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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON: 24.05.2013

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PRONOUNCED ON:19.09.2013

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RFA (OS) 18/2007

AIR INDIA LTD.

..... Appellant

Through: Ms. Geeta Luthra, Sr.
Advocate with Ms. Deeksha Shukla,
Ms. Sangeeta Bharti, Mr. Harish
Malik and Mr. Gautam Bajaj,
Advocates.

Versus

TEJ SHOE EXPORTERS P. LTD. AND ANR

..... Respondents

Through: Mr. G.S. Raghav with
Mr. A.K. Jain and Mr. Pankaj
Kumar, Advocate for Resp-1.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.V. EASWAR

MR. JUSTICE S.RAVINDRA BHAT

1. The defendant's appeal questions the judgment and order of a learned single judge of this Court, decreeing the suit preferred by Tej Shoes (the plaintiff, hereafter referred to by name), to the extent of ₹ 20,81,372/10 with interest @ 10% per annum. Tej Shoes had sued the defendant (appellant hereafter, called "Air India") for value of loss of its goods, wrongfully released to the consignee.

2. Air India is an international air carrier. In 1990, M/s Tej Shoe Exporters hired the services of Air India for transporting a consignment worth DM (Deutsche Mark) 1,50,152 by Airway Bill No 09857645545 dated 21.08.09. The named consignee under the airway bill was a bank, Sparkse Naila, Wester - 18674 Nalia, West Germany. The consigned goods and the Airway bill were to be handed over to the consignee after receiving payment of the goods. Tej Shoes did not make any declaration of the amount of consignment for the carrier in the said airway bill. In order to deliver the goods in Nuremberg, Air India entrusted the goods to Lufthansa Airways (the second respondent) at Frankfurt. This was done under terms and conditions printed on the reverse of the airway bill. On 30.08.1990, Lufthansa Airways, by mistake delivered the consignment to the ultimate consignee, Militzer Und Munch without obtaining the necessary bank release. Lufthansa Airways admitted that this was a genuine mistake and agreed to compensate Air India in terms of the maximum limited liability, i.e. US \$ 20 per kg of the baggage lost (weight loss basis) provided under the Carriage by Air Act, 1972 ("the 1972 Act"). Lufthansa authorized Air India to settle the claims of Tej Shoes at US \$ 39,780/- which was their maximum liability in accordance with the terms of the contract of carriage, i.e. US\$ 20 per kg.

3. On 24.07.1990 Tej Shoes submitted its claim for DM 1,82,717 with 25% interest. Not satisfied with the compensation offered by Air India, Tej Shoes filed a complaint under Section 21 read with Section 12 of the Consumer Protection Act, 1986 before the National Consumer Dispute Redressal Commission claiming compensation @

₹ 44,26,264/79 with pendent lite and future interest @ 21% p.a. The Commission, on 28.04.1993 after considering provisions of the 1972 Act ordered Air India to pay Tej Shoes the equivalent of US\$ 39780. Not satisfied with this order, Tej Shoes filed a Special Leave Petition against that order of the Commission. The Special Leave Petition was later dismissed as withdrawn. On 02.11.1993, Tej Shoes, after a gap of more than three years from the cause of action, filed a suit for recovery of ₹ 48,86,784 before this Court (C.S No 2717 of 1993). Air India contested the suit by filing a written statement contending that the claim was barred by limitation as it was filed beyond the prescribed limitation period stipulated by the 1972 Act and that following the orders of National Commission it had paid its liability @ US\$ 20 per kg.

4. By the impugned judgment and order of 19.10.2006, the learned Single Judge decreed a sum of ₹ 20,81,372 in favour of Tej Shoes, and against Air India, along with 10% per suit, *pendent lite* and future interest, per annum.

5. Air India urges that the learned Single Judge failed to appreciate that Tej Shoes' suit was time barred under the Carriage by Air Act 1972; the suit was also barred and not maintainable in terms of the contract between the said parties, and the airway bill issued in this regard. It is argued that the single judge failed to appreciate that Air India could not be made liable for compensation which was beyond the maximum liability stipulated under the Carriage by Air Act, 1972.

