

CARRIAGE OF GOODS BY SEA ACT, 1925

26 of 1925

[21st September, 1925]

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"A bill of lading was originally a receipt for the goods placed on a ship and also a document for transferring the title of the goods to the consignee. With (he development of trade, it became recognised as a negotiable instrument in which shippers, the carriers and the consignees or purchasers of the goods as well as bankers and under writers became increasingly interested.

Concurrently with this it became the custom to show on the bill of lading the terms of the contract on which the goods were delivered to and received by the ship, and from time to time new clauses were added usually in the direction of contracting the carrier out of liability for some kind of loss or damage to the goods. There thus arose great diversity between the conditions on which goods were carried by sea and considerable uncertainty about the liabilities which still attached to the carrier. 2. There has been a demand for many years among the different commercial interests which handle bills of lading for uniformity among all maritime countries in the definition of the liabilities and risks attaching to the carrier of goods by sea. Some countries, e.g. Canada, Australia, and the United States of America, enacted legislation prohibiting carriers of goods by sea from contracting themselves out of certain kinds of liability. The matter was discussed at several International Conferences between shipowners, shippers and bankers if an attempt to secure the universal adoption of an agreed set of rules. 3. A Code of rules was drawn up in 1921 by the International Law Association at the Hague. These were subjected to criticism by the various interests affected till finally agreement was reached at the International Conferences on Maritime Law held in Brussels in October, 1922. and again in October 1923. A Code of rules defining the responsibilities and liabilities to which a carrier of goods by sea should be subject and also the rights and immunities he was entitled to enjoy was drawn up, and it was unanimously recommended that every country should give legal sanction to these rules. The United Kingdom has done so by Carriage of Goods by Sea Act, 1924(14 and 15 Geo.V.c. 22). It is proposed to do the same in India by this Bill. 4. This Bill follows closely the English Act. The agreed Code of rules are reproduced in the Schedule. Clause 5 of the Bill exempts from these rules goods carried in the coasting trade under documents other than bills of lading whilst Clause 6 sves the carrier from claims for shortage of weight in certain cases of bulk shipments where, by he custom of the trade, the weight entered in the bill of lading is a weight ascertained or accepted by a third part other than the carrier or shipper and this fact is so stated in the bill of lading."- Gazette of India. 1925, Part V, page 37. REPORT OF JOINTCOMMITTEE The following report of the Joint Committee on the Bill to amend the law with respect to the carriage of goods by sea was presented to the Legislative Assembly on the 31st August 1925:- "We the undersigned Members of the Joint Committee to which the Bill to amend the law with respect to the

carriage of goods by sea was referred, have considered the Bill and the papers noted in the margin and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto. We have made one change in the Bill, the substitution of new Cl. 5. Original Cl. 5, following lines of the English Act, exempted the whole of the coasting trade from the requirement that in all cases a bill of lading should be issued subject to the conditions prescribed in the Rules, that is to say, such trade was excluded from the operation of the Rules. It is clear from the opinions received that, contrary to the English practice, bills of lading are almost invariably issued by steamship companies engaged in the Indian coasting trade, and that it is the desire of the mercantile community that the provisions of the Bill relating to bills of lading should apply to such trade. It is not however, the practice for sailing vessels engaged in the coasting trade or proceeding from Indian ports to issue bills of lading and these have been exempted accordingly. The provision in Clause (b) is intended to cover the case of goods carried by the South Indian Railway ferry boat from Dhanushkodi to Talaimanar. Bills of lading are not issued for the short sea journey and cargo is carried subject to the provisions of Railways Act."

