Philips Hong Kong Ltd v China Airlines Ltd
[2001] SGHC 362

Case Number : MC Suit 21209/1999

Decision Date : 06 December 2001

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Yap Yin Soon (Allen & Gledhill) for the appellants/plaintiffs; Robert Wee (Ho & Wee) for the respondents/defendants

Parties : Philips Hong Kong Ltd — China Airlines Ltd

Carriage of Goods by Air and Land – Carriage of goods by air – International treaties and conventions – Limitation of carrier's liability under Warsaw Convention as amended by the Hague Protocol – Computation of number of packages lost or damaged under art 22(2) – Warsaw Convention as amended by the Hague Protocol art 22(2)

: This appeal turns on the effect of art 22(2) of the Warsaw Convention as amended by the Hague Protocol (hereinafter referred to as `the Convention`) in limiting a carrier`s liability for the loss, damage or delay of baggage or cargo in the course of carriage by air.

The facts of the appeal are not complicated. The consignor Philips Singapore Pte Ltd shipped 1,000 cellular digital spark transceivers from Singapore to Hong Kong to the consignee and plaintiff, Philips Hong Kong Ltd. The transceivers were shipped with the defendant, China Airlines Ltd. An air waybill was made out by the consignor under art 6 of the Convention stating the `No. of pieces` as `1` and the gross weight as 154kg. In the consignor`s invoice attached to the waybill, the entry under `Packing List` was `1 pallet`. The pallet arrived at Hong Kong damaged, with a shortage of 440 transceivers of a total value of US$74,360.

It is common ground between the parties the Convention applies to the claim by virtue of the Carriage by Air Act (Cap 32A, 1989 Ed).

The plaintiff accepts that it is not entitled to recover the full value of the 440 lost transceivers and that its claim is limited by art 22(2) of the Convention which provides that:

> *(a) In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of 250 francs per kilogramme, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the passenger`s or consignor`s actual interest in delivery at destination.*
>
> *(b) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier`s liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of*

liability.

The Carriage by Air (Singapore Currency Equivalents) Order (Cap 32A, O 2, 1990 Ed) sets the equivalent of 250 francs at $49.58.

After the shortfall in delivery was discovered the defendant requested for the packing details of the transceivers and they received a revised invoice showing eight cartons of 112 transceivers and one carton of 104 transceivers. By the defendant`s description `[t]hese 9 cartons were packed into a pallet using shrink polyethylene sheet. The shrink polyethylene sheet is a thin plastic sheet. This is to keep the cartons together as they belonged to the same owner for ease of handling in accordance with standard industry practice.` The sheet was damaged, and four cartons containing 440 transceivers were missing. The total weight of those four cartons was 60kg.

The parties disagreed over whether in applying art 22(2)(b) the compensation was to be limited on the basis of one package of 154kg as the plaintiff contends, or four packages of a total 60kg according to the defendant. If it is the former, the compensation payable is $7,635.32 but by the latter, it is $2,974.80.

The question went before a deputy registrar who held that compensation should be computed on the latter basis. The plaintiff appealed against the decision to a district judge and failed. The matter came before me on appeal from the district judge`s decision, and I allowed the appeal. The matter is now to go to the Court of Appeal as I gave leave to the defendant to appeal against my decision so that the issues can be decided at the highest level.

The main issue I had to decide is whether the consignment is to be regarded as one package or nine packages. For the defendant, it was argued that:

> *[A]lthough air waybill mentioned only 1 pallet, they are allowed to produce evidence of details of packaging of the goods. In other words, the defendants are entitled to introduce evidence of the 9 cartons even though the air waybill did not mention the 9 cartons.*

The next issue is the validity of the defendant`s complaint that the plaintiff`s claim is unjust because:

> *Article 22 is compensatory provision. It is not intended to unjustly benefit the plaintiffs. Where only part of the cargo is lost, the defendants are entitled to bring evidence to show the weight of the lost cargo.*

The number of packages

The Convention does not define a package, but there is little doubt over what may constitute a package. A receptacle like a box, a carton, or a pallet can be a package. If a consignment consists of an item in a box, the box is a package. If a consignment consists of a carton holding an item, the carton is a package, and if the consignment is a pallet holding an item, the pallet is a package. Differences of opinions arise where these receptacles are combined, eg where a consignment is made

up of a pallet formed by five cartons, each containing ten boxes. In this situation, there cannot, for the purposes of art 22(2) be at the same time one pallet-package, five carton-packages and 50 box-packages.

This problem arises in all modes of carriage of goods. In carriage by sea the same issue has given rise to the views and treatments referred to in Lord Justice Phillips` comprehensive review of the issues in connection with the Hague Rules in **The River Gurara** [1997] 1 Lloyd`s Rep 225.

For the carriage of goods by air coming within the Convention, assistance is provided by art 11(2) which states that:

> ***The statements in the air waybill relating to*** *the weight, dimensions and packing of the cargo, as well as those relating to* ***the number of packages, are prima facie evidence of the facts stated****; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been and are stated in the air waybill to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the cargo. [Emphasis is added.]*

This provision gives the parties, especially the consignor who prepares the air waybill, the discretion to decide how the number of packages for a particular consignment is to be reckoned. It is not the consignor`s sole discretion because the carrier can have a say on it before it accepts the consignment for carriage.