6. To say that the suit was time barred, Air India relies on *Sailesh Textile Industries Vs. British Airways and Anr* 2003 (69) DRJ 683

where, noticing the law declared by the Supreme Court in *East and West Steamship Co., Georgetown, Madra Vs S.K. Ramalingam Chettiar* [1960] 3 SCR 820, the Court held that Clause 18 of the Second Schedule to the Carriage by Air Act provides that the carrier can be liable for damage sustained if there is loss to the registered luggage or the cargo. The plaintiff's case fell under Clause 18 (1) of the 1972 Act. In terms of clauses 29 and 30, a suit filed beyond the period of two years is barred by limitation. Provisions of the Schedule to the 1972 Act are clear and unambiguous and provide for a period of limitation within which a suit is to be filed to claim damages for loss of goods, whether it be loss to the goods or whether loss to the owner. The suit, having been filed the beyond the period prescribed period of two years, is barred by limitation.

7. It is argued that the learned Single Judge erred by holding that in a case of wrongful delivery of consignment, limitation would not be governed by Rules 29 and 30 of the first and second Schedule to the 1972 Act but by the Limitation Act, 1963. It is submitted that Rules 29 and 30 clearly stipulate that the right of damages *shall be extinguished* if an action is not brought within two years from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped. In the present case, the goods arrived at the destination on 30.08.1990. The suit is therefore clearly barred by limitation. Furthermore, submitted learned senior counsel Ms. Gita Luthra, the single judge overlooked that under the provisions of the 1972 Act, a carrier's liability is limited to a sum of 250 francs per kilo gram (equal to US \$ 20 per kilo) unless the

passenger or consignor had made a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so required. In the present case, submitted counsel, Tej Shoes did not declare the value of the goods for the carrier and therefore the carrier could not be compelled to pay anything more than the amount prescribed in the statute.

8. It was argued that the suit was time barred as even according to the conditions of the airway bill, it was incumbent on Tej Shoes to make a complaint in writing within 120 days from the date of the Airway Bill, in the event of non-delivery of the consignment to the consignee as named in the airway bill, failing which it shall be deemed to have waived its right to complain against the delivery or non-delivery of the consignment. Since no such complaint was made by Tej Shoes, within the stipulated period prescribed in the Airway Bills, the suit was barred by limitation.

9. Learned senior counsel relied on *Air India Vs Asia Tanning Co* 2003 (1) LW622 where the Madras High Court held that the term 'damages' is not defined in the Rules and that some types of damages are referred to in some Rules in Chapter III. This did not *ipso facto* imply that the period of limitation prescribed in Rule 30 would not apply when the damages is claimed on the ground of delivery of cargo without insisting upon the production of the air waybill sent by the consignor to the consignee. In that case, the damage alleged was the delivery of the consignment to the consignee without insisting upon the original air waybill which, according to the plaintiff, has resulted in the consignee securing the possession of the goods without having

first paid for the same. The rule of limitation provided in Rule 30 would clearly be attracted as the claim is in relation to the alleged wrongful delivery of goods without insisting upon the document of title even though the delivery was made to the person to whom it was intended to be delivered. She also relied on *American Export Isbrandtsen Lines Inc . and Anr . vs . Joe Lopez and Anr*, AIR 1972 SC 1405 where it was held that:

“Carrier and ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of goods or date when goods should have been delivered.”

Similarly, the judgment of this court in *Rajasthan Handicrafts Emporium, New Delhi v Pan American World Airways*, AIR 1972 SC 396 with respect to the plea that the suit was time barred, was relied upon, by learned senior counsel for Air India. Counsel also relied on *Ethiopian Airways v Ganesh Narain Saboo* AIR 2011 SC 3494 and *Gulf Air Co v Nahar Spinning Mills Ltd & Ors* 2000 ILR (1) Pun & Har 238 for the submission that provisions of the 1972 Act being part of later special law, and providing to the contrary, would prevail over the earlier general law, embodied in the Limitation Act, 1963 (i.e. the doctrine of *lex posterior derogat priori*).