MINUTE OF DISSENT [By Purshotamdas Thakurdas] "I think it necessary to draw the attention of the Indian Legislature to the opinion of Mr. Justice J. R. Ellis Cunliffe of the Rangoon High Court. He says that the English statute corresponding to the Bill under report 'was the result of a so-called International Maritime Conference at Brussels, which has been subject to acute criticism on the part of high legal authorities at Home'. These authorities regarded the draft provisions of the Bill as being extremely difficult to interpret and likely to lead to much unnecessary litigation arising out of their obscurity. The learned Judge further remarks: "The construction of Article 6 under the Schedule will be extremely difficult to decide. How the Courts are to come to a satisfactory conclusion as to whether the stipulation mentioned in the first part of the Article is or is not contrary to public opinion, I do not know. And further, the ordinary trader is bound to be in very great doubt as to the difference between the receipt mentioned therein, which is ruled to be a non-negotiable instrument and to be so marked and, the ordinary bill of lading which is, by custom largely a formally printed document. The only reason that I know of for recommending the Indian Legislature to adopt the Rules given in the Schedule to this Bill is to ensure uniformity in a matter which has been under discussion between experts of the various countries

for a number of years. But in this long and protracted discussion, it must be noted that, Indian interests had no direct say or representation. Whilst I see no reason, so far, to oppose the Bill as amended by the "Select Committee" I deem it my duty to bring the opinion expressed by Justice Cunliffe to the notice of the Legislature by a separate Minute." -Gazette of India, 1925, Part V, page 205.

1. Short title and extent :-

In these Rules the following expressions have the meanings hereby assigned to them respectively, that is to say-

(a) "Carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper:

(b) "Contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea including any bill of lading or any similar document as aforesaid issued under or pursuant to a charterparty from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same:

(c) "Goods" includes goods, wares, merchandises, and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried :

(d) "Ship" means any vessel used for the carriage of goods by sea:

(e) "Carriage of goods" covers the period from the time when the goods are loaded on to the time when they are discharged from the ship.

2 \Application of Rules

Subject to the provisions of this Act, the rules set out in the Schedule (hereinafter referred to as "the Rules") shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in ¹[India] to any other port whether in or outside ¹ [India].

1. Substituted by A. L. O. 1950.

3. Absolute warranty of seaworthiness not to be Implied in contracts to which Rules apply :-

1. The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to- (a) make the ship seaworthy;

(b) properly man, equip, and supply the ship; (c) make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article. IV, the carrier shall properly and carefully load. handle, stow, carry, keep, care for and discharge the goods carried. '

3. After receiving the goods into his charge, the carrier or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things- (a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage; (b) Either the number of packages or pieces, or the quantity, or weight, as the case may be as furnished in writing by the shipper: (c) The apparent .order and condition of the goods: Provided that no carrier, master or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (a), (b) and (c).

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss. damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in noway limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. 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. The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection. In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or' the date when the goods should have been delivered. In the case of any actual or apprehended loss or damage, the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

7. After the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that, if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier, such document of title may be noted at the port of shipment by the carrier, master or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this Article be deemed to constitute a "shipped" bill of lading.

8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect. A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability.

4 \Statement as to application of rules to be included in bills of lading

Every bill of lading, or similar document of title, issued in [India] which contains or is evidence of any contract to which the Rules apply, shall contain an express statement that it is to have effect subject to the provisions of the said Rules as applied by this Act.

5. Modification of Article VI of Rules in relation to goods carried in sailing ships and by prescribed routes :-

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under the Rules contained in any of these Articles, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper. The provisions of these Rules shall not be applicable to charterparties, but if bills of lading are issued in the case of a ship under a charterparty, they shall comply with the terms of these Rules. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

6 \ Modification of Rules 4 and 5 of Article III in relation to bulk cargoes

Where under the custom of any trade the weight of any bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper and the fact that the weight is so ascertained or accepted is stated in the bill of lading, then, notwithstanding anything in the Rules, the bill of lading shall not be deemed to be prima facie evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading, and the accuracy thereof at the time of shipment shall not be deemed to have been guaranteed by the shipper.

7. Saving and operation :-

(1) Nothing in this Act shall affect the operation of ¹section 331 and Section 352 of the Merchant Shipping Act, 1958 (44 of 1958),] or the operation of any other enactment for the time being in force limiting the liability of the owners of sea-going vessels.

