IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	14.11.2024
Pronounced On	25.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.S.Nos.148 and 150 of 2015
and
A.No.3634 of 2023

1.M/s.Gupta Hair Products (P) Ltd.,
No.279, Sydenhams Road,
Chennai – 600 112.
Represented by its Chairman and
Managing Director Shri M.Mohana Gupta

2.M/s.QINGDAO JIFA IMP. & EXP. CO. LTD.,
Represented by its Power Agent
Mr.Krishna Kishore ... Plaintiffs in both C.S.

Vs

M/s.United India Insurance Co. Ltd.,
Represented by its Divisional Manager ... Defendant in both C.S.

Prayer in C.S.No.148 of 2015: This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure, 1908, prayed for a Judgment and Decree:-

(a) for a Judgment and Decree against the defendant for a sum of US$ **2,64,689.98** equivalent to **Rs.1,64,10,779/-** (Rupees One Crore Sixty Four Lakhs Ten Thousand Seven Hundred and Seventy Nine only) calculated @ 1US$ = Rs.62/- together with interest @ 18% per annum from the date hereof till payment in full or such other higher rate as the Court may think deem fit on the date of Decree.

(b) Cost of the suit.

Prayer in C.S.No.150 of 2015: This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure, 1908, prayed for a Judgment and Decree:-

(a) for a Judgment and Decree against the defendant for a sum of US$ **2,29,320.77** equivalent to **Rs.1,42,17,888/-** (Rupees One Crore Forty Two Lakhs Seventeen Thousand Eight Hundred and Eighty Eight only) calculated @ 1US$ = Rs.62/- together with interest @ 18% per annum from the date hereof till payment in full or such other higher rate as the Court may think deem fit on the date of Decree.

(b) Cost of the suit.

In both C.S.

For Plaintiffs	:	Mr.S.Vasudevan
For Defendant	:	Mr.Nageswaran for Mr.Nageswaran and Narichania

COMMON JUDGMENT

By this common judgment, both the suits have been disposed.

2. These suits are between the same parties. The cause of action in both the suits are against the same defendant. They are similar.

3. These suits have been filed for the following relief:-

C.S.No.148 of 2015	***C.S.No.150 of 2015***
a. for a Judgment and decree against the defendant for a sum of **US$ 2,64,689.98** equivalent to **Rs.1,64,10,779/-** (Rupees One Crore Sixty Four Lakhs Ten Thousand Seven Hundred and Seventy Nine only) calculated @ **1US$ = Rs.62/-** together with interest @ **18%**p.a.from the date of till payment in full or such other higher rate as the Court may think deem fit on the date of Decree. b. Cost of the suit.	a. for a Judgment and decree against the defendant for a sum of **US$ 2,29,320.77** equivalent to **Rs.1,42,17,888.00/-**(Rupees One Crore Forty Two lakhs Seventeen Thousand Eight Hundred and Eighty Eight only) calculated @ **1US$ = Rs.62/-** together with interest @ **18%**p.a.from the date of till payment in full or such other higher rate as the Court may think deem fit on the date of Decree. b. Cost of the suit.

4. In both the suits, the plaintiff has examined one witness as detailed below:-

Witnesses	***Name***	***Designation***
P.W.1	M.Krishna Kishore	Managing Partner of 1st plaintiff
D.W.1	Shoba Shanmugam	Sr.Divisional Manager of defendant insurance company

5. In C.S.No.148 of 2015, the plaintiff has filed Ex.P1 to Ex.P22. The defendant has filed Ex.D1. Ex.D1 is a copy of Policy in Ex.P1 together with

terms of insurance taken up by the first plaintiff / defendant herein.

6. In C.S.No.150 of 2015, the plaintiff has filed Ex.P.1 to Ex.P.25. The defendant has filed Ex.D1 which is a copy of full version of the policy in Ex.P.1.More or less, the facts are similar in both the case except for the dates. The details of Exhibits marked in the respective suits are as under:-

	C.S.No.148 of 2015			***C.S.No.150 of 2015***		
	Exhibits	**Date**	**Description**	**Exhibits**	**Date**	**Description of Document**
1.	Ex.P.1 Ex.D1	24.2.2012	Marine Insurance Policy	Ex.P.2 Ex.D1	02.07.2011	Marine Insurance Policy
2.	Ex.P.2	08.03.2012	Custom House Shipping Bill	Ex.P.5	07.04.2012	Custom House Shipping Bill
3.	Ex.P.3	08.03.2012	Packing List	Ex.P.4	06.04.2012	Packing List
4.	Ex.P.4	08.03.2012	Commercial Invoice	Ex.P.3	06.04.2012	Commercial Invoice
5.	Ex.P.5	13.03.2012	Multimodal Transport Document issued by the MTO	Ex.P.6	10.04.2012	Multimodal Transport Document issued by the MTO
6.	Ex.P.6	15.03.2012	Equipment Interchange Receipt	Ex.P.7	10.04.2012	Equipment Interchange Receipt
7.	Ex.P.7	16.03.2012	Survey Report	Ex.P.8	11.04.2012	Survey Report
8.	Ex.P.8	16.03.2012	Containers Fitness Inspection Report	Ex.P.9	11.04.2012	Containers Fitness Inspection Report
9.	Ex.P.9	19.03.2012	Copy of Mate Receipt	Ex.P.10	14.04.2012	Copy of Mate Receipt
10.	Ex.P.10	02.05.2012	Letter Requesting the defendant to arrange for	Ex.P.16	28.09.2012	Letter requesting for details

	C.S.No.148 of 2015			C.S.No.150 of 2015		
			Inspection			
11.	Ex.P.11	20.07.2012	Letter	Ex.P.13	20.07.2012	Letter
12.	Ex.P.12	24.07.2012	Letter	Ex.P.14	24.07.2012	Letter
13.	Ex.P.13	20.09.2012	Letter raising a Query	Ex.P.15	20.09.2012	Letter raising a Query
14.	Ex.P.14	29.09.2012	Reply to Letter	Ex.P.18	20.02.2013	Reply to Letter
15.	Ex.P.15	18.10.2012	Letter Requesting Claim to be Settled	Ex.P.17	18.10.2012	Letter Requesting Claim to be Settled
16.	Ex.P.16	21.06.2013	Letter	Ex.P.19	21.06.2013	Letter
17.	Ex.P.17	28.11.2013	Legal Notice	Ex.P.20	28.11.2013	Legal Notice
18.	Ex.P.18	12.01.2014	Reply Notice	Ex.P.21	12.01.2013	Reply Notice
19.	Ex.P.19	19.12.2014	Power of Attorney	Ex.P.22	19.12.2014	Power of Attorney
20.	Ex.P.20	04.02.2020	Letter of Authority	Ex.P.23	04.02.2020	Letter of Authority
21.	Ex.P.21	05.11.2019 27.11.2019	Notice	Ex.P.24	05.11.2019	Notice
22.	Ex.P.22	05.05.2012	Survey Report	Ex.P.1	02.12.1999	Registration Certificate of the 1st plaintiff's Firm
23.				Ex.P.11	30.05.2012	Report of the Surveyors at the Discharge Port together with the Photographs
24.				Ex.P.12	31.05.2012	Letter Requesting the Claim to be settled
25.				Ex.P.25	02.12.1999 Certified on	Registration Details of the 1st

	C.S.No.148 of 2015			C.S.No.150 of 2015		
					16.06.2023	plaintiff's Firm

7. The first plaintiff had exported consignments of human hair to the second plaintiff and had utilized the services of M/s.Shanco Trans Ltd., a Multi Modal Transport Operator who had issued Ex.P.5 Multimodal Transport Document dated 13.03.2012 for the consignment covered by the suit in C.S.No.148 of 2015 and Ex.P.6 dated 10.04.2012 in C.S.No.150 of 2015.

8. The consignment of human hair were exported to the second plaintiff by the first plaintiff under Ex.P.2 & Ex.P.5 - Shipping Bills in the respective suits as detailed below:-

C.S.No.148 of 2015			***C.S.No.150 of 2015***		
Exhibits	**Date**	**Description**	**Date**	**Exhibits**	**Description**
Ex.P.2	08.03.2012	Custom House Shipping Bill	Ex.P.5	07.04.2012	Custom House Shipping Bill

9. Ex.P.2/Ex.P5 Shipping bills were filed in advance, even before the export consignments reached the Chennai port from the first plaintiff factory from Andhra Pradesh.

10. The 1st plaintiff had raised Ex.P.4 and Ex.P.3 – Commercial Invoice on the second plaintiff as detailed below:-

C.S.No.148 of 2015		***C.S.No.150 of 2015***	
Exhibits	Ex.P.4	**Exhibits**	Ex.P.3
Description	Commercial Invoice	**Description**	Commercial Invoice
Date	08.03.2012	**Date**	06.04.2012
Value in USD	5,75,000/-	**Value in USD**	14,46,950/-
Value in Rs	2,79,45,000/-	**Value in Rs.**	7,32,88,017.50/-

11. The first plaintiff had taken Ex.P1/Ex.P2 – Open Cover Marine Isurance Policy (Warehouse to Warehouse) to cover the risk in respect of the consignments covered by Ex.P.4/Ex.P.3 – Commercial Invoice covered by Ex.P2 Shipping Bills dated 08.03.2012 and Ex.P.5 Shipping Bills dated 07.04.2012 as detailed below:-

C.S.No.148 of 2015			***C.S.No.150 of 2015***		
Exhibits	**Date**	**Description**	**Date**	**Exhibits**	**Description**
Ex.P.1	21.02.2012	Marine Insurance Policy	Ex.P.2	02.07.2011	Marine Insurance Policy

12. The Customs Authorities issued Let-Export Order (LEO) for the

respective Shipping Bills in Ex.P2 & Ex.P5 dated 08.03.2012 and 7.04.2012 respectively on 12.03.2012 and on 10.04.2012.