10. Counsel lastly submitted that Rules 29 and 30 of the first and second Schedule to the Carriage By Air Act, 1972, stipulate that right to claim damages is extinguished if an action is not brought within two years from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which

the carriage stopped. In the present case, the cause of action arose in 1990 but the suit was filed by Tej Shoe in 1993. The conditions of the contract printed on the reverse of the airway bill clearly stated that shipper's right to claim damages stands forfeited/ waived/extinguished after the expiry of two years from the date of arrival at the destination. Further, though the term 'damages' is not defined in the Rules and some types of damages are referred to in some of the Rules in Chapter III, this would not imply that the period of limitation prescribed in Rule 30 will not apply when the damages are claimed on the ground of delivery of cargo without insisting upon the production of the air waybill sent by the consignor to the consignee. Thus, the suit instituted by Tej Shoe is barred by law of limitation as per the Carriage by Air Act 1972 as well as the Contract between the shipper and the carrier.

11. Tej Shoes argued, in support of the findings rendered by the learned single judge, that Clause 18 of the First and second schedules to the 1972 Act enacted that a “*carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered luggage or any goods..*” Counsel placed reliance on the decision of a learned single judge of this court in *Vij Sales Corporation v Lufthansa Airlines*, ILR 1981 Del 749, where it was held that the incorrect delivery of goods did not fall within Clause 18 as to attract the shorter period of limitation, or warrant applicability of statutorily limited damages:

“On the face of it therefore the present case could not be treated as of destruction, loss or damage to the cargo, within

the implication of these terms under rule 18. Instead the case as set up by the plaintiff is of unauthorised delivery to a wrong person. In other words it is contended that the case should be treated as one of non-delivery to the rightful person. Non-delivery has to be treated as non-delivery as per instructions or directions given. Where the instructions are not carried out, it does not matter to him whether the carrier had delivered the goods to X or Y other than the named consignee. In the circumstances it is urged that it follows that a case of mis-delivery is well within the expression non-delivery.”

It was submitted that the decision of the Supreme Court in *East & West Steamship* is of no assistance in limiting the carrier's liability, since the expression and phraseology used by the Carriage by Sea Act was entirely different from the expressions used in the 1972 Act. Learned counsel also relied on the decision in *Ethiopian Airways v Federal Chemical Works* AIR 2005 Del 258, where it was observed that:

“13. The concept of loss or damage suffered by any account by the shipper or consignee, is not the same as the loss and damage referable to the goods. We are relying upon the judgment of M/s.Viz Sales Corporation Vs.Lufthansa, German Airlines's case (supra) and approve the reasoning of the learned single Judge. In paragraph-18 of the East and West Steamship Co. V/s.S K Ramalingam Chettiar's case (supra) the Supreme Court took note that paragraph 8 spoke of loss or damage to or in connection with the goods but the legislature in 6th paragraph of the Article left the words 'loss or damage' unqualified. Had, therefore, words 'to or in connection with the goods' been incorporated in paragraph-6 as well as after the words 'loss or damage', the Supreme Court would not have treated the same as unqualified, which was so in their absence..”

12. It was argued that there can be no dispute about Tej Shoes' right to claim for damages for the non-delivery since that question was left open by the National Consumer Disputes Redressal Commission (NCDRC) in its order dated 28th April, 1993. At that stage, Air India did not express any reservations about Tej Shoes's right to claim such damages or compensation.

13. It was submitted that by virtue of Section 29 of the Limitation Act, the provisions of the Act would automatically apply to enactments and causes not specifically provided for, unless the special or local enactment provided to the contrary. The 1972 Act was silent as to causes of action in respect of non-delivery of goods. Consequently, the residual provision under the Limitation Act, i.e., Article 137 which provides a three year period, would apply; also, the silence in the 1972 Act meant that in respect of causes not provided for under Entry 18 of the first and second schedule, compensation based on actual damage can be recovered.

