SUPREME COURT OF INDIA

Contship Container Lines Ltd.

Vs.

D.K. Lall

C.A.No.3245 of 2005

(Markandey Katju and T.S. Thakur JJ.)

16.03.2010

JUDGEMENT

T.S.Thakur, J.

1. These three cross appeals arise out of an order passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as the `National Commission') whereby it has dismissed the complaint filed by the respondent Shri D.K. Lall, proprietor of M/s Lall Enterprises against respondent-National Insurance Company Ltd. while granting relief in part to the complainant against Contship Container Lines Ltd., the shipping company to whom the consignment in question was entrusted for delivery to the consignee in Barcelona, Spain. The facts giving rise to the controversy may be summarised as under:

2. M/s D.K. Lall Enterprises, a sole proprietary concern, claims to have received an order for export of iron furniture and iron handicraft items from M/s Natural Selection International, a Spanish purchaser of those items. A similar order for export of miniature paintings is also said to have been received by the said concern from M/s Pindikas another concern located in Spain. The case of M/s D.K. Lall Enterprises (hereinafter to as the `Exporter') is that all the items meant for export in terms of the above orders were packed in 122 different cartons for shipment to the purchasers in Spain. According to the exporter while miniature paintings were packed in one carton meant for export to M/s Pindikas, the iron furniture items meant for export to M/s Natural Selection International were packed in 121 other cartons. These packages were, according to the Exporter, checked and cleared by the Customs Authority at Jodhpur and finally stuffed in one simple container, for which purpose the exporter hired the services of M/s Samrat Shipping & Transport System Pvt. Ltd. through its local agent who forwarded the container to Bombay where it was put on board CMBT Himalaya, a vessel belonging to M/s Contship Container Lines Ltd.-appellant in C.A. No.6232 of 2004. It is noteworthy that the exporter had obtained a Marine Cargo/Inland transit insurance policy to cover risks enumerated in the policy.

3. The case of the exporter is that the consignment reached Barcelona, Spain on 1st March, 1997 and that while 121 cartons had been duly received by M/s Natural Selection International, one carton marked for M/s Pindikas comprising miniature paintings was not so delivered to the consignee. The claim for payment of compensation on account of the alleged deficiency of service having been denied by the Shipping Company as also by the Insurance Company the exporter filed O.P. No.272 of 1997 before the National Consumer Disputes Redressal Commission, New Delhi, claiming compensation to the tune of Rs.39,23,225/- representing the value of the miniature paintings with interest pendente lite and till realization. The respondents contested the claim made against them, inter alia, on the ground that the petitioner was not a consumer and that the case involved complicated questions of fact and law, which could not be determined in summary proceedings before the Consumer Commission. It was also alleged that the exporter had never stuffed/exported the carton containing miniature paintings and that the claim made by the exporter to that effect was false. Reference was made to the Bill of Lading according to which the particulars declared by the shipper/exporter had not been checked by the carrier. It was also alleged that under clause 17 of the Bill of Lading and Article IV Rule 5 of The Indian Carriage of Goods by Sea Act, 1925 the liability of the carrier was limited to 2 SDRs per kg of weight, which came to 400 SDRs for the loss of the undelivered package weighing 200 kgs. equivalent to Rs.21,428/- only. The respondents further alleged that the cartons had not been properly marked with the result that the same could not be segregated before being delivered to the consignee concerned.

4. The Insurance Company also filed a separate reply, alleging that the exporter was in collusion with the buyers trying to perpetrate a fraud on them with a view to making an undeserved & unjust financial gain. The company alleged that the valuation indicated in the policy was C.I.F. + 10% whereas the invoice FOB (Free on Board) and the Bill of Lading was clean. The company asserted that the liability of the seller came to an end no sooner the consignment was loaded on to the ship leaving the exporter with no insurable interest in the consignment.