13.The consignments were covered in Ex.P.3 & Ex.P.4 packing list dated 08.03.2012 &   in the respective suits. The consignments were sealed in the containers in presence of the Officers of the Customs Department namely, the Preventive Officer on 15.03.2012 & 10.04.2012 respectively before they were exported.

14. The endorsement regarding the container Numbers, Customer Bill Numbers and Agents Seal Numbers in the respective Shipping Bills / Let Export order are detailed as under:-

	C.S.No.148 of 2015		***C.S.No.150 of 2015***	
Description	**Exhibit-Ex.P.2**	**Number**	**Exhibit Ex.P.5**	**Number**
Custom House Shipping Bill	08.03.2012	-	07.04.2012	
Let Export order	12.03.2012	-	10.04.2012	dated 10.04.2012
Container Number	15.03.2012	CRSU-148065-7	10.04.2012	REGU-3199091
Customs Seal Number	15.03.2012	KVNU-13723	10.04.2012	RQNE-19212
Liner/Agent Seal Number	15.03.2012	732445	10.04.2012	1200266

	C.S.No.148 of 2015		***C.S.No.150 of 2015***	
L/C Number/Ex. No	**Ex.P.4**	**381201LC 12000036**	**Ex.P.3**	**3812101LC1 2000056**

15. After stuffing the container in the presence of the Preventive Officers, the consignments were also surveyed at Chennai by M/s.J.B.Boda Surveyors Private Limited in Ex.P.8 dated 16.03.2012 and Ex.P9 on 11.04.2012. On the previous day, for the consignment covered in the respective suits, Ex.P6 / Ex.P.7 Export Equipment Interchange Receipt were issued giving the particulars of the container numbers, the vehicle numbers and seal numbers as detailed below:-

	Ex.P6 in C.S.No.148 of 2015	***Ex.P6 in C.S.No.150 of 2015***
Description	**Number**	**Number**
Container Number	CRSU- 148065-7	REGU- 3199091
Vehicle Number	TN5L 1431	TN04L 1455
Customs Seal Number	KVNU- 13723	RQNE- 19212
Liner/Agent Seal Number	732445	1200266

16. The two consignment in the respective suits reached the port of destination in China in Qingdao on the following dates as detailed below:-

Date of Discharge at Portin China	
C.S.No. 148 of 2015	20.04.2012
C.S.No.150 of 2015	28.05.2012

17. After the consignment reached the port of destination in China in Qingdao, it was noticed that the Agent's seal in the respective containers had been tampered and were substituted and few cartons of human hair exported were missing. Details of Agent Seal at port of destination in China in Quingdao are as under:-

	C.S.No.148 of 2015		**C.S.No.150 of 2015**	
Description	**Exhibits**	**Number**	**Exhibits**	**Number**
Liner/Agent Seal Number	Ex.P2 dated 08.03.2012	732445	Ex.P.5 dated 07.04.2012	1200266
New Seal Number as in Survey Report	Ex.P.22 dated 05.05.2012	109117	Ex.P.11 dated 30.05.2012	102097

18. Therefore, at the port of destination, consignments were de-stuffed and inspection was conducted. As far as consignment in C.S.No.148 of 2015 is concerned, Ex.P.22 Final Certificate Report dated 05.05.2012 was issued. In C.S.No.150 of 2019, Ex.P.11, a Preliminary Report dated 30.05.2012 was issued.

19. As far as the Final Report in Ex.P.22 for the consignment in C.S.No.148 of 2015 is concerned, it was stated that the plaintiff was informed by Mr.Liu Shixin, of the Consignee, namely the 2nd plaintiff on May 2, 2012, that the consignment was packed in the container No.CRSU1480657 at loading port and its seal number was 732445; However, after the Containerand the original seal of the container was missing and another seal was found locked on the container's door.

20. Relevant portion of Ex.P.22 Final Certificate Report dated 05.05.2012 & P.11 Preliminary Report dated 30.05.2012 regarding the alleged loss reads as under:-

C.S.No.148 of 2015	**C.S.No.150 of 2015**
As per Ex.P.22 dated 05.05.2012	**As per Ex.P.11 dated 20.07.2012**
Upon our survey on site, we would report our findings as following: 1. After we arrived at the doorway of Qingdao port, Mr. Liu Shixin requested their forwarder agency to take the container out of Qingdao pori. The truck No. B99373 drove out from Qingdao port and parked at the doorway. We noticed that the container No. CRSU1480657 was stowed on the truck's trailer. 2. ..... 3. We approached to the door of the	1. As a result of our survey, we found the container was in apparent normal condition without apparent damage or hole, but the container seal was not the original one; 2. As per our survey, we found there were total 12 cartons of Cargo missing, other Cargos in apparent normal condition; 3. The value of lost cargo was calculated to be **USD 138,250** according to the cargo invoice;

container and noticed that a green seal was locked on the door. The number of the seal was 109117 instead of 732445, which was described on bill of lading. it was obvious that the original seai had been missing. At our request, the green seai was cut off by the driver for opening the door. 4. After opening the door, we entered into the container and found that 29 cartons of cargo were stowed on the floor. Each carton was packed by a plastic bag. The plastic strips were used for fastening the plastic bags. As per the shipping document, 40 cartons of cargo should be stowed in the container. Considering 29 cartons were actually stowed therein, it was obvious that 11 cartons had been missing or stolen according to our survey on site. After our joint survey, a memorandum was signed by Mr. Liu Shixin, Mr. Sun Jianwen and the undersigned surveyor. The contents of the memorandum as below: The parties concerned had agreed with the following fact and signed this memorandum us below: *1. The number of the container was CRSU1480657. As per previous estimation, 40 cartons of cargo were transported from India to Qingdao port.* *2. At 10:00hours on May 5, 2012. it was found that the number of the container's seal was 10911* *3. After cutting off the seal and opening the door, we confirmed that 29*	

cartons were stowed therein. Each carton was in normal condition. *4. It is to say that 11 cartons of cargo had been short-landed. The net weight of each carton of cargo was 25kg, so the short-landed weight was 275kg.* According to the joint survey on site, 11 cartons (275kgs) of human hair had been missing and should be treated as total loss. As per the shipping documents, the unit price of human hair was **USD575.00/kg**. Therefore, the damaged amount should be **USD575.00/kg x275kg = USD158,125.00**	

21. Long after Ex.P.22 / Ex.P.11 dated 05.05.2012 and 20.07.2012 were issued to the consignee namely the second plaintiff in respect of claims of the plaintiff in the respective suits, the defendant declined the claims of the plaintiff in the respective suits vide Ex.P.16 / Ex.P.19 Letters dated 21.06.2013.

22. Relevant portion of the aforesaid communication in Ex.P.16 / Ex.P.19 Letters dated 21.06.2013 of the defendant on the plaintiffs read as under:-

C.S.No.148 of 202015	***C.S.No.150 of 2015***
<u>Ex.P.16 dated 21.06.2013</u> Besides Survey Report at discharge	**<u>Ex.P.19 dated 21.06.2013</u>** Besides Survey Report at discharge

C.S.No.148 of 202015	***C.S.No.150 of 2015***
port, the circumstance of the loss was also thoroughly investigated at Chennai, the place of dispatch, by enquiry with yourselves, the Clearing Agents, Container Terminal, Port and other relevant sources by Investigators M/s. Surveyors & General Surveillance. Based on the information gathered and reported, it is revealed that the loss had taken place at the Container Terminal between 15th -16th March, 2012, before loading on the vessel. The difference in seal ought to have occurred even at that stage when the container was being loaded on the vessel. **However, Bill of Lading has been obtained as if the container was shipped on Board on 13.03.2013 itself which appears to be managed for bank purposes.** The container was shipped with the said ante-dated bill taking no action whatsoever on the loss. Complaint to Police was avoided by ignoring the loss and securing an ante-dated Bill of Lading. Though there was clear information of such incidents, two consignments were shipped within a short period, ignoring the occurrence. Such conduct clearly falls within ex lusion 4.1 of ICC(A) of the Policy which excludes any loss due to wilful misconduct of the assured.	port, the circumstance of the loss was also thoroughly investigated at Chennai, the place of dispatch, by enquiry with yourselves, the Clearing Agents, Container Terminal, Port and other relevant sources by Investigators M/s. Surveyors & General Surveillance. Based on the information gathered and reported, it is revealed that the loss had taken place at the Container Terminal between 10th-13th April 2012, before loading on the vessel. The difference in seal ought to have occurred even at that stage when the Container was being loaded on the vessel. However, Bill of Lading has been obtained as if the container was shipped on Board on 10-4-2013 itself which appears to be managed for bank purposes. The container was shipped with the said ante-dated bill taking no action whatsoever on the loss. Complaint to Police was avoided by ignoring the loss and securing an ante-dated Bill of Lading. Though there was clear information of such incidents, two consignments were shipped within a short period, Ignoring the occurrence. Such conduct clearly falls within exclusion 4.1. of ICC (A) of the Policy which excludes any due to

C.S.No.148 of 202015	***C.S.No.150 of 2015***
Moreover, in terms of Clause 16.1 of ICC (A) of the policy "It is the duty of the Assured and their servants and agents in respect of loss recoverable hereunder. 16.1 to take such measures as may be reasonable for the purpose of averting or minimizing such loss" There is gross violation of the above condition of the Policy. Considering the above circumstance and the terms of the Policy, the claim is not admissible and hereby stands declined.	willful misconduct of the assured. Moreover, in terms of Clause 16.1 of ICC (A) of the policy "It is the duty of the Assured and their servants and agents in respect of loss recoverable hereunder. 16.1 to take such measures as may be reasonable for the purpose of averting or minimizing such loss" There is gross violation of the above condition of the Policy. Considering the above circumstance and the terms of the Policy, the claim is not admissible and hereby stands declined.

23. Since the defendant failed to pay amounts to the 1st plaintiff, despite repeated request to settle the loss, the plaintiff has filed these two suits. The defendant has denied its liability.

