantum* of damages was to be calculated upon taking into consideration the weight of all the 16 cases and not only of two cases.

C

With respect, the approach of the High Court is wrong. If the plaintiff- respondent confined its claim of damages only for two cases, there was no room for making the observation that the liability must be calculated taking into consideration the weight of 16 cases. Even in support D of the said conclusion, no reason has been assigned. The discussions of the High Court end with the said finding which apparently is contrary to the statutory provisions.

19. A contention has been raised before us for the first time that the value of the goods had been declared in the Bill of Lading. It is based on E the premise that Bill of Lading refers to the invoice. We cannot accept the said contention. Invoice is not a part of the Bill of Lading. The value of the goods is required to be stated on the Bill of Lading so as to enable the shipping concern to calculate the *quantum* of freight. It cannot, in absence of any statutory provisions, be held to be incorporated therein F by necessary implication or otherwise.

20. We, therefore, are of the opinion that the liability of the appellant being limited and that too in respect of the two cases, the matter should be considered afresh in the light of the observations made hereinbefore G by the learned Single Judge. To the aforementioned extent, the judgments and decrees of the High Court are set aside.

21. The appeal is allowed to the aforementioned extent. There shall, however, be no order as to costs.

H K.K.T. Appeal partly allowed.