The provisions

14. Before discussing the rival merits of the parties' cases, it would be necessary to notice the relevant provisions of law. The provisions of the 1972 Act, to the extent they are relevant, are reproduced hereafter. Section 2 (2) defines "Convention" as "*the Convention for the unification of certain rules relating to international carriage by air signed at Warsaw on the 12th day of October, 1929.*" Section 2(1) defines "amended Convention" as "*the Convention as amended by the Hague Protocol on the 28th day of September 1955*". Section 3 (1) reads as follows:

“3. Application of Convention to India – (1) The rules contained in the First Schedule, being the provisions of the Convention relating to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, shall, subject to the provisions of this Act, have the force of law in India in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage....”

Section 4 (1), likewise, reads as under:

“4. Application of amended Convention to India – (1) The rules contained in the Second Schedule, being the provisions of the amended Convention relating to the rights and liabilities of carriers, passengers, consignors, consignees and other persons shall, subject to the provisions of this Act, have the force of law in India in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage....”

The relevant provisions of the First Schedule, read as follows:

“18. (1) The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered luggage or any goods, if the occurrence which caused the damage so sustained took place during the carriage by air.

(2) The carriage by air within the meaning of sub-rule (1) comprises the period during which the luggage or goods are in charge of the carrier, whether in an aerodrome or on board an aircraft, or in the case of a landing outside an aerodrome, in any place whatsoever.

(3) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If however, such a carriage takes place in the performance of a contract for carriage by air for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

19. The carrier is liable for damage occasioned by delay in the carriage by air of passengers, luggage or goods. ”

Article 22, (of the first schedule) which fixes the limits of liability, reads as follows:

“22. (1) In the carriage of passengers the liability of the carrier for each passenger is limited to the sum of 1,25,000 francs. Where damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 1,25,000 francs. Nevertheless, by special contract the carrier and the passenger may agree to a higher limit of liability.

(2) In the carriage of registered luggage and of goods, the liability of the carrier is limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that sum is greater than the actual value to the consignor at delivery.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5,000 francs per passenger.

(4) The sums mentioned in this rule shall be deemed to refer to the French franc consisting of sixty-five and a half milligrams gold of millesimal fineness nine hundred.”

Rule 29 prescribes the period of limitation within which an action for damages can be instituted:

“29. The right of damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.”

Rules 18 and 19 of the second schedule are worded identically with corresponding rules in the First Schedule; Rule 22 reads as follows:

“22. (1) In the carriage of persons the liability of the carrier for each passenger is limited to the sum of 2,50,000 francs. Where in accordance with the law of the Court seized of the case, damages may be awarded in the form of periodical payments the equivalent capital value of the said payments shall not exceed 2,50,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a high limit of liability.

(2) (a) In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of 250 francs per kilogram, unless the passengers or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the passenger’s or consignor’s actual interest in delivery at destination.

(b) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier’s liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo, or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5,000 francs per passenger.

(4) The limits prescribed in this rule shall not prevent the Court from awarding, in accordance with its own law, in addition, the whole or part of the Court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall

not apply if the amount of the damages awarded, excluded Court cost and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

(5) The sums mentioned in francs in this rule shall be deemed to refer to a currency unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred. These sums may be converted into national currencies in round figures. Conversion of the sums into national currencies other than gold shall, in case of judicial proceedings, be made according to the gold value of such currencies at the date of the judgment."

Finally, the limitation period – Rule 30 in the second schedule – is *in pari materia* with Rule 29 in the First Schedule.

15. Section 29 of the Limitation Act reads as follows:

29. Savings.

(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 . (9 of 1872 .)

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of " easement" in section 2 shall not apply to cases arising in the territories to

which the Indian Easements Act, 1882 , (5 of 1882) may for the time being extend.”

Analysis and Conclusions

16. It can be gathered from the above discussion that the question involved in this appeal is whether the carrier, Air India, is right when it contends that it is liable only to the extent of the limits of liability prescribed by Rule 22 (of the First and Second Schedule to the 1972 Act) and further, whether the suit was in any event barred by reason of it being presented or filed beyond the period prescribed under Rule 29 of the First Schedule and Rule 30 of the Second Schedule to the 1972 Act.