24. By two separate orders dated 25.07.2019, this Court had framed identical issues in both the cases. They read as under:-

1. Whether the loss of cargo had occurred during transit from Chennai to Qingdao in China as covered by the warehouse to warehouse Policy?
2. Whether the defendant is right in repudiating the

plaintiffs' Insurance claim?
3. Whether the suit is liable to be dismissed for non joinder of necessary parties?
4. Whether the consignment was entrusted to the sea carrier in good order and condition?
5. Whether the suit claim is liable to be dismissed as per exclusion clauses ICC (A) No.4.1 r/w. 16.1 of the Policy terms and conditions?
6. Whether the plaintiffs are entitled to receive the suit claim from the defendant?
7. To what relief.

25. Subsequently, the following Additional Issues were framed vide Order in A.Nos.9810 & 9812 of 2019 in both the suits:-

Sl. No.	**C.S.No.148 of 2015**	**C.S.No.150 of 2015**	**Issues**
1.	(i)	(ii)	Whether the representative who signed and verified the plaint on behalf of the second plaintiff is competent to do so?
2.	(ii)		Whether the first plaintiff is competent to file and maintain the suit as the owner of the suit consignment?
3.		(i)	Whether the suit is liable to be dismissed for non compliance with the requirements under Section 69(2) of the Indian Partnership Act?
4.	(iii)	(iii)	Whether the claim of the second plaintiff is maintainable in the absence of proof of ownership and insurable interest over the suit cargo?"

Common Written Submissions on behalf of the Plaintiffs in C.S.No.148 Of 2015 And C.S.No.150 Of 2015

26. The Learned counsel for the plaintiff's has submitted answers to each issue individually to convince this Court of their case.

Issue No. 1: Whether the loss of cargo occurred during transit from Chennai to Qingdao in China as covered by the Warehouse-to-Warehouse Policy?

27. It is submitted that the sequence of events in both cases establishes that the 1st Plaintiff had entrusted the cargo to Sanco Trans Limited, the Freight Forwarding Agent, who in turn entrusted the cargo to the Sea Carrier at the Terminal of the Chennai Port for carriage to the Port of Discharge, Qingdao, China. It is further submitted that both shipments were insured separately vide Ex.P1 Marine Insurance Policy dated 24.02.2012 for the consignment covered in C.S. No. 148 of 2015 and vide Ex.P2 Marine Insurance Policy dated 02.07.2011 for the consignment covered in C.S. No. 150 of 2015 issued by the Defendant, which covered "All Risks Warehouse-to-Warehouse" terms.

28. It is further submitted that Ex.P4/ Ex.P3 Commerical invoices dated 08.03.2012 and 06.04.2012, and Ex.P3/ Ex.P4 packing list were submitted to the Defendant, who incorporated the value of the cargo at 110%

and issued Ex.P1/Ex.P2 Marine Insurance Policies dated 24.02.2012 and 02.07.2011 respectively.

29. It is submitted that in both cases, the cargo was transported from the Plaintiffs' factory in Eluru, Andhra Pradesh, to the Container Freight Station (CFS) of Sanco Trans Limited, a Multimodal Transport Operator (MTO). It is further submitted that Sanco Trans received the cargo, stuffed it into containers, and issued Ex.P5 / Ex.P6 Multimodal Transport Documents dated 13.03.2012 and 10.04.2012 respectively, certifying that the cargo was in good order and condition.

30. It is further submitted that in C.S. No. 148 of 2015, the Customs Seal No. KVNU13723 and Agent's Seal No. 732445 were confirmed as intact during customs clearance, and that similarly in C.S. No. 150 of 2015, the fitness of the container (No. REGU3199091) was surveyed and certified by J.B. Boda Surveyors Pvt. Ltd. on 11.04.2012 (Ex.P9 Container Fitness Inspection Report), confirming that it was clean, dry, odorless, and structurally sound. It is submitted that after loading, the surveyor issued another certificate (Ex.P8) on 11.04.2012, confirming the arrangement of stuffed cartons and the intactness of Customs Seal No. RQNE19212 and Agent's Seal No. 1200266.

31. It is submitted that both containers were handed over to the Chennai Container Terminal (CCTL) for loading onto vessels, with the Customs Department supervising the operation. It is further submitted that in C.S. No. 148 of 2015, the vessel MV JIN YUN HE received the cargo, and the Master issued a Mate Receipt confirming that the Agent's Seal No. 732445 was intact and that similarly in C.S. No. 150 of 2015, the vessel MV JITRA BHUM received the cargo under similar conditions.

32. It is further submitted that the Defendant alleged that the Bill of Lading was antedated and that the loss occurred at the Container Terminal before loading onto the vessel. However it is submitted that, this allegation is baseless as the Plaintiffs have produced documentary evidence to disprove it. It is further submitted that in C.S. No. 148 of 2015, the Customs Preventive Officer's certification dated 15.03.2012 (Ex.P2) confirmed that the seals were intact when the cargo was handed over to the Sea Carrier, and that similarly, in C.S. No. 150 of 2015, Ex.P5 and Ex.P8 confirm the intactness of the seals at the time of customs clearance and transfer to the Terminal.

33. It is further submitted that the Multimodal Transport Documents (Ex.P5 in C.S. No. 148 of 2015 and Ex.P6 in C.S. No. 150 of 2015) issued by Sanco Trans Limited, which declare the cargo to be in good order and condition, would not have been issued if the cargo was not in such condition. Furthermore, it is submitted that the customs officials supervised the entire process, confirming that no tampering occurred before loading.

34. It is submitted that a Multimodal Transport Document differs from a Bill of Lading, as the former involves carriage by two or more modes. It is further submitted that in both cases, Sanco Trans issued the Multimodal Transport Documents, proving that the Plaintiffs had no further control over the cargo once it was entrusted for transit.

35. It is further submitted that DW-1, during cross-examinations on 10.08.2022 in C.S. No. 148 of 2015 and on 23.12.2021, 12.07.2022, 15.07.2022, and 18.07.2022 in C.S. No. 150 of 2015, admitted that the Plaintiffs had complied with all requirements for entrusting the cargo to Sanco Trans. It is further submitted that the witness also confirmed that the Plaintiffs had no control over the cargo once it was handed over to the Freight Forwarder.

36. From the above, it is submitted that the cargo was insured under Ex.P1 and Ex.P2 and entrusted in good order and condition for transit from Chennai to Qingdao, China. It is therefore submitted that the Plaintiffs have proved that the loss occurred during transit, which was covered under the Warehouse-to-Warehouse Policies issued by the Defendant in both suits and submitted that the Defendant's baseless allegation of an antedated Bill of Lading stands disproved by the Plaintiffs' evidence.

Issue No. 2: Whether the Defendant is right in repudiating the Plaintiffs' insurance claims?

37. It is submitted that the Defendant is not right in repudiating the Plaintiffs' insurance claims in both suits and submitted that the submissions made under Issue No. 1 have explained that there was no antedated Bill of Lading. It is submitted that Ex.P5/Ex.P6 Multimodal Transport Documents 13.03.2012 and 10.04.2012 were issued by Sanco Trans Limited, and the stuffing of the cargo into containers, transporting the same by road on a truck, and loading the containers onto the ship were done by Sanco Trans.

38. It is further submitted that in a Multimodal Transport involving two or more modes of transport of cargo, the Plaintiffs had no role or control over the cargo once it was entrusted to the Freight Forwarding Agent, Sanco

Trans, who is the NVOCC (Non-Vessel Operating Common Carrier). It is submitted that Sanco Trans issued Ex.P5 /Ex.P6 Multimodal Transport Document 13.03.2012 and 10.04.2012 after entrusting the cargo to the Sea Carrier, and that that the container was carried through the Zero Gate at Chennai Port and delivered to the Chennai Container Terminal (CCTL), with all seals intact.

39. It is further submitted that up to the stage of entrustment, statutory documents such as Ex.P2 in C.S. No. 148 of 2015 and customs clearance documents in C.S. No. 150 of 2015, duly signed by the Preventive Officer of the Customs Department, confirm that the containers were intact in all respects without any breakage of seal, as alleged by the Defendant.

40. Moreover, it is submitted that the Surveyors appointed by the Defendant issued reports, Ex.P22 in C.S. No. 148 of 2015 and Ex.P11 in C.S. No. 150 of 2015, after conducting surveys at the Discharge Port. It is further submitted that in these reports, the Surveyors stated that they were tasked with investigating the circumstances of the subject matter and assessing the value of the cargo loss. It is submitted that they finally valued the loss of cargo at USD 1,58,125.00 in C.S. No. 148 of 2015 and USD 1,38,250.00 in C.S. No. 150 of

2015, based upon the invoice values. It is further submitted that these reports do not specify where the loss occurred.

41. It is further submitted that the the Plaintiffs have provided evidence to establish their compliance with all requirements. It is therefore submitted that the Plaintiffs acted diligently and ensured the proper transit of the cargo, and the Defendant has failed to substantiate their allegations of misconduct.

Issue No. 3: Whether the Suit is liable to be dismissed for Non-Joinder of Necessary Parties?

42. It is submitted that the Suit cannot be dismissed for non-joinder of necessary parties, namely the Sea Carrier who carried the Cargo by ship and submitted that in C.S.No.148 of 2015, DW-1 admitted during cross-examination that despite the notice of loss being informed to the Defendant as early as 02.05.2012, as per Ex.P16, the rejection was sent only on 21.06.2013, which is almost 13 months later. It is submitted that similarly, in C.S.No.150 of 2015, DW-1 admitted that, despite the notice of loss being informed to the Defendant as early as 30.05.2012, as per Ex.P19, the rejection was sent on 21.06.2013, after a delay of 13 months.