5. The Commission received three affidavits as evidence one filed by the exporter, the second by Carrier while the third was filed by Mr. Ramesh Goyal, Senior Branch Manager of the Insurance Company. By its order dated 14th July, 2003 the Commission held that the Insurance Policy had been obtained on the representation that the transactions between the exporter and the purchasers were on C.I.F. basis whereas the consignment had in fact been sent on FOB basis which absolved the Insurance Company of any liability for the failure of the insured to maintain utmost good faith essential for a marine insurance policy. The Commission noted that in the declaration of the consignment sent to the insured no details of the conditions of shipment were mentioned. There was thus, in the opinion of the Commission, absence of good faith on that account also. The Commission further held that the policy covered risks only at sea and "that ware house to ware house" coverage was limited to risk arising from inland transit alone. The terms of the policy did not according to the Commission cover the risk till delivery was made to the consignee. The Commission on that basis held that there was no deficiency of service on the part of the Insurance Company.

6. In so far as the claim against the carrier was concerned, the Commission recorded a finding that the service provided by them was deficient but held that the liability of the carrier for payment of compensation to the consignee was limited by the provisions of the Indian Carriers of Goods by Sea Act, 1925. The Commission noted that since no value of goods was given in the Bill of Lading the only amount which the exporter was entitled to was a sum equivalent to 1800$ in Indian rupee as per the then prevailing rate of exchange with interest @ 9% from 1.7.1998 till the date of payment with costs of Rs.10,000/-.

> "The complaint, so far as M/s Samrat Shipping & Transport System Pvt. Ltd. was concerned, was dismissed on the ground that it was acting only as an agent of the carrier. A review petition filed against the said order by Mr. D.K. Lall having been dismissed by the Commission by its order dated 29th October, 2003, the appellants have filed the present appeals to assail the correctness of the orders passed by the Commission."

7. Two distinct issues fall for our consideration, one touching the liability of the Insurance Company and the other concerning the liability of the carrier. On behalf of the insurance company a two-fold submission was advanced before us. Firstly, it was contended that since the transaction between the exporter and the purchaser in Spain was on FOB basis, the exporter had no insurable interest in the goods once the same were delivered to the carrier. It was argued that in a FOB transaction the property in goods stands transferred to the purchaser no sooner the goods are entrusted to the carrier or at least when the same cross the customs barrier for shipment. This implies that all the risks relating to such goods are that of the purchaser who alone could sue the carrier or insurance company if there was an insurance cover obtained by him for such goods. The terms of the transaction between the shipper and the purchaser did not in the instant case reserve in favour of the shipper any right or interest in the goods so as to constitute an insurable interest within the meaning of Section 7 of the Marine Insurance Act, 1963.

8. Secondly, it was contended that a contract of insurance was based on utmost good faith not only by reason of the general principles governing such contracts but also by reason of Section 19 of the Marine Insurance Act, 1963. The shipper had not, however, observed utmost good faith while obtaining the insurance cover from the respondent-insurance company inasmuch as the shipper had taken out an insurance policy from the company on the representation that the goods were being dispatched on CIF (cost insurance and freight basis) while in reality the goods had been sent by the shipper on FOB basis which constituted a material non-disclosure hence failure of utmost good faith by him within the meaning of Section 19 of the Act aforementioned.

9. Section 3 of the Marine Insurance Act, 1963 defines marine insurance to mean an agreement whereby insurer undertakes to indemnify the assured, in the manner and to the extent thereby agreed, against marine losses, that is to say, losses incidental to a marine adventure. Section 4 of the Act provides that a contract of marine insurance may, by its

express terms, or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage.

> “Section 5 permits every lawful "marine adventure" to be the subject matter of a contract of marine insurance. The expression "marine adventure" is defined by Section 2(d) in the following words:
>
> "2(d): "marine adventure: includes any adventure where - (i) any insurable property is exposed to maritime perils;
>
> (ii) the earnings or acquisition of any freight, passage money, commission, profit or other pecuniary benefit, or the security for any advances, loans, or disbursements is endangered by the exposure of insurable property to maritime perils;
>
> (iii) any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property by reason of maritime perils.”