Once the number of packages is fixed and stated in the air waybill, that is prima facie the number of packages for the purpose of the Convention. As long as the number stated is a correct figure, it will apply. In the example used the number of packages could be stated as `1` (for pallets), `5` (for cartons), or `50` (for boxes). Each of them will be the operative number of packages when it is stated in the waybill. The number stated is not conclusive if it is not correct, eg if it is stated as `3` in the example given, reflecting neither the number of pallets, cartons nor boxes.

The defendant submitted that evidence of the nine cartons can be adduced although it was not stated in the waybill, citing **Yusen Air & Sea Service (S) v Changi International Airport Services** [1999] 4 SLR 135 where the Court of Appeal held that the weight on a waybill can be rebutted with proper evidence. That applies to all prima facie evidence and reflects the essential character of prima facie evidence. The question here is not whether the prima facie evidence can be rebutted, but whether it is.

The defendant accepts that the consignment was in a pallet consisting of nine cartons holding 1,000 transceivers. The number of packages could be taken to be one, nine and arguably 1,000 if the transceivers were packed in individual boxes. When it was stated as `1` in the waybill, it was a proper description. If it was stated as `9`, that would also be proper, but it did not happen. The defendant is now obliged by art 11(2) to acknowledge that the number of packages was correctly stated as `1`.

Unjust benefit to the plaintiff

Counsel for the defendant placed considerable reliance on the argument that it is impermissible and unjust to use the full weight of a consignment in quantifying the compensation when only a part of

the consignment is lost.

This argument arises from a fallacy. Article 22(2) sets the limit to the compensation payable. It says that for lost, damaged or delayed cargo, the compensation shall not exceed 250 francs per kilogramme of the package or packages concerned. It does not fix the compensation at 250 francs per kilogramme of the package or packages lost, damaged or delayed.

Article 22 does not enable a consignee to recover more than its loss. If a consignee suffered a loss of 1,000 francs as a result of the loss, damage or delay of its goods in a consignment of 50kg, it cannot recover 12,500 francs. The most it can recover is 1,000 francs, and less if the compensation is reduced by limitation. This is evident in the present case. The value of the lost transceivers is US$74,360. The plaintiff limits its claim to $7,635.32, while the defendant contends that it should be limited to $2,974.80. The defendant may argue that the plaintiff`s claim is subject to a lower limitation (if the number of packages is taken as nine), but it is overstating the case to complain that the claim would result in an unjust benefit to the plaintiff.

While dealing with this complaint, it should also be noted that the weight of consignment lost, damaged or delayed is not used in the computation under art 22(2)(b) which provides for `the total weight of the package or packages concerned` to be taken into consideration. Where a package is partially lost, damaged or delayed, the total weight of that package is taken into account. If that is unjust, it arises from art 22(2)(b) itself.

Counsel for the defendant also argued that the:

> *Plaintiffs` claim is only for part of the cargo ... [T]hey proceeded under art 22(2)(b). If the plaintiffs` claim is for the whole of the cargo, they would have proceeded under art 22(2)(a). It is submitted that they recognise there is a difference between losing the whole cargo and part of the cargo and the two situations must be treated differently.*

I do not think that it is a correct reading of art 22(2) that sub-art (2)(a) applies to claims for total loss and sub-art (2)(b) applies to claims for partial loss. On my reading, sub-art (2)(a) sets the monetary limit by weight to claims for total as well as partial loss, damage or delay. Sub-article (2)(b) sets out the basis on which monetary limit is to be computed. It states that for partial damage, loss or delay, the total weight of the package concerned is taken into account, but it does not refer to claims arising from total loss, damage or delay in which the total weight of the package must apply. Put another way, there is a need to refer to claims for partial loss, damage or delay to remove any doubt whether the partial or full weight should apply, but there is no need to refer to total loss, damage or delay where there is no uncertainty over that. Like sub-art (2)(a), it applies to total and partial loss, damage or delay.

Counsel for the defendant also cited **Bland v British Airways Board** [1981] 1 Lloyd`s Rep 289 where Lord Denning in discussing the Convention held at p 290:

> *Article 22(2)(a) covers the case when the **whole** of a person`s baggage is lost. I need not deal with that. But art 22(2)(b) covers the case when only **part** of the baggage is lost. That article says:*
>
> *`In the case of loss, damage or delay of **part** of registered baggage ... the amounts to which the carrier`s liability is limited shall be only the total weight*

of the package or packages concerned.` [Emphasis supplied.]

> ***So it depends on the weight of the "package concerned". Compensation depends on the number of kilogrammes you have lost.*** *[Emphasis is added.]*

I humbly repeat my views on the application of art 22(2). In any event, the effect is the same. As the judge pointed out, the limitation to the carrier`s liability (and the consignee`s entitlement) is set by reference to the weight of the package concerned (not the weight of the lost, damaged or delayed part of the package) whereas the compensation is measured by the weight of the lost, damaged or delayed part thereof. This applies equally to claims for total and partial loss.

The plaintiff`s full loss is US$74,360. Its claim under art 22(2) is for $7,635.32. The plaintiff`s claim was properly made on the basis that the consignment was in one package. There is no unjust benefit in the sense that the compensation sought exceeds the loss incurred. The plaintiff`s appeal was allowed for these reasons.

Outcome:

Appeal allowed.

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