43. It is further submitted that the Defendant's delay in deciding the

Plaintiffs' claims prevented the Plaintiffs from initiating any action against the Carrier, and submitted that the limitation to proceed against the Freight Forwarding Agent is only 9 months from the date of delivery at the Discharge Port, and against the Sea Carrier, it is 1 year. It is further submitted that this delay caused the Plaintiffs to lose the right to recover the loss from the Freight Forwarder or Carrier. Therefore it is submitted that, the entire liability to indemnify the loss rests with the Defendant.

44. Moreover, it is submitted that as per the decisions of various High Courts, the Defendant cannot travel beyond the grounds mentioned in Ex.P16/Ex.P19 Letter of Repudiation/Rejection dated 21.06.2013. It is further submitted that Non-joinder of necessary parties is not a ground mentioned in the repudiation letter. Therefore it is submitted that, the ground raised in the Written Statement, asserting that the Freight Forwarder or Carrier should have been joined as necessary parties in the present suit, is not valid, both on facts and in law.

45. It is therefore submitted that it is evident that the repudiation/rejection by the Defendant is unsustainable, and the Suit cannot be dismissed for non-joinder of necessary parties.

Issue No. 4: Whether the consignment was entrusted to the sea carrier in good order and condition?

46. It is submitted that in C.S. No. 148 of 2015, the container (CRSU1480657) was first inspected for loading, then taken to the loading point within the Customs Freight Station (CFS) of Sanco Trans Limited, and stuffed under their supervision. It is further submitted that the seal of the Agent (732445) and the Customs Seal (KVNU13723) were affixed and confirmed as intact by the Customs Department when the cargo was moved to the Chennai Port Terminal, and that similarly, in C.S. No. 150 of 2015, the Customs Seal (RQNE19212) and the Agent's Seal (1200266) were confirmed as intact when the consignment was handed over at the Chennai Port Terminal.

47. It is further submitted that in C.S. No. 148 of 2015, the Master of the vessel MV JIN YUN HE issued a Mate Receipt confirming the intactness of the Agent's Seal (732445), and that in C.S. No. 150 of 2015, the consignment was entrusted in good order and condition to the vessel MV JITRA BHUM for carriage to Qingdao, China.

48. It is submitted that the Multimodal Transport Documents

(MMTDs) issued by Sanco Trans-Ex.P5 in C.S. No. 148 of 2015 and Ex.P6 in C.S. No. 150 of 2015 declare that the cargo was received in good order and condition. It is further submitted that such documents would not have been issued unless the cargo was in good condition at the time of entrustment.

49. It is further submitted that DW-1 admitted during cross-examination in both suits that once a container containing cargo is entrusted to the Freight Forwarder or Carrier after completing Customs formalities, no party can exercise control over the container's movement until it reaches the Discharge Port, i.e., Qingdao in China.

50. It is therefore submitted that, it is evident that the containers carrying the consignments covered by suits in both C.S.No.148 of 2015 and C.S.No.150 of 2015 were entrusted to the Chennai Container Terminal at the Chennai Port in good order and condition, and that the Plaintiffs have proved this fact beyond doubt with documentary and oral evidence.

Issue No. 5: Whether the suit claim is liable to be dismissed as per exclusion clauses ICC (A) No. 4.1 r/w 16.1 of the Policy terms and conditions?

51. The Relevant Clauses from Institute Cargo Clauses is reproduced

below:-

Clause 4.1 - Willful Misconduct
"Exclusions
4 – In no case shall this insurance cover:
4.1 – Loss, damage, or expense attributable to the willful misconduct of the assured."

Clause 16.1 - Loss Minimization
"16 – It is the duty of the assured and their employees and agents in respect of loss recoverable hereunder:
16.1 – To take such measures, as may be reasonable, for the purpose of averting or minimizing such a loss."

52. It is submitted that the essential elements of willful misconduct, as laid down by various courts, are that the assured intended to achieve loss or damage to the insured subject matter or was recklessly indifferent to whether such loss or damage occurred; and the assured's immediate purpose was to claim insurance.

53. It is further submitted that in both cases, the Plaintiffs acted diligently and in good faith throughout the process, and that the 1st Plaintiff prudently handed over the cargo in good order and condition, packed in cartons, to Sanco Trans Limited, which shipped it to the 2nd Plaintiff. It is further submitted that there was no intention to cause loss or damage to their own cargo.

54. It is submitted that since the Defendant alleged willful misconduct, the burden of proof lies with the Defendant to establish such misconduct. It is submitted that the Plaintiffs followed all statutory requirements and delivered the cargo in good order and condition and that the Defendant's allegation of willful misconduct was made casually to escape liability under the policy.

55. It is further submitted that the Plaintiffs did not lodge an insurance claim as their immediate purpose. It is submitted that the 2nd Plaintiff, upon learning about the loss of cargo at the discharge port, acted prudently and refused to take delivery of the damaged cargo. It is further submitted that they promptly informed the local surveyor appointed by the Defendant, who subsequently conducted a survey and submitted a loss report.

56. It is submitted that the Defendant's surveyor found no evidence of container tampering at any stage, further proving that the Plaintiffs had no role in committing willful misconduct. It is further submitted that "willful" implies intent or deliberation, and "misconduct" refers to acts contrary to the policy terms and that for willful misconduct to apply, both elements must

coexist, which is not the case here.

57. It is further submitted that after the cargo was shipped, the Plaintiffs became aware of the loss only upon its delivery at the discharge port. It is further submitted that the Plaintiffs had no opportunity to interfere with the cargo after its entrustment to Sanco Trans for carriage. It is further submitted that the loss was assessed after several months, following which the Plaintiffs lodged their claims.

58. It is submitted that the Defendant alleged that the loss occurred at the Container Terminal, before loading onto the vessel. It is further submitted that the place of loss remains unidentified. It is further submitted that although the existence of a loss is undisputed by both parties, the concept of loss minimization is not applicable in this instance.

59. It is further submitted that loss minimization is relevant in cases of damage, where measures can be taken to avert or reduce the loss ;however it does not apply to instances of theft or untraceable loss, as in the present case. It is further submitted that in both suits, the Plaintiffs were unaware of the exact time and location of the loss.

60. It is submitted that the loss occurred during transit, as evidenced by customs certification confirming that the container seals were intact at the Chennai Port, and the vessel captain's confirmation of seal integrity (Ex.P9/Ex.P10 in C.S. No. 148 of 2015). It is further submitted that the loss likely occurred during transit at the transshipment port in Kelang, Malaysia.

61. It is therefore submitted that the exclusion clauses ICC (A) 4.1 (willful misconduct) and 16.1 (loss minimization) do not apply to the present case, and that the Plaintiffs' claims are valid, and the suit is not liable to be dismissed under these exclusions.

Issue No. 6: Whether the Plaintiffs are entitled to receive the suit claim from the Defendant?

62. It is submitted that the Plaintiffs are entitled to receive the suit claim as they have demonstrated that the cargo was entrusted in good order and condition, transported in compliance with the Warehouse-to-Warehouse Policy, and insured under Ex.P1 (Marine Insurance Policy dated 24.02.2012) in C.S. No. 148 of 2015 and Ex.P2 (Marine Insurance Policy dated 02.07.2011) in C.S. No. 150 of 2015. It is further submitted that the Plaintiffs have elaborately dealt with the movement of the cargo under Issue No. 1, proving that the loss

occurred during transit.

63. It is further submitted that the Defendant's surveyor confirmed the loss at the discharge port and assessed it at USD 1,58,125.00 in C.S. No. 148 of 2015 (Ex.P22) and USD 1,38,250.00 in C.S. No. 150 of 2015 (Ex.P11). It is further submitted that DW-1 admitted during cross-examination that the Defendant's surveyor would not be examined, leaving the survey reports unchallenged.

64. It is submitted that the Plaintiffs ensured the proper movement of the cargo from the warehouse to the discharge port. It is submitted that the Plaintiffs moved the cargo from their factory in Eluru to the Container Freight Station (CFS), where it was stuffed into containers and transported to the Chennai Port Terminal. It is further submitted that the cargo's movement was consistent with the terms of the Warehouse-to-Warehouse Policy, as evidenced by Ex.P1 and Ex.P2.

65. It is further submitted that the Defendant's contention that the loss occurred at the Chennai Port or Container Terminal lacks supporting evidence. It is further submitted that even if the loss occurred at the Chennai

Port, Clause 8.1 of ICC(A) covers the transit period, including the port terminal. It is further submitted that the Defendant delayed investigating the loss and failed to act promptly at the load port. It is further submitted that the Plaintiffs could not lodge a police complaint due to the absence of concrete evidence of the location of the loss.

66. It is submitted that the Defendant, having acted on the claim by deploying a surveyor and receiving claim documents, is estopped from denying the Plaintiffs' claims. It is further submitted that Ex.P16 in C.S. No. 148 of 2015 and Ex.P19 in C.S. No. 150 of 2015 show that the Defendant rejected the claim only after a significant delay, thereby preventing the Plaintiffs from pursuing alternative remedies.

67. It is submitted that the Plaintiffs have proved the loss occurred during transit, adhered to the policy terms, and submitted valid claims, and that the Defendant has failed to provide concrete evidence for repudiation. Therefore, it is submitted that the Plaintiffs are entitled to receive the claim amounts under Ex.P1 and Ex.P2, respectively.

Additional Issue No. 1 in C.S.No.148 of 2015 /Additional Issue No. 2 in C.S.No.150 of 2015:

Whether the representative who signed and verified the Plaint on behalf of the second Plaintiff is competent to do so?

68. It is submitted that the 2nd Plaintiff, being a company incorporated under Chinese law, has no office in India to represent itself. It is further submitted that the 2nd Plaintiff executed a Power of Attorney (Ex.P19 in C.S. No. 148 of 2015 and Ex.P22 in C.S. No. 150 of 2015) in favor of Mr. Krishna Kishore, who is well-versed in the facts of the case. It is further submitted that the Power of Attorney was adjudicated by competent authorities in India, ensuring its validity.