10. The expression "maritime perils" referred to in Section 2(d) supra is defined in Section 2(e) as under:

> “2(e) : "maritime perils" means the perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints and detainments of princes and people, jettisons, barratry and any other perils which are either of the like kind or may be designated by the policy.”

11. Section 7 of the Act stipulates that subject to the provisions of the Act every person interested in a marine adventure has an insurable interest. It reads:

> “Section 7: Insurable interest defined - (1) Subject to the provisions of this Act, every person has an insurable interest who is interested in a marine adventure.
>
> (2) In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof.”

12. What is noteworthy is the use of the words "interested in a marine adventure" appearing in Section 7 of the Act.

> “The expression "interested" has not been defined in the Act although sub-section (2) to Section 7 gives an indication of what would constitute `interest' in a marine adventure. The question is whether a seller of goods on FOB basis like the

complainant in the present case can be said to be `interested in marine adventure' within the meaning of Section 7. If the answer be in the affirmative, the complainant would have an insurable interest but not otherwise."

13. The provisions of Marine Insurance Act, 1906 enacted by the British Parliament are in pari materia with those contained in the Indian Act. The former is in fact a precursor to the latter. The definition of `insurable interest' given in the English legislation is the same as the one given in Section 7 of our enactment. Judicial pronouncements by English Courts would, therefore, be both relevant and helpful in understanding the true purport of the expression `insurable interest'.

14. Halsbury's Laws of England, Fourth Edition has, while dealing with the expression "insurable interest" under the Marine Insurance Act, 1906 prevalent in that country, explained the purport of the expression "interest" in a marine adventure in the following words:

> "A person may be said to be interested in an event when, if the event happens, he will gain an advantage, and, if it is frustrated, he will suffer a loss, and it may be stated as a general principle that to constitute an insurable interest it must be an interest such that the peril would by its proximate effect cause damage to the assured, that is to say cause him to lose a benefit or incur a liability."

15. Halsbury's refers to the decision of *House of Lords in Lucena V. Craufurd*[1] as to the meaning of the expression "insurable interest":

> "A man is interested in a thing to whom advantage may arise or prejudice happen from the circumstances which may attend it;...and whom it importeth that its condition as to safety or other quality should continue.
>
> Interest does not necessarily imply a right to the whole or part of the thing, nor necessarily and exclusively that which may be the subject of privation, but the having some relation to, or concerning the subject of the insurance; which relation or concern by the happening of the perils insured against, may be so effected as to produce a damage, determent or prejudice to the person insuring. And where a man is so circumstanced with respect to matters exposed to certain risks and dangers as to have a moral certainty of advantage or benefit but for those risks and dangers, he may be said to be interested in the safety of the thing. To be interested in the preservation of a thing is to be so circumstanced with respect to it as to have benefit from its existence, prejudice from its destruction."

16. Dealing with the question whether the seller of goods retains any insurable interest, Halsbury explains:

"When, however, the property which is the subject matter of the contract of sale has completely passed from the seller to the buyer or when it has under the contract of sale become completely at the buyers' risk, the seller ceases to have any insurable interest, and the buyer acquires one. Thus, a contract for the sale of goods to be supplied on board, a particular vessel may be so framed that the property in them and the risk of their loss do not pass to the buyer until a complete cargo has been loaded, in which case the buyer has no insurable interest until the complete cargo has been loaded; or the contract may be so framed that the property in and the risk as to any part of the goods passed to the buyer on shipment, in which case the buyer acquires an insurable interest on any part of the goods then shipped."

(emphasis supplied)

17. Reference may also be made by us to Macgillivray on Insurance Law. While dealing with insurable interest under contracts for the Sale of Goods, the author has the following to say:

"The unpaid seller of goods who has parted with property in them has no insurable interest in them unless either they remain at his risk or he has a lien, charge or other security interest over them for the price. So long as the risk remains with him, he has an interest whether the property has passed or not, and the measure of his interest is the purchase price or the actual value of the goods, whichever is the greater.