17. The preamble to the Act indicates that it was enacted to give effect to the Warsaw Convention (of 1929) for unification of rules relating to international carriage, to which India is signatory, and further to give effect to the Hague Protocol of 1955. The Protocol made certain amendments to the Warsaw Convention. The Warsaw Convention had previously been given effect to in India by enactment of the Indian Carriage by Air Act, 1934 (Act 20 of 1934) in regard to international carriage and the provisions of the Act were extended to the 'domestic carriage' as well, subject to certain exceptions, adaptations and modifications in terms of a notification issued in 1964. The Convention provided that, when an accident occurred during international carriage by Air, damage was caused to a passenger or the cargo, or there was loss or destruction of baggage or

goods, there was a presumption of liability on the carriers (who, however could not be held liable, if they proved that they or their agents had taken all necessary measures to avoid damage or that it was impossible for them to take such measures). Striking a balance, the extent of liability on such presumption was fixed on the carrier, limiting the same to 1,25,000 Gold Francs in respect of death of each passenger; while there was no limitation of liability if the damage was caused by the willful misconduct of the Carrier. Limits of liability were also fixed in case of destruction of, or loss to goods.

18. A diplomatic conference was convened at the Hague in September 1955 at the instance of the International Civil Aviation Organization, as a result of which, the provisions of Warsaw Convention 1929 were amended and the extent of presumed liability imposed on the Carrier was enhanced from 1,25,000 Gold Francs per passenger to 2,50,000 Gold Francs per passenger; besides the Protocol provided for simplification of the documents for carriage and also making the carrier liable where the damage was caused by an error in piloting or in handling the Air Craft or in navigation. Further to the steps taken by the Government of India to give effect to the Hague Protocol, as one of its signatories, Act 69 of 1972 (the 1972 Act) was brought into force w.e.f. 15.05.1973.

19. Coming to the judgment of the Supreme Court in *East and West Steamship* (supra), that was in the backdrop of a claim for loss (on account of non-delivery) of goods under the Carriage by Sea Act. Interpreting the relevant provisions of the schedule to the Act, the Court held:

“It is worth noting in this connection that while paragraph 5 makes it clear that loss there means loss to the carrier and paragraph 6 speaks of loss or damage to or in connection with the goods, the Legislature has in the 6th paragraph of this Article left the words "loss or damage" unqualified. The object of the rule however being to give immunity to the carriers and the shippers from claims of compensation made by the owners of the goods in respect of loss sustained by them, it will be unreasonable to read the word " loss " in that paragraph as restricted to only loss of the goods ". When the object of this particular paragraph and the setting of this paragraph in the Article after the previous paragraphs are considered there remains no doubt whatsoever that the learned judges of the Bombay High Court were right in their conclusion that the loss or damage in this paragraph is a wide expression used by the Legislature to include any loss or damage caused to shipper or consignee in respect of which he makes a grievance and in respect ,of which he claims compensation from the shipping company. The argument that loss due to failure to deliver the goods is not covered by this clause is merely to be mentioned to deserve rejection. The very use of the words "the date on which the goods should have been delivered" clearly contemplates a case where the goods have not been delivered. The clause gives the owner of the goods one year's time to bring the suit the year to be calculated from the date of the delivery of the goods where the goods have been delivered and from the date when the goods should have been delivered where all or some of the goods have not been delivered. The fact that the first clause of the 6th paragraph speaks of removal of the goods may be an argument for thinking as the Bombay High Court thought that clause has no application when goods are not delivered. It may be mentioned that some authorities (See Carver's Carriage of Goods by Sea, 10th Edition, p. 191) have suggested that the first clause of this paragraph appears to have little meaning. That is a matter which need not engage our attention. It is sufficient to mention that the fact that the rule of evidence provided in the first clause of the paragraph may have no application to cases of non-delivery is wholly irrelevant in deciding whether the

third clause applies to cases of non-delivery. As we have already said the date when the goods should have been delivered necessarily contemplates a case where loss has arisen because goods have not been delivered."

