

1 IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 7411 OF 2005
WITH
I.A. NO.1 OF 2010

M/S. SHAW WALLACE & CO. LTD. & ANR.

APPELLANTS

VERSUS

UNION OF INDIA

RESPONDENT

O R D E R

Application for substituting the name of the first appellant is allowed.

This appeal arises from a suit for compensation. Mr. K.V. Viswanathan, senior advocate appearing for the appellants tried to raise the issue of limited liability. Learned counsel contended that even on the basis of the findings that damage was caused to the goods due to the negligence of the carrier, and the responsibility for which rested with the appellants-defendants, the amount of compensation could not exceed 1250 DM (Deutsche Marks) per unit i.e. 1250 x 6 (that being the total number of cartons under carriage).

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It was stated that the Indian Carriage of Goods by Sea Act, 1925 had no application to the facts of the case as the goods in question had moved out of Hamburg, Germany. It was further stated that in the Bill of Lading the value of the goods was not stated and, consequently, the issue of liability would be governed by the provisions of the Hague-Visby Rules, the Hague Rules as amended by the

Brussels Protocol, 1968.

Mr. Viswanathan relied upon clause 660 of the Rules that provides as follows:-

"660. [Limit of liability] In any event the carrier is liable for each package or unit up to the maximum amount of one thousand two hundred and fifty German Marks, unless before the commencement of the loading, the forwarder stated the kind and value of the goods and, this statement has been included in the bill of lading."

Learned counsel contended that since the Bill of Lading did not mention the value of the goods, the liability of compensation would be limited to 1250 DM (Deutsche Marks) per unit.

From the judgment of the learned Single Judge as affirmed by the Division Bench of the High Court, it appears that the issue was never raised before the High Court in the manner in which it is sought to be raised before us.

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We find that there was no specific issue framed on the point and in its absence, Mr. Viswanathan tried to advance the above submissions on the basis of issue No.4 which was cast as follows:-

"Are not the defendants liable for the suit claim?"

In our view, the issue is cast in an ominous manner and it is far too vague. It does not at all indicate that this plea was raised before the High Court. Not only this, we find that no evidence in support of the plea was produced before the High Court. What seems to have been raised before the High Court was a dispute about the quantum of compensation claimed by the plaintiff-respondent. A dispute over the quantum of compensation is not the same thing as the limit of liability as is sought to be contended before us.

We are, therefore, satisfied that the issue is sought to be raised before us for the first time and for that reason, we are not inclined to entertain it.

The next issue sought to be raised by Mr. Viswanathan was on the basis of Section 230 of the Contract Act. In our view, the issue no longer survives since in compliance with the interim orders passed by this Court, the carrier - defendant No.2 has already made the deposits.

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We find no merit in the appeal. It is, accordingly, dismissed.

.....J.
(AFTAB ALAM)

.....J.
(R.M. LODHA)

NEW DELHI,
SEPTEMBER 30, 2010

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ITEM NO.105 COURT NO.12 SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 7411 OF 2005

M/S. SHAW WALLACE & CO. LTD. & ANR. Appellant (s)

VERSUS

UNION OF INDIA Respondent(s)

(With appln(s) for substitution
(I.A. NO.1 OF 2010 and office report)

Date: 30/09/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE AFTAB ALAM
HON'BLE MR. JUSTICE R.M. LODHA

For Appellant(s) Mr. K.V. Viswanathan, Sr. Adv.
Mr. Neeraj Jain, Sr. Adv.
Mr. P.B. Suresh, Adv.
Mr. Vipin Nair, Adv.
Mr. Vivek Sharma, Adv.
For M/S. Temple Law Firm

For Respondent(s) Mr. T.S. Doabia, Sr. Adv.

Ms. Rashmi Malhotra, Adv.
Mr. D.S. Mahra, Adv.
Mr. Manpreet Doabia, Adv.

UPON hearing counsel the Court made the following
O R D E R

Application for substituting the name of the
first appellant is allowed.

The appeal is dismissed in terms of the signed
order.

(Neetu Khajuria)
Sr. P.A.

(S.S.R. Krishna)
Court Master

(Signed order is placed on the file.)