Even when risk and property have both passed, the seller retains an insurable interest in the goods while he still possesses them because, if he is unpaid in whole or part on account of the buyer's insolvency or for other reasons, he has an interest in respect of his lien for the purchase money.

His possession of the goods would also permit him to insure on the buyer's behalf if his intention is clear and the policy does not forbid it."

(emphasis supplied)

18. We may now refer to the provisions of the Sales of Goods Act, 1930 relevant to the transfer of the property in goods to the purchaser specially in a FOB-transaction like the one in the instant case. Section 19 of the said Act provides that in a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred and that for the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case. Sections 20 to 24 of the said Act prescribe rules for ascertaining the intention of the parties as to the time at which the property is to pass to the buyer.

"One of the said rules is that in unconditional contracts for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract

is made irrespective of the fact that the time of payment of the price or the time for the delivery of the goods or both are postponed. Yet another rule contained in Section 23 of the Act is that where contract for the sale of uncertained or future goods by description are unconditionally appropriated to the contract either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods passes to the buyer. So also where the seller delivers the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract. Section 23(2) which stipulates that rule reads:

"Delivery to carrier. - Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract."

19. Section 25 provides that where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such a case, notwithstanding the delivery of the goods to a buyer or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

"Section 26 of the Act provides that unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not. Section 26 may at this stage be extracted:

"Section 26: Risk prima facie passes with property - Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but, when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not:

Provided that, where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault:

Provided also that nothing in this section shall affect the duties or liabilities of either buyer or seller as a bailee of the goods of the other party."

20. Section 39, inter alia, provides that delivery of the goods to a carrier whether named by the buyer or not, is prima facie deemed to be delivery of the goods to the buyer. Sections 46 and 47 deal with unpaid seller's rights and lien and, inter alia, provide that unpaid seller shall, subject to the provisions of the Act and of any law for the time being in force, have a lien on

the goods for the price while he is in possession of them and that the seller can retain the possession of the goods until payment or tender of the price in situations where the buyer has become insolvent or goods have been sold on credit, but the term of credit has expired. The lien, however, stands terminated in terms of Section 49 of the Act when the goods are delivered to a carrier for the purpose of transmission to the buyer without reserving the right of disposal of the goods.

21. Coming to the case at hand, the contract of sale was on FOB basis even when the contract of insurance proceeded on the basis that the transactions between the seller and the purchaser and meant to be covered by the policy would be on CIF basis. The distinction between CIF (Cost Insurance and Freight) and FOB (Free on Board) contracts is well recognized in the commercial world. While in the case of CIF 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 FOB 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."

22. It is common ground that the seller had, in the case at hand, reserved no right or lien qua the goods in question.

> "In the absence of any contractual stipulation between the parties the unpaid seller's lien over the goods recognised in terms of Sections 46 and 47 of the Sale of Goods Act, 1930 stood terminated upon delivery of the goods to the carrier.
>
> The goods were from that stage onwards held by the carrier at the risk of the buyer and the property in the goods stood vested in the buyer. The principle underlying transfer of title in goods in FOB contracts was stated by a Constitution Bench of this Court in *B.K. Wadeyar V. Daulatram Rameshwarlal*[2]. The question as to the transfer of title in the goods arose in that case in the context of a fiscal provision but the principle relating to the transfer of title in goods in terms of FOB contract was unequivocally recognised. This Court held that in FOB contracts for sale of goods, the property is intended to pass and does pass on the shipment of the goods. The National Commission was, therefore, right in holding that the seller had no insurable interest in the goods thereby absolving the insurance company of the liability to reimburse the loss, if any, arising from the mis-delivery of such goods."