In the earlier portion of the judgment, the Court had noticed the provisions:

"The fifth paragraph provides that the shipper shall be deemed to have guaranteed to the carrier the accuracy as regards the details of marks, number, 'quantity and weight as furnished by him. It provides further that the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from such inaccuracies. Then comes paragraph 6, the whole of which it is proper to set out :-

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

20. In the present case, the Carriage by Air Act provides for relief through Rule 18 (in both the First and Second Schedule). That is the only provision which prescribes or visualizes the kind of situations which Parliament had in contemplation while dealing with compensation. The expression is *"damage sustained in the event of the destruction or loss of, or of damage to"* the goods. In *East and West Steamship* (supra) the Supreme Court had to deal with a provision under the Carriage by Sea Act, limiting liability in respect of *"loss or damage"* to the goods. The court decisively rejected that

“loss or damage” contemplated was in respect of loss or damage to the goods and did not cover loss or damage of the goods:

“the loss or damage in this paragraph is a wide expression used by the Legislature to include any loss or damage caused to shipper or consignee in respect of which he makes a grievance and in respect ,of which he claims compensation from the shipping company. The argument that loss due to failure to deliver the goods is not covered by this clause is merely to be mentioned to deserve rejection. The very use of the words "the date on which the goods should have been delivered" clearly contemplates a case where the goods have not been delivered.”

21. There is authority for the proposition that the task of the courts wherever the law uses a term in clear and unambiguous terms is to give such expressions their plain and ordinary meaning. Unless the context is otherwise, the amplitude of the expression cannot be cut down or curtailed by the interpretive process (ref *Sri Ram Ramnarain v. State of Bombay* AIR 1959 SC 459; *Jumma Masjid v Kodimaniandra* AIR 1962 SC 847). The rule was explained crisply in *Suthendran v. Immigration Appeal Tribunal*, (1976) 3 All ER 611 (HL) as follows:-

"PARLIAMENT is prima facie to be credited with meaning what is said in an Act of Parliament. The drafting of statutes, so important to a people who hope to live under the rule of law, will never be satisfactory unless courts seek whenever possible to apply 'the golden rule' of construction, that is to read the statutory language, grammatically and terminologically, in the ordinary and primary sense which it bears in its context, without omission or addition..."

In the present case, there is nothing in the 1972 warranting a restrictive construction as to limit “loss” only to destruction of or loss

to the goods, when the plain words clearly are “*loss of*” (emphasis supplied). Therefore, to hold that loss of goods as a result of their non-delivery falls outside of the enactment to justify an action for damages larger than what is provided by the Act would be unwarranted.

22. The public policy underlying uniform rules in the case of loss caused to passenger baggage, personal injury to a passenger, and damage on account of loss of goods, or destruction or damage to goods and the presumptions which the Convention (as well as the Protocol) seek to raise – which are enacted as law - have been described by the Supreme Court in its recent decision in *Trans Mediterranean Airways vs M/S. Universal Exports & Anr.* (2011)10 SCC 316 as “*balanc(ing) the imposition of a presumption of liability on the carrier by limiting his liability ...*” The (former) House of Lords had, in *Abnett v. British Airways Plc.* 1997 (1) All.ER 193, similarly characterized identical terms of UK Law, which had given effect to the Warsaw Convention as amended by the Hague Protocol, as follows:

“Article 22 however is important, because it limits the liability of the carrier. It does so in terms which enable the limitation of liability to be applied generally to all cases where the carrier is liable in the carriage of persons and of registered baggage and cargo. Article 22(1) begins simply with the words “In the carriage of persons.” Article 22(2)(a) begins with the words “In the carriage of registered baggage and of cargo.” The intention which emerges from these words is that, unless he agrees otherwise by special contract - for which provision is made elsewhere in the article - the carrier can be assured that his liability to each passenger and for each package will not exceed the sums stated in the article. This has obvious implications for insurance by the carrier and for the cost of his undertaking as a

whole. Article 22(4) makes provision for the award, in addition, of the whole or part of the costs of the litigation. But this is subject to the ability of the carrier to limit his liability for costs by an offer in writing to the plaintiff. The effect of these rules would, I think, be severely distorted if they could not be applied generally to all cases in which a claim is made against the carrier.