69. It is further submitted that the Plaintiffs found it appropriate to grant the Power of Attorney to Mr. Krishna Kishore, who had personal knowledge of the transactions, as he was actively involved with the Defendant on behalf of the Plaintiffs. It is therefore further submitted that under the Power of Attorney, Mr. Krishna Kishore is competent to represent the 2nd Plaintiff before this Court.

Additional Issue No. 1 in C.S.No.150 of 2015

Whether the Suit is liable to be dismissed for non-compliance with the

requirements under Section 69(2) of the Indian Partnership Act?

70. It is submitted that Ex.P1 in C.S.No.150 of 2015, the Registration Certificate of the 1st Plaintiff Partnership Firm dated 02.12.1999, demonstrates that the firm was duly registered with the Registrar of Firms, Eluru, Andhra Pradesh. It is submitted that the 1st Plaintiff is represented by its Managing Partner, Mr. Mohana Gupta, who has signed and verified the Plaint and other pleadings on behalf of the firm.

71. It is further submitted that Ex.P12 in C.S.No.150 of 2015, a Letter dated 31.05.2012, shows that the 1st Plaintiff, through its Managing Partner, sought a survey regarding the loss of 14 cartons from the container. This evidence establishes the active involvement of the 1st Plaintiff in addressing the matter at hand.

72. It is further submitted that Ex.P1 and Ex.P12 in C.S.No.150 of 2015 demonstrate sufficient compliance with Section 69(2) of the Indian Partnership Act, making the suit maintainable. Although the Defendant raised the issue of non-compliance in its Written Statement, it is submitted that it omitted to pursue this defense in its Proof Affidavit, nor was PW1 cross-

examined on this aspect.

73. Consequently, it is submitted that the Defendant has failed to establish that the 1st Plaintiff has not complied with Section 69(2), and an adverse inference must be drawn in this regard.

74. It is further submitted that Section 69(2) of the Indian Partnership Act is not applicable to the 2nd Plaintiff, as it is a company incorporated and registered under the laws of China. Therefore, it is submitted that the compliance requirements under the Indian Partnership Act do not apply to the 2nd Plaintiff, and the suit is maintainable on this ground as well.

75. For these reasons, it is submitted that the suit is not liable to be dismissed for non-compliance with Section 69(2) of the Indian Partnership Act.

Additional Issue No. 2 in C.S. No. 148 of 2015 - Whether the first Plaintiff is competent to file and maintain the suit as the owner of the suit consignment?

Additional Issue No. 3 in C.S. No. 148 of 2015 and C.S. No. 150 of 2015- Whether the claim of the second Plaintiff is maintainable in the absence of proof of ownership and insurable interest over the suit cargo?

76. It is submitted that the 1st Plaintiff and 2nd Plaintiff are the seller

and purchaser, respectively, of the cargo under CIF contracts, and that the ownership and risk transfer to the purchaser upon the transfer of documents such as the Bill of Lading and Insurance Policy. It is further submitted that the Plaintiffs submitted the required documents, including insurance policies (Ex.P1 in C.S. No. 148 of 2015 and Ex.P2 in C.S. No. 150 of 2015), to substantiate their claims.

77. It is further submitted that the joint filing of the suit by both Plaintiffs is to avoid technical objections and submitted that the claims are valid, as ownership and insurable interest have been sufficiently proved.

78. It is therefore submitted that the Plaintiffs have established their entitlement to the claims under Ex.P1 and Ex.P2, respectively, and that the Defendant has failed to provide a valid defense for repudiation and has acted contrary to the terms of the Warehouse-to-Warehouse Policy. Therefore, the Plaintiffs respectfully pray that this Hon'ble Court decrees the suits as prayed for, with costs awarded in their favor.

Denial of Defendant's Defense.

79. It is submitted that the Defendant's primary defenses, as stated in their rejection letters dated 21.06.2013 (Ex.P16 in C.S. No. 148 of 2015 and

Ex.P19 in C.S. No. 150 of 2015), are untenable. The Defendant contends that the loss occurred at the Chennai Container Terminal prior to loading the cargo onto the vessel and further alleges that the Multimodal Transport Documents (MMTDs) were manipulated for banking purposes.

80. It is further submitted that the Plaintiffs have effectively disproved these defenses, demonstrating that the seals on the containers were intact at the time of entrustment to the Freight Forwarder and during the customs clearance process. It is further submitted that in C.S. No. 148 of 2015, the Customs Preventive Officer certified on 15.03.2012 (Ex.P2) that the seals were intact, while in C.S. No. 150 of 2015, Ex.P5 and Ex.P8 establish that the seals were verified and intact at the time of Let Export and entrustment to the Terminal.

81. It is further submitted that the Defendant's allegation regarding the manipulation of Multi Modal Transport Documents (MMTDs in short) is baseless, as these documents (Ex.P5 in C.S. No. 148 of 2015 and Ex.P6 in C.S. No. 150 of 2015) were issued by Sanco Trans, a registered Freight Forwarder. It is further submitted that these MMTDs confirm the receipt of cargo in good order and condition and indicate the contractual relationship between the

Freight Forwarder and the Plaintiffs. It is submitted that the subsequent issuance of the Bill of Lading by the Sea Carrier does not negate the validity of the MMTDs.

82. It is submitted that the Defendant has failed to provide any concrete evidence to substantiate their allegations. It is further submitted that DW-1 admitted during cross-examination that the Defendant could not identify the precise location or timing of the loss, thereby undermining their defense.

83. It is submitted that DW-1's admissions during cross-examination strengthen the Plaintiffs' case. It is submitted that DW-1 admitted that the Ex.P1 /Ex.P2 Marine Insurance Policies covered the cargo under Warehouse-to-Warehouse terms, and that DW-1 acknowledged the issuance of valid survey reports (Ex.P22 in C.S. No. 148 of 2015 and Ex.P11 in C.S. No. 150 of 2015) confirming the loss at the discharge port.

84. It is further submitted that DW-1 admitted that the Plaintiffs complied with all customs and insurance requirements, including obtaining Let Export Orders and ensuring that the seals on the containers were intact at every stage before the cargo was handed over to the Terminal and subsequently to the

Sea Carrier.

85. It is further submitted that DW-1 conceded that the Defendant delayed investigating the claims and failed to provide a final investigation report. It is further submitted that the Defendant's reliance on discrepancies between the dates on the MMTDs and Bills of Lading does not hold merit, as these documents serve distinct purposes and are consistent with standard shipping practices.

86. It is further submitted that the Plaintiffs issued notices to the Defendant to produce relevant documents, but the Defendant failed to comply. It is submitted that the Defendant's non-production of these documents allows this Court to draw an adverse inference against them, further bolstering the Plaintiffs' claims.

87. It is therefore submitted that the Plaintiffs have proved their entitlement to the claims under the Ex.P1/Ex.P2 Marine Insurance Policies and established that the Defendant's repudiation was baseless. It is further submitted that the Defendant has acted contrary to the terms of the policies and has failed to provide a valid defense.

88. Hence, the Plaintiffs prays that this Court decrees the suits as prayed for, awarding the Plaintiffs the claim amounts along with interest and costs.

Written Submissions on behalf of the defendant in C.S.No.148 of 2015 and C.S.No.150 of 2015

Issue No. 1) Whether the loss of cargo had occurred during transit from Chennai to Quingdao in China as covered by the warehouse to warehouse policy?

89. It is submitted that in the cases of C.S.No.148 of 2015 and C.S.No.150 of 2015, the issue revolves around whether the alleged loss of cargo occurred during transit from Chennai to Qingdao in China, as covered under the respective Ex.P1/Ex.P2 Marine Insurance Policies dated 24.02.2012 and 2.7.2011. It is further submitted that the plaintiffs in both cases have failed to establish through credible evidence that the loss occurred during the transit covered by the policies.

90. It is submitted that in C.S.No.148 of 2015, the cargo, consisting of 40 cartons weighing 1000Kg, was said to have been entrusted to the sea carrier on 15.03.2012; however, the Bill of Lading was issued on 13.03.2012, prior to the cargo's alleged entrustment. Similarly it is submitted that, in

C.S.No.150 of 2015, the cargo consisted of 208 cartons of human hair weighing 5200Kgs, and the discrepancy in the container seal numbers upon arrival at the discharge port raises significant doubts. It is submitted that in both cases, the plaintiffs failed to prove the consignment's condition and security during the transit.

91. It is further submitted that in C.S.No.148 of 2015, the cargo was loaded at the Sanco Container Freight Station on 15.03.2012, and the Ex.P7 stuffing survey report dated 16.03.2012 indicated satisfactory loading conditions; however, the Bill of Lading reflecting an earlier date raises questions regarding the shipment's documentation. Similarly it is submitted that in C.S.No.150 of 2015, the plaintiff failed to produce evidence confirming the consignment's secure entrustment and handling during transit, particularly at the transshipment point at Port Kelang, Malaysia.

92. It is submitted that the investigator in both cases concluded that the loss likely occurred at the loading port, prior to the cargo being loaded onto the vessel. It is submitted that in C.S.No.148 of 2015, the discrepancy in the Bill of Lading dates and the plaintiff's failure to provide evidence of entrustment to the sea carrier in good order and condition further undermine the

claims of the plaintiff. Likewise, it is submitted that in C.S.No.150 of 2015, the absence of proof regarding pre-dispatch inspections or measures to secure the cargo strengthens the defendant's argument.

93. It is submitted that the cross-examinations of the plaintiffs' witnesses in both cases revealed critical admissions, including the lack of written contracts, original documentation, and pre-dispatch inspections. It is further submitted that the witnesses in both cases admitted that no notices were sent to the sea carriers to claim the loss, further contravening the policy terms requiring the preservation of rights against third parties.

94. Reliance is placed on the judgment in **AIR 1993 Supreme Court 2054**, where it is submitted that the court held that the expression “warehouse to warehouse” merely indicates the policy’s duration and does not inherently cover every risk and that the burden is on the plaintiff to prove that the loss resulted from perils covered under the policy. It is submitted that in both cases, the plaintiffs failed to demonstrate that the alleged loss occurred due to insured perils or during the policy period.