(2) The Rules shall not by virtue of this Act apply to any contract for the carriage of goods by sea before such day, not being earlier than the first day of January, 1926. as the ²[Central Government] may, by notification in the ² [Official Gazette], appoint, nor to any bill of lading or similar document of title issued, whether before or after such day as aforesaid, in pursuance of any such contract as aforesaid.

1. Substituted for the words, figures and brackets "four hundred and forty-six to four hundred and fifty both inclusive, five hundred and two and five hundred and three of the Merchant Shipping Act, 1894 (57 and 58 Vict.. c.60). as amended by any subsequent enactment" by the Repealing and Amending Act, 1964(52 of 1964). S. 3 and Sch. II (28-12-1964).

2. Substituted by A. L. O. 1937

SCHEDULE 1

RULES RELATING TO BILLS OF LADINGS

1. Article Definitions :-

In these Rules the following expressions have the meanings hereby assigned to them respectively, that is to say-

(a) "Carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper:

(b) "Contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea including any bill of lading or any similar document as aforesaid issued under or pursuant to a charterparty from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same:

(c) "Goods" includes goods, wares, merchandises, and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried :

(d) "Ship" means any vessel used for the carriage of goods by sea:

(e) "Carriage of goods" covers the period from the time when the goods are loaded on to the time when they are discharged from the ship.

2. Article Risks :-

Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

3. Article Responsibilities and Liabilities :-

1. The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to- (a) make the ship seaworthy; (b) properly man, equip, and supply the ship; (c) make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article. IV, the carrier shall properly and carefully load. handle, stow, carry, keep, care for and discharge the goods carried. '

3. After receiving the goods into his charge, the carrier or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things-

(a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage; (b) Either the number of packages or pieces, or the quantity, or weight, as the case may be as furnished in writing by the shipper: (c) The apparent order and condition of the goods: Provided that no carrier, master or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (a), (b) and (c).

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. 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. The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection. In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date

when the goods should have been delivered. In the case of any actual or apprehended loss or damage, the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

7. After the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that, if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier, such document of title may be noted at the port of shipment by the carrier, master or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this Article be deemed to constitute a "shipped" bill of lading.

8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect. A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability.

4. Article Rights and Immunities :-

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

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from-

(a) act. neglect, or default of the master, mariner, pilot, or the

servants of the carrier in the navigation or in the management of the ship;

(b) fire, unless caused by the actual fault or privity of the carrier;

(c) perils, dangers and accidents of the sea or other navigable waters;

(d) act of God;

(e) act of war;

(f) act of public enemies;

(g) arrest or restraint of princes, rulers of people, or seizure under legal process;

(h) quarantine restriction;

(i) act or omission of the shipper or owner of the goods, his agent, or representative;

(j) strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general;

(k) riots and civil commotions;

(l) saving or attempting to save life or property at sea;

(m) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;

(n) insufficiency of packing;

(o) insufficiency or inadequacy of marks;

(p) latent defects not discoverable by due diligence;

(q) any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding 1001 per package or unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. This declaration if embodied in the bill of lading shall be prima facie evidence, but shall not be binding or conclusive on the carrier. By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than that mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figure above named. Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier, has not consented, with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

5. Article Surrender of Rights and Immunities and Increase of Responsibilities and Liabilities :-

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under the Rules contained in any of these Articles, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper. The provisions of these Rules shall not be applicable to charterparties, but it bills

of lading are issued in the case of a ship under a charterparty, they shall comply with the terms of these Rules. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

6. Article Special Conditions :-

Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier, and a shipper shall, in regard to any particular goods, be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness so far as the stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care. and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such. Any agreement so entered into shall have full legal effect : Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed, as such are reasonably to justify a special agreement.

7. Article Special Conditions :-

8. Article Limitation of liability :-

The provisions of these Rules shall not affect the right and obligation of the carrier under any Statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

9. Article nine :-

The monetary units mentioned in these Rules are to be taken to be gold value/.