The counterpart of what was plainly a compromise is to be found in the following article, article 24. This Article provides that in the cases covered by articles 18 and 19 and by article 17 respectively - these cases are dealt with separately in two different paragraphs - "any action of damages, however founded, can only be brought subject to the conditions and limits set" by the Convention. It should be noted in passing that paragraph (2) of the article states that this rule is to apply to the cases covered by article 17 "without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights." As Professor Rene H Mankiewicz has pointed out in his article, "The Judicial Diversification of Uniform Private Law Conventions - The Warsaw Convention's Days in Court" (1972) 21 I.C.L.Q. 718, 741 no one could expect states to be prepared to amend their laws relating to these questions, which are basic to the laws of tort and contract and therefore of a wide reaching significance, for the sole purpose of unifying and accommodating all matters relating to the law of the air carrier's liability.

The structure of these two provisions seems to me therefore to be this. On the one hand the carrier surrenders his freedom to exclude or to limit his liability. On the other hand the passenger or other party to the contract is restricted in the claims which he can bring in an action of damages by the conditions and limits set out in the Convention. The idea that an action of damages may be brought by a passenger against the carrier outside the Convention in the cases covered by article 17 - which is the issue in the present case - seems to be entirely contrary to the system which these two articles were designed to create..."

23. The need for a uniform policy and a global approach was underlined again by the House of Lords in *Morris v. KLM Dutch Airlines* [2002] 2 AC 628:

"81. In an ideal world the Convention should be accorded the same meaning by all who are party to it. So case law provides a further potential source of evidence. Careful consideration needs to be given to the reasoning of courts of other jurisdictions which have been called upon to deal with the point at issue, particularly those which are of high standing. Considerable weight should be given to an interpretation which has received general acceptance in other jurisdictions. On the other hand a discriminating approach is required if the decisions conflict, or if there is no clear agreement between them."

This point has been repeatedly emphasized, and applied in other decisions (see *Zicherman v. Korean Air Lines Co. Ltd* 516 US 217, (1996), *"to foster uniformity in the law of international air travel"*; also see, *El Al Israel Airlines Ltd. v. Tseng* 525 U.S.155 (1999)). In the latter decision, *El Al Israel Airlines*, a passenger claimed that she had sustained psychosomatic injuries as a result of an intrusive body search. It was accepted that there was no bodily injury within the meaning of that expression in the Convention but the passenger contended that she was not precluded from pursuing a separate action for damages under domestic law. The court said that:

"To allow passengers to pursue claims under local law in circumstances when the Convention does not permit such recovery, could produce several anomalies. Carriers might be exposed to unlimited liability under diverse legal regimes but would be prevented in terms of the treaty from contracting out of such liability. Passengers injured physically in an emergency

landing, might be subject to the liability caps of the Convention, while those merely traumatized in the same mishap would be free to sue outside of the Convention for potentially unlimited damages.”

24. That the limits of liability prescribed in the Convention are absolute, and also apply to goods lost during, or by the carrier, has been confirmed in *Data Card Corp & others v Air Express International Corp* 1983 (2) All ER 639.

25. In the present case, the airway bill formed the contract between Air India and Tej Shoe. Tej Shoe had sought to urge that the airway bill relied on in this case by the Air India did not contain any stipulation limiting liability or requiring special declaration about value and payment of extra amounts. However, the copy of the airway bill produced by Tej Shoe itself (a point not disputed during the hearing by its counsel) shows that Condition No. 4 printed on the reverse of the airway bill limited the carrier’s liability to US\$ 20 kgs. The relevant stipulations, i.e Clauses 3 and 4, read as follows:

“3. The first Carrier’s name may be abbreviated on the face hereof the full name and its abbreviation being set forth in such Carrier’s tariffs, conditions of carriage, requisitions and timetables. The first carrier’s address is the airport of departure shown on the face hereof. The agreed stopping places (which may be altered by the carrier in case of necessity) are those places, except the place of departure and the place of destination, set forth on the face hereof or shown in the Carrier’s timetables as scheduled stopping places for the route. Carriage to be performed hereunder by several successive carriers is regarded as a single operation.