95. It is further submitted that the policies in question are governed

by strict terms and conditions, which require the plaintiffs to provide clear evidence of compliance with the contractual obligations, including securing and documenting the consignment throughout the transit. It is submitted that in both cases, the plaintiffs' failure to meet these obligations renders the claims unsustainable under the respective policies.

96. Therefore, it is submitted that due to the lack of credible evidence proving the occurrence of the alleged loss during transit and the plaintiffs' failure to adhere to the policy terms, the claims in C.S.No.148 of 2015 and C.S.No.150 of 2015 are liable to be dismissed.

Issue No. 2) Whether the defendant is right in repudiating the plaintiff's insurance claim?

Issue No. 5) Whether the suit claim is liable to be dismissed as per exclusion clauses ICC (A) No. 4.1 read with 16.1 of the policy terms and conditions?

97. It is submitted that in both C.S.No.148 of 2015 and C.S.No.150 of 2015, the defendant repudiated the insurance claims under Ex.P1/P2 Marine Policy dated 24.02.2012 and 2.7.2011, respectively, citing Exclusion Clause 4.1, which excludes loss due to willful misconduct of the assured, and Clause 16.1 of ICC (A) of the policy, which places an obligation on the assured to take

reasonable measures to avert or minimize loss and preserve rights against third parties. It is submitted that the investigation conducted by the surveyor revealed that the loss occurred prior to transit at the Container Terminal, before the container was loaded on the vessel. Furthermore, it is submitted that the Bill of Lading in both cases are inconsistent with the actual timeline of events.

98. It is further submitted that in C.S.No.148 of 2015, the plaintiff failed to comply with the terms and conditions of the insurance policy, including the duty to take reasonable measures to prevent loss and to ensure all rights against carriers, bailees, or other third parties were preserved. Similarly, it is submitted that in C.S.No.150 of 2015, no action was taken to recover the alleged loss or to protect the consignment, thereby breaching the policy terms.

99. It is submitted that the cross-examination of the plaintiff's witnesses in both cases revealed crucial admissions. It is submitted that in C.S.No.148 of 2015, PW1 acknowledged that the original policy terms, marked as Ex.D1, were binding on both parties, and that in C.S.No.150 of 2015, the plaintiff admitted during cross-examination that no notice or legal action was initiated against the parties responsible for the cargo during transit, further violating policy obligations.

100. Reliance is placed on the judgment in **(2010) 10 SCC 567**, submitting that the Court there emphasized that the terms of an insurance contract must be strictly construed, and courts cannot create a new contract or alter its terms. It is submitted that the Hon'ble Supreme Court there observed that an insurer's liability is strictly limited to the risks and conditions outlined in the policy.

101. Similarly, reliance is placed on the judgment in (**2004) 8 SCC 644**, wherein the court held that the policy terms must be interpreted as they are, without adding or subtracting provisions.

102. It is further submitted that the plaintiffs in both cases failed to discharge their burden of proof to demonstrate that the loss occurred due to risks covered under the policy. It is submitted that the discrepancies in the Bill of Lading, the lack of evidence of willful measures to prevent loss, and the failure to take action against third parties who may have contributed to the loss, all constitute breaches of the policy terms and conditions.

103. In conclusion on this issue, it is submitted that the defendant was justified in repudiating the claims in both C.S.No.148 of 2015 and C.S.No.150 of 2015 due to the plaintiffs' failure to comply with the policy terms, including Clauses 4.1 and 16.1 of ICC (A) and therefore submitted that, the claims are not maintainable, and the suits are liable to be dismissed with costs.

Issue No. 3) Whether the suit is liable to be dismissed for non joinder of necessary parties?

104. It is submitted that, the consignment was entrusted to M/s. Sanco Trans Ltd. under Ex.P3/P6 Multi Modal Transport Documents bearing No. STL/MAA/QIN/3436 dated 13.03.2012 and 10.04.2012, respectively, confirming that the consignment was shipped on board. It is submitted that under the Multi Modal Transportation of Goods Act, 1993, legal action against a multi-modal transport operator must be initiated within nine months from the date of delivery of the goods.

105. It is further submitted that the plaintiffs, in their respective plaints, state that the loss of cargo occurred while the vessel was in transit between Chennai and Qingdao Port, China; however, no legal action was initiated against the multi-modal transport operator or the sea carrier, despite

the goods being in their exclusive custody during transit. It is submitted that the plaintiffs have not made the sea carrier a party to the suit proceedings, failing to prove that the suit cargo was lost while in the custody of the sea carrier. It is submitted that this omission is a clear violation of Clause 16 of the policy issued by the defendant, which mandates the assured to take reasonable measures to avert or minimize loss and ensure that all rights against carriers, bailees, or other third parties are properly preserved and exercised.

106. It is further submitted that in C.S.No.148 of 2015, during cross-examination on 28/10/2021, the plaintiff's witness admitted that no notice was sent to the vessel owner or legal action initiated against them. Similarly, it is submitted that in C.S.No.150 of 2015, the plaintiff's witness conceded that legal action was not pursued against the vessel owner despite provisions in Ex.P22 Power of Attorney dated 19.12.2014 requiring recovery measures from either the insurance company or the vessel owner.

107. Reliance is placed on **1988-1-Law Weekly 320**, where the this Court held that the failure to institute timely action against the carrier resulted in the insurer being deprived of its right to indemnity against the carrier. It is submitted that the insurer's liability is contingent upon the assured preserving

their remedies against third parties and that any failure by the assured to comply with these obligations justifies the insurer repudiating the claim.

108. It is further submitted that the evidence in both cases highlights a clear breach of policy terms and submitted that the plaintiffs failed to take up the issue with the carrier regarding entrustment of the cargo in good order and condition, as well as its discharge at the port of destination. It is further submitted that the absence of the transporter or sea carrier as a party to the proceedings makes it impossible to ascertain the fate of the cargo and constitutes a material defect in the suit.

109. In conclusion, it is submitted that the failure of the plaintiffs to initiate action against necessary parties, including the sea carrier, and their non-compliance with the policy obligations render their claims untenable and therefore, the suits are liable to be dismissed for non-joinder of necessary parties.

4) Whether the consignment was entrusted to the sea carrier in good order and condition?

110. It is submitted that in C.S.No.148 of 2015, Ex.P7 container stuffing survey report filed by M/s. J.B. Boda Surveyors Pvt. Ltd., bearing

MDS/12316/11AA dated 16.03.2012, reflects that the container in which the consignment was stuffed was in a satisfactory condition on 14.03.2012 at STP-2, Plot, Chennai, and that the date and place of stuffing were recorded as 15.03.2012 at Sanco Container Freight Station, Chennai. It is further submitted that only after the cargo was stuffed, weighed, and sealed, could particulars regarding the consignment be furnished to the sea carrier by the consignor/shipper for the preparation of the Bill of Lading; however, in the present cases, the Bill of Lading was made available on 13.03.2012, prior to the completion of these essential steps, confirming the container to be shipped on board the sea carrier as a full container load (FCL/FCL).

111. It is further submitted that the events surrounding the loading of the consignment and the preparation of the Bill of Lading raise doubts about the entrustment of the cargo to the sea carrier in good order and condition. It is submitted that in Ex.P1/ Ex.P2 Marine Policy dated 24.02.2012 and 02.07.2011 the first plaintiff has failed to furnish critical particulars, including the exact nature of the container, the consignment details, and its weight, packing, and the actual process of entrustment to the sea carrier. It is submitted that this failure raises serious concerns regarding whether the cargo was ever transported for safe carriage and delivery and for a valid cover under the policy.

112. It is further submitted that the plaintiff has not established the shortage of the consignment, nor has it provided evidence as to when and under whose custody the alleged shortage occurred and that this failure to substantiate the claim regarding the condition and delivery of the cargo renders the claim untenable under the terms of the policy.

113. It is thus submitted that the plaintiffs' inability to prove the entrustment of the consignment to the sea carrier in good order and condition, as well as their failure to establish any actionable evidence regarding the alleged shortage, results in their inability to claim a valid cover under the respective policies an on these grounds, the suits are liable to be dismissed.

Issue No. 6) Whether the plaintiffs are entitled to receive the suit claim from the defendant?

Issue No. 7) To what relief?

114. It is submitted that in both the suits, the plaintiffs have failed to establish their case regarding the transportation of the cargo from the container freight station to the port premises and the proper entrustment of the cargo to the sea carrier. It is further submitted that the plaintiffs have failed to prove that

the container with the suit consignment was properly stored, sealed, and entrusted to the sea carrier in accordance with the policy requirements.

115. It is further submitted that the policy of insurance issued by the defendant is strictly governed by the terms and conditions forming part of the policy, including the Institute Cargo Clauses (A). It is submitted that under Ex.P1/P2 Marine Insurance Policies dated 24.02.2012 and 02.07.2011, exclusion clause 4.1 sates states that in no case shall the insurance cover loss, damage, or expense attributable to willful misconduct of the assured, and loss minimization and clause 16.1 states that it is the duty of the assured, their servants, and agents to take reasonable measures to avert or minimize such loss and to ensure that all rights against carriers, bailees, or other third parties are properly preserved and exercised respectively. It is submitted that in C.S.No.148 of 2015 the plaintiff obtained a Bill of Lading on 13.03.2012, which was dated much earlier than the actual cargo stuffing date of 15.03.2012 and this discrepancy violates the policy terms. It is further submitted that the plaintiffs have failed to comply with policy terms and obligations, and therefore the claim was repudiated by the defendant due to clear breaches of the policy terms and conditions.