23. We consider it unnecessary to delve any further on this aspect of the matter for in our opinion the claim made by the shipper against the insurance company has been rightly rejected by the National Commission on the ground that the shipper had not observed utmost

good faith while obtaining the insurance cover. The principle that insurance is a contract founded on good faith is of vintage value. In Carter V. Boehm (1766) 3 Burr 1905 one of the earliest cases on the subject the principle was stated by Lord Mansfield in the following words:

> "Insurance is a contract of speculation.
>
> The special facts upon which the contingent chance is to be computed lie most commonly in the knowledge of assured only; the underwriters trusts to his representation and proceeds upon confidence that he does not keep back any circumstance in his knowledge to mislead the underwriter into a belief that the circumstance does not exist. The keeping back such circumstance is a fraud, and therefore the policy is void. Although the suppression should happen through mistake, without any fraudulent intention, yet still the underwriter is deceived and the policy is void; because the risqui run is really different from the risqui understood and intended to be run at the time of the agreement....The policy would be equally void against the underwriter if he concealed.....
>
> Good Faith forbids either party, by concealing what he privately knows, to draw the other into a bargain from his ignorance of the fact, and his believing the contrary."

24. Section 19 of the Marine Insurance Act, 1963 grants statutory recognition to the above principle. It reads:

> "19. Insurance is uberrimae fidei. - A contract of marine insurance is a contract based upon the utmost good faith, and if the utmost good faith be not observed by either party, the contract may be avoided by the other party."

25. In *United India Insurance Company Ltd. V. M.K.J. Corporation*[3] this Court declared good faith as the very essence of a contract of insurance in the following words:

> "It is a fundamental principle of Insurance law that utmost good faith must be observed by the contracting parties. Good faith forbids either party from concealing (non-disclosure) what he privately knows, to draw the other into a bargain, from his ignorance of that fact and his believing the contrary. Just as the insured has a duty to disclose, similarly, it is the duty of the insurers and their agents to disclose all material facts within their knowledge, since obligation of good faith applies to them equally with the assured. The duty of good faith is of a continuing nature.
>
> After the completion of the contract, no material alteration can be made in its terms except by mutual consent. The materiality of a fact is judged by the circumstances existing at the time when the contract is concluded."

26. To the same effect is the decision of this Court in *Modern Insulators Ltd. V. Oriental Insurance Co. Ltd.*[4] where this Court observed:

> "It is the fundamental principle of insurance law that utmost good faith must be observed by the contracting parties and good faith forbids either party from non-disclosure of the facts which the parties know. The insured has a duty to disclose and similarly it is the duty of the insurance company and its agents to disclose all material facts in their knowledge since the obligation of good faith applies to both equally."

27. The National Commission has, in the instant case, recorded a clear finding the correctness whereof has not been disputed before us that the insurance cover obtained by the exporter envisaged goods being despatched on CIF basis whereas the goods were, in fact, sent on FOB basis.

> "This was a material departure which breached the duty of utmost good faith cast upon the exporter towards the insurance company. If the proposal for insurance had disclosed that the goods will be sent on FOB basis, the question whether the supplier had any insurable interest in the goods and if he had what premium the company would charge for the same may have assumed importance. Be that as it may, the duty to make a complete disclosure not having been observed by the exporter, the National Commission was justified in holding that the insurance company stood absolved of its liability under the contract and in dismissing the petition qua the said company."

28. That brings us to the question whether the National Commission was justified in holding that the service rendered by the carrier was deficient, and if so, whether it was right in awarding rupee equivalent of US$ 1800 by way of compensation. The National Commission has on appreciation of the material on record come to the conclusion that the consignment meant to be delivered to Pindikas was misdelivered and what was offered to Pindikas did not actually contain miniature paintings meant for the said consignee. That finding is, in our opinion, justified on the material on record from which it is evident that out of 122 cartons 121 cartons were delivered to M/s Natural Selection International while the only remaining carton when checked in the presence of the General Counsulate of India was found to contain steel furniture items. The inference, therefore, is that the carton containing miniature paintings had been misdelivered by the carrier who ought to have taken care to deliver the same to the consignee concerned.