4. Except as otherwise provided in Carrier’s tariffs or conditions of carriage in carriage to which the Warsaw

Convention does not apply and liability shall not exceed US \$ 20.00 or the equivalent per kilogram of goods lost, damaged or delayed, unless a higher value is declared by the shipper and supplementary charges paid.”

The above stipulation, particularly Clause 4, gives effect to Rule 22 of the Schedule to the 1972 Act, to the extent that it limits liability for the loss of, or damage or destruction to goods:

“the liability of the carrier is limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires.”

26. If the shipper, Tej Shoe, wanted Air India to assume liability for an amount exceeding US\$ 20 or its equivalent, it had to declare such amount for carriage and pay the applicable valuation charge. Rule 22 of the Act of 1972 restricts the liability of the carrier to a maximum of US\$ 20 per kg. The statute thus placed a limit on the liability of the carrier where compensation cannot be awarded in excess of US\$ 20 per kg of the weight loss. For seeking a higher compensation, it was required that the consignor would make a special declaration of the value of the consignment for carriage and pay a supplementary charge. The court also notes that the plaintiff, Tej Shoe, did not declare the value of the goods in the airway bill, but rather, only the value for customs was declared (amounting to DM 150,152.90). Furthermore, no supplementary amount was paid to the appellant in accordance with the declaration of interest. An interpretation which allows the consignor or consignee to recover more than the prescribed limits, on

an artificial construction of the expressions used by the statute, can be the gateway for unlimited liability under diverse and unforeseen conditions rendering unviable the business of air carriage. This court is also supported in the view it takes by Clause 22 (4) of the Second Schedule (supra) which permits Indian courts to award sums over and above the limits set out in limited contingencies towards costs of litigation:

“(4) The limits prescribed in this rule shall not prevent the Court from awarding, in accordance with its own law, in addition, the whole or part of the Court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluded Court cost and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.”

27. Had Parliament intended that courts can exceed the liability limits imposed by statute for loss of goods, the structure of Clause 22 would have been entirely different. Air India has already paid the maximum liability being of ₹ 12,51,877 as per the valuation of US \$ 39,780 in terms of the order passed by the National Consumer Dispute Redressal Commission. This court does not discern anything in the order of the Commission enabling Tej Shoes to recover anything in excess of what is prescribed by statute; nor does that order record Air India's consent as to amount to estopping it from defending the higher claim of the said plaintiff. This court is therefore of the opinion that the single judge fell into error in placing the interpretation

that regardless of whether the shipper/consignor declared a value higher than the limits imposed by Rule 22 (and Clause 4) and did not specify or pay any supplementary charge, it could recover damages in excess of the limits prescribed by the Convention and embodied in municipal law. Accordingly, the view in *Vij Sales Corporation v Lufthansa Airlines* ILR 1981 Del 749 (a decision rendered by a learned single judge) is hereby overruled. Likewise, the period of limitation prescribed under Articles 29 (of the first schedule) and 30 (of the second schedule) are contrary stipulations, which amount to “*period of limitation different from the period*” under the Limitation Act (Section 29(2)) which would exclude application of the Limitation Act itself. Those stipulations under the 1972 Act are under a special statute and are absolute in terms; they would prevail over the general provisions of the Limitation Act. Consequently, the suit filed by Tej Shoe is also time barred.

28. In view of the above discussion, the appeal has to succeed. The impugned judgment and decree of the learned single judge is hereby set aside. The appeal is allowed without any order on costs.

**S. RAVINDRA BHAT
(JUDGE)**

**R.V. EASWAR
(JUDGE)**

SEPTEMBER 19, 2013