116. It is further submitted that the plaintiffs have not filed documents to establish their credentials or their entitlement to maintain the suit. It is submitted that in C.S.No.148 of 2015, no purchase order, letter of credit, or evidence of sale consideration was presented. Similarly, in C.S.No.150 of 2015, it is submitted that the plaintiffs failed to file the necessary documents to substantiate their claims, such as purchase orders, letters of credit, or proof of payment by the buyer and submitted that the plaintiff's failure to present essential documents raises doubts about the value, ownership, and nature of the consignment. It is further submitted that the evidence provided by PW-1 during cross-examination further supports the position that the plaintiffs did not conduct a pre-dispatch survey before loading the cargo at their warehouse ; There is no proof regarding the number of cartons loaded and the plaintiffs failed to inform the defendant about the appointment of M/s. J.B. Boda Surveyors for inspection.

117. It is therefore submitted that the plaintiffs have failed to prove their entitlement to file and maintain the suits by presenting proper documentation.

Additional Issue No. 1 in C.S.No.148 of 2015 /Additional Issue No. 2 in C.S.No.150 of 2015: Whether the representative who signed and verified the Plaint on behalf of the second Plaintiff is competent to do so?

118. It is submitted that in C.S.No.148 of 2015, the plaint was signed by Mr. M. Mohana Gupta on behalf of the first plaintiff and Mr. Krishna Kishore on behalf of the second plaintiff. It is further submitted that Ex.P21, a letter of authority issued to Mr. Krishna Kishore, was dated 04/02/2020, while the suit was filed in 2015 and that his discrepancy raises doubts about the validity of the authorization. It is further, no registration certificate has been filed to demonstrate that the first plaintiff is a registered company under the Companies Act or that Mr. M. Mohana Gupta is competent to represent the first plaintiff in this suit.

119. It is further submitted that during cross-examination in C.S.No.148 of 2015, the plaintiff's witness could not recall when the plaintiff company was established, and Ex.P20, a Board resolution dated 04/02/2020, was passed nearly five years after the filing of the suit. It is further submitted that there was no prior resolution or authorization empowering the signatories to institute the suit and therefore he lack of documentation invalidates the representation.

120. It is submitted that in C.S.No.150 of 2015, the second plaintiff is represented through a power of attorney issued to Mr. M. Krishna Kishore,

marked as Ex.P22. It is submitted that Ex.P22 is not registered, lacks adjudication, and fails to comply with Indian legal requirements. It is further submitted that during cross-examination, the plaintiff's witness admitted that Ex.P22 bore no document number and had not been properly adjudicated in India. An unregistered power of attorney renders the claim inadmissible.

121. It is further submitted that both suits suffer from fundamental defects. In C.S.No.148 of 2015, there is no valid documentation authorizing Mr. Mohana Gupta or Mr. Krishna Kishore to sign and verify the plaint. In C.S.No.150 of 2015, the unregistered power of attorney fails to establish the competency of the representative to maintain the suit.

122. Reliance is placed on **(2011) 11 SCC 524**, wherein the Court held that the absence of proper authorization renders a suit invalid, and AIR 1991 Delhi 25, which mandates specific authorization through a valid Board resolution or partnership document. AIR 1987 Bombay 348 further emphasizes that non-compliance with statutory requirements invalidates the suit.

123. It is therefore submitted that the absence of proper authorization and compliance with statutory requirements renders the suits in C.S.No.148 of

2015 and C.S.No.150 of 2015 defective and non-maintainable.

Additional Issue No. 1 in C.S.No.150 of 2015

Whether the Suit is liable to be dismissed for non-compliance with the requirements under Section 69(2) of the Indian Partnership Act?

124. It is submitted that in C.S.No.150 of 2015, the first plaintiff is represented by its managing partner, Mr. M. Mohana Gupta, who signed and verified the plaint; however, no document has been filed to prove that the signatory was a partner in the plaintiff firm at the time of filing the suit and that the cross-examination of PW1 on 29/10/2021 also revealed the same.

125. It is further submitted that the failure to comply with Section 69(2) of the Indian Partnership Act deprives the plaintiff firm of the right to institute the suit, and that even consent or waiver by the defendant cannot cure this defect, as the provision is mandatory in nature and therefore submitted that the suit filed by the first plaintiff is non-maintainable.

Additional Issue No. 2 in C.S. No. 148 of 2015 - Whether the first Plaintiff is competent to file and maintain the suit as the owner of the suit consignment?

126. It is submitted that as per paragraph six of the plaint in

C.S.No.148 of 2015, the second plaintiff opened a letter of credit agreeing to pay the price of the consignment. It is further submitted that the sale was on a Cost, Insurance, and Freight (CIF) basis as per the terms of the letter of credit; however, the plaint lacks particulars regarding the contract of sale, whether the first plaintiff acted upon the contract, or if payment was received under the letter of credit. It is further submitted that as already stated, no documents, including the contract of sale, purchase order, or letter of credit, have been filed by the plaintiffs to substantiate the claim. It is therefore submitted that the first plaintiff has failed to prove their competency to file and maintain the suit.

127. It is further submitted that the evidence of the plaintiff's witness also reveals critical deficiencies. It is further submitted that the letter of credit, being a critical document reflecting payment between the parties, has not been filed, which suggests that the plaintiffs are withholding vital facts related to the transaction , and that the documents, if filed, might show that the first plaintiff received the full sale consideration, disqualifying them from making any claim under the suit.

128. It is further submitted that from the pleadings and the evidence, it is evident that ownership of the suit consignment would have transferred to

the buyer under the CIF contract and therefore, the first plaintiff has failed to establish ownership and insurable interest over the suit cargo, rendering them incompetent to file and maintain the suit. It is therefore submitted that the suit, as filed by the first plaintiff, is not maintainable and is liable to be dismissed.

Additional Issue No. 3 in C.S. No. 148 of 2015 and C.S. No. 150 of 2015- Whether the claim of the second Plaintiff is maintainable in the absence of proof of ownership and insurable interest over the suit cargo?

129. It is submitted that in C.S.No.148 of 2015, the second plaintiff has failed to prove ownership or insurable interest over the suit cargo, and that Ex.P19, the power of attorney issued by the second plaintiff, was signed by one Mr. William, whose name is not mentioned in the document. It is submitted that during cross-examination, the witness admitted that the power of attorney was not properly registered or executed in India, as it lacked a document number confirming adjudication; Furthermore, it is submitted that the plaintiff did not file critical documents which are necessary to establish the terms of sale and ownership of the cargo and this indicates that there is no proof of a sale or purchase transaction between the first and second plaintiffs, and that without such evidence, the second plaintiff has not demonstrated ownership or insurable interest over the suit cargo. It is further submitted that the unregistered power of attorney further demonstrates procedural lapses,

rendering the second plaintiff's claim inadmissible.

130. For the foregoing reasons, it is submitted that the claim of the second plaintiff in both the suit is unmaintainable and is liable to be dismissed with costs in favor of the defendant.

131. I have considered the arguments advanced by the learned counsel for the plaintiffs and the learned counsel for the defendant Insurance Company in the respective suits.

132. I have perused the plaint, the written statement and the written submission filed by the plaintiffs and the defendant in the respective suits. I have also considered the documents that were marked as exhibits on behalf of the plaintiffs and on behalf of the defendant.

133. The 1st plaintiff had exported human hair of 40 Cartons weighing 25 Kgs each, aggregating in all 1000 Kgs in C.S.No.148 of 2015 and 208 Cartons weighing 5200 Kgs in C.S.No.150 of 2015 to the 2nd plaintiff.

134. The 1st plaintiff appears to have its factory in the State of Andhra Pradesh where it packed human hair in cartons for being exported to the 2nd plaintiff. The 1st plaintiff utilized the services of Multimodal Transport Operator (MTO), who had issued Multimodal Bill of Lading namely Ex.P5 dated 13.03.2012 and Ex.P6 Multimodal Transport Document dated 10.04.2012 for the export of consignment of human hair covered in the respective suits.

135. The consignments were insured with the defendant Insurance Company vide Ex.P1-Ex.D1 Marine Insurance Policy/Marine Certificate dated 24.02.2012 in C.S.No.148 of 2015.

136. Similarly, in C.S.No.150 of 2015, the consignments were insured by the defendant Insurance Company vide Ex.P2-Ex.D1 Marine Insurance Policy/Marine Certificate dated 02.07.2011. Both Ex.P1-Ex.D1 in C.S.No.148 of 2015 and Ex.P2-Ex.D1 in C.S.No.150 of 2015 were warehouse-to-warehouse policy.

137. Ex.P1-Ex.D1 Marine Insurance Policy/Marine Certificate dated 24.02.2012 in C.S.No.148 of 2015 and Ex.P2-Ex.D1 Marine Insurance Policy/Marine Certificate dated 02.07.2011 in C.S.No.150 of 2015 covered the

risk from Chennai to Qingdao, China. Therefore, for any loss from the Chennai Port upto the port of destination was insured.

138. The commodity description in Ex.P1-Ex.D1 Marine Insurance Policy/Marine Certificate dated 24.02.2012 in C.S.No.148 of 2015 and Ex.P2-Ex.D1 Marine Insurance Policy/Marine Certificate dated 02.07.2011 are with reference to Ex.P4 Commercial Invoice dated 08.03.2012 in C.S.No.148 of 2015 and Ex.P3 Commercial Invoice dated 06.04.2012 in C.S.No.150 of 2015.

139. The Ex.P1-Ex.D1 Marine Insurance Policy/Marine Certificate dated 24.02.2012 in C.S.No.148 of 2015 and Ex.P2-Ex.D1 warehouse-to-warehouse policy dated 02.07.2011 in C.S.No.150 of 2015 and the corresponding invoices Ex.P4 Commercial Invoice dated 08.03.2012 in C.S.No.148 of 2015 and Ex.P3 Commercial Invoice dated 06.04.2012 in C.S.No.150 of 2015 are of subsequent dates.