> "The National Commission has rightly rejected the contention that the carton was not properly marked making it difficult for the shipping company to separate the same from other cartons which were meant for M/s Natural Selection International. There is indeed, no room for us to interfere with the findings of the National Commission. The question, however, is whether the National Commission was justified in awarding rupee equivalent of US$ 1800 to the shipper by way of compensation. There are two errors which are evident in the order by the National Commission in that regard.

Firstly, the National Commission has instead of going by the number of packages entered in the Bill of Lading gone by the packages mentioned in the packing list.

The Bill of Lading was the only document on the basis of which compensation could be determined against the carrier in terms of the provisions of The Indian Carriage of Goods by Sea Act, 1925 and the Schedule thereto. Section 2 of the said Act provides that the rules set out in the Schedule shall have effect in connection with the carriage of goods by sea in ships carrying foods from any port in India to any other port whether in or outside India. Section 4 requires that every Bill of Lading or similar document of title issued in India to which Rules apply shall contain an express statement that it is to have effect subject to the provisions of the said Rules as applied by the Act. In terms of Rule 5 of Article IV neither the carrier nor the ship shall be liable for any loss or damage to or in connection with goods in excess of the amounts stipulated therein. Rule 5 of Article IV to the extent the same is relevant for our purposes may be extracted at this stage:

"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 666.67 Special Drawing Rights per package or unit or two Special Drawing Rights per kilogram of gross weight of the goods lost or damaged, whichever is higher, 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 and inserted in the bill of lading.

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 the purposes of this paragraph as far as these packages or units are concerned.

Neither the carrier nor the ship shall be entitled to the benefit of limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result."

29. 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.

30. It is not in dispute that 122 cartons despatched by the shipper were consolidated in a container, nor is it disputed that there was only one package indicated in the Bill of Lading concerning the consignment meant for Pindikas. The National Commission could not go beyond the Bill of Lading and award compensation on the basis of the packing list which may have mentioned several packages consolidated in one bigger package, delivery whereof

was acknowledged in the Bill of Lading. The Commission ought to have taken the number of packages to be only one as mentioned in the Bill of Lading.

31. The second error committed by the National Commission is equally manifest. The Commission appears to have gone by the unamended provisions of Rule 5 in which the amount of compensation was stipulated to be US$ 100 per package. After the amendment to the Schedule in the year 1992 by Act 28 of 1993 the amount of compensation was to be paid in terms of Special Drawing Rights. As noticed above the shipper would be entitled to the compensation of 666.67 Special Drawing Rights per package or two Special Drawing Rights per kilogram according to the gross weight of the goods lost or damaged whichever is higher. The single package meant for Pindikas weighed 200 kgs. The amount of compensation payable by reference to the weight of the package would come to 400 Special Drawing Rights. The amount of compensation, actually payable would, however, be 666.67 Special Drawing Rights being higher of the two amounts.

32. It was next argued that the shipper would be entitled to the value of the goods misdelivered which according to the shipper was not less than Rs.39,23,225/-. There is no merit in that submission. We say so because compensation by reference to the value of the goods lost or damaged can be claimed only if the nature or the value of such goods has been declared by the shipper before shipment and inserted in the Bill of Lading. Even assuming that the nature and the valuation of the goods had been declared by the shipper before the shipment the requirement of `insertion of the same in the Bill of Lading' was not satisfied in the present case. The Bill of Lading does not mention either the nature or the value of the goods. That being so, compensation of rupee equivalent of 666.67 Special Drawing Rights was the only amount that could be awarded by the Commission to the shipper. In as much as the Commission awarded US$1800 it committed a mistake that calls for correction.

33. In the result we dismiss C.A. No.8276 of 2003 but partly allow C.A. Nos.3245 of 2005 and 6232 of 2004 to the extent that the amount of compensation payable to the shipper shall stand reduced to the rupee equivalent of 666.67 Special Drawing Rights only. The order passed by the National Commission shall stand modified to the above extent leaving the parties to bear their own costs.

[1]*(1806) 2 Bos & PNR 269*
[2]*AIR 1961 SC 311*
[3]*1996 (6) SCC 428*
[4]*2000 (2) SCC 734*