140. It is not clear how the claim filed by the plaintiffs under the above mentioned Ex.P1-Ex.D1 Marine Insurance Policy/Marine Certificate dated 24.02.2012 in C.S.No.148 of 2015 and Ex.P2-Ex.D1 Warehouse-to-Warehouse Policy dated 02.07.2011 in C.S.No.150 of 2015 were issued for

Ex.P3 Commercial Invoice dated 06.04.2012 and Ex.P4 Commercial Invoice dated 08.03.2012 respectively issued subsequent to the date of the policy. However, it has been issued.

141. The details of Ex.P1/Ex.D1 Marine Insurance Policy/Marine Certificate dated 24.02.2012 in C.S.No.148 of 2015 and Ex.P2/Ex.D1 Warehouse-to-Warehouse Policy dated 02.07.2011 in C.S.No.150 of 2015 and the corresponding invoices Ex.P4 Commercial Invoice dated 08.03.2012 in C.S.No.148 of 2015 and Ex.P3 Invoice dated 06.04.2012 in C.S.No.150 of 2015 are tabulated below:-

Ex.P1 and Ex.P4 C.S.No.148 of 2015		**Ex.P2 and Ex.P3 inC.S.No.150 of 2015**	
Marine Certificate No. & date	012500/21/11/10/70 002675- Dt.12.03.2012	**Marine Certificate No.**	012500/21/12/10/7/0000 013- Dt.02.12.1999
Invoice No. & date	No.62- Dt.08.03.2012	**Invoice No. & date**	1- Dt.06.04.2012
L/C No.	381201LC12000036	**L/C No.**	381201LC12000056

142. The Marine Insurance Policy also gives out the details of the invoices such as number of cartons etc., and the total value of the consignments.

143. It is not clear how details of Ex.P4 and Ex.P3 Commercial

Invoices dated 08.03.2012 and 06.04.2012 issued long after the issuance of Ex.P1/Ex.D1 Marine insurance policy and Ex.P2/Ex.D1 Warehouse-to-Warehouse Policy dated 02.07.2011 have been incorporated in them.

144. That apart, Ex.P2 Shipping Bill dated 08.03.2012 in C.S.No.148 of 2015 is of the same date as that of the Ex.P3 Commercial Invoice raised by the 1st plaintiff on the 2nd plaintiff

145. There is some complicity on the part of the defendant insurance company in extending Ex.P1-Ex.D1 Marine Insurance Policy/Marine Certificate dated 24.02.2012 and Ex.P2-Ex.D1 Warehouse-to-Warehouse Policy dated 02.07.2011 policy to the plaintiff.

146. The only reason that is possible is that the defendant is driven by profit motive and issued open cover policies without proper examination and *bona fide* of the plaintiff.

147. However, the fact remains that the details of the invoices, shipping bills etc., incorporated in Ex.P1-Ex.D1 Marine Insurance Policy/Marine Certificate dated 24.02.2012 in C.S.No.148 of 2015 for Ex.P4

Commercial Invoice dated 08.03.2012 and Ex.P2-Ex.D1 Warehouse-to-Warehouse Policy dated 02.07.2011 for Commercial Invoice dated 06.04.2012 was issued in C.S.No.150 of 2015 have not been questioned by the defendant.

148. The Ex.P2 Shipping Bill dated 08.03.2012 and Ex.P5 Shipping Bill dated 07.04.2012 filed were free Shipping Bill. The consignments were preloaded in the container without any scope for examination of the content as no export incentive was claimed by the plaintiff.

149. The Ex.P2 Shipping Bill dated 08.03.2012 and Ex.P5 Shipping Bills dated 07.04.2012 were free shipping bills. Thus, the consignments were not examined by the Customs Officials.

150. All that was done was the containers were sealed in Container No.CRSU148065-7 and Container No.REGU319909-1 with customs seal, license seal and agent seal for the consignment covered by the respective suits.

151. All that was done by the Customs Department would have been to seal the container of the Multimodal Transport Operator in which the export consignments in cartons were being exported.

152. The number of cartons that were loaded in the container in respect of which Ex.P5 Multimodal Transport Document dated 13.3.2012 and Ex.P6 Multimodal Transport Document dated 10.4.2012 were issued by Multimodal Transport Operator (MTO) which was confirmed by the surveyor was appointed by the 1st plaintiff.

153. Ex.P7 and Ex.P8 Surveyor reports dated 16.03.2012 and 11.04.2012 filed in respect of the respective suits confirms the seal numbers, customs seals and the agent seal and also confirms the seal were to be intact.

154. There is a confirmation indeed 40 Cartons of human hair weighing 1052 Kgs were stuffed and were indeed loaded in the Container in a apparent sound conditions in so far as consignment covered by C.S.No.148 of 2015 and 208 cartons of human hair weighing 5470.40 kgs were stuffed and were indeed loaded in the Container in a apparent sound conditions in so far as consignment covered by C.S.No.148 of 2015.

155. Similarly, Ex.P8 Container Stuffing Survey Report dated 11.04.2012 in C.S.No.150 of 2015 confirms that the Carton Nos.204 and 112 were opened for customs inspection and closed with masking tape after

inspection, and corresponding with customs seal and the license seal as in shipping bills in Ex.P2 dated 08.03.2012 in C.S.No.148 of 2015 and the shipping bills in Ex.P5 dated 07.04.2012 in C.S.No.150 of 2015.

156. The report of the surveyor in Ex.P22 dated 05.05.2012 at the port of destination namely Qingdao, China in C.S.No.148 of 2015 and the report of the surveyors at the discharge port together with photographs in Ex.P11 dated 30.05.2012 in C.S.No.150 of 2015 confirmed that the customs seal were tampered with.

157. The observation / conclusion in Ex.P22 Survey Report dated 05.05.2012 and Ex.P11 Survey Report dated 30.05.2012 in the respective suits read as under:-

C.S.No.148 of 2015	**C.S.No.150 of 2015**
(Ex.P22 Survey Report dated 05.05.2012)	**(Ex.P11 Survey Report dated 30.05.2012)**
According to the joint survey on site, 11 cartons (275kgs) of human hair had been missing and should be treated as total loss. As per the shipping documents, the unit price of human hair was **USD575.00/kg**. Therefore, the damaged amount should be **USD575.00/kg x275kg = USD158,125.00**	i. As a result of our survey, we found the container was in apparent normal condition without apparent damage or hole, but the container seal was not the original one, ii. As per our survey, we found there were total 14 cartons of cargo missing, other cargos in apparent normal condition.

C.S.No.148 of 2015	C.S.No.150 of 2015
	iii.The value of lost cargo was calculated to be **USD 138,250** according to the cargo invoice.

158. Thus, there is no dispute that the consignment of 40 Cartons weighing 1000 Kgs and 208 Cartons weighing 5200 Kgs were sent to 2nd plaintiff by the 1st plaintiff and that 11 number of Cartons in C.S.No.148 of 2015 and 14 number of Cartons in C.S.No.150 of 2015 were missing in respect of which, the 1st plaintiff had insured the consignment. Thus, the loss arose out of missing Cartons has to be compensated by the defendant to the plaintiff.

159. In the light of the above discussion, the issues framed in the respective suits are answered as under:-

1. Whether the loss of cargo had occurred during transit from Chennai to Qingdao in China as covered by the warehouse to warehouse Policy?

   Ans: Irrelevant**.** In any event, there is no proof that the loss occurred before the consignments were exported out of the country.

2. Whether the defendant is right in repudiating the plaintiffs' Insurance claim?

   Ans : No. The defendant is not entitled to repudiate the plaintiff's insurance claim.

3. Whether the suit is liable to be dismissed for non joinder of necessary parties?

   Ans : No. The suit is not liable to be dismissed for non joinder of parties.

4. Whether the consignment was entrusted to the sea carrier in good order and condition?

   Ans : Yes. The consignments were entrusted to the sea carrier in good order and condition in view of Endorsement in Ex.P.2 and Ex.P.5 – Shipping Bills.

5. Whether the suit claim is liable to be dismissed as per exclusion clauses ICC (A) No.4.1 r/w. 16.1 of the Policy terms and conditions?

   Ans : No

6. Whether the plaintiffs are entitled to receive the suit

claim from the defendant?

Ans : Yes

7. To what relief?

   Ans : As prayed for

8. Additional Issue No. 1 in C.S.No.148 of 2015 /Additional Issue No. 2 in C.S.No.150 of 2015: Whether the representative who signed and verified the Plaint on behalf of the second Plaintiff is competent to do so?

   Ans : Irrelevant. It has no relevance.

9. Additional Issue No. 2 in C.S. No. 148 of 2015 - Whether the first Plaintiff is competent to file and maintain the suit as the owner of the suit consignment?

   Ans : Yes, as the plaintiffs have an insurable interest.

10. Additional Issue No. 1 in C.S.No.150 of 2015- Whether the Suit is liable to be dismissed for non-compliance with the requirements under Section 69(2) of the Indian Partnership Act?

Ans : Not relevant as the plaintiff is a registered Partnership Firm with Registrar of Firms in terms of Ex.P1 dated 02.12.1999 in C.S.No.150 of 2015.

11. Additional Issue No. 3 in C.S. No. 148 of 2015 and C.S. No. 150 of 2015 - Whether the claim of the second Plaintiff is maintainable in the absence of proof of ownership and insurable interest over the suit cargo?

Ans : The prayer is for a composite relief. Therefore, the plaintiffs are entitled for the relief.

160. In the result, the claim of the plaintiffs in C.S.Nos.148 and 150 of 2015 are allowed. Accordingly, the suits are decreed as prayed for. The plaintiffs are also entitled for cost in terms of Proviso to amended Section 26(2) of C.P.C as amended by Schedule to the Commercial Courts Act, 2015. The plaintiffs are entitled for all the expenses incurred in prosecuting these suits. Connected Application is also closed.

25.11.2024

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Index : Yes / No
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Neutral Citation : Yes / No

kkd/arb

C.SARAVANAN, J.

kkd/arb

C.S.Nos.148 and 150 of 2015