

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.4896 OF 2006

KLM CARGO

Appellant (s)

VERSUS

PEARL SYNTEX PVT. LTD. & ORS.

Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned order and office report)

With Civil Appeal No.4922 of 2006  
(With appln(s) for ex-parte stay and office report)

Civil Appeal No.4933 of 2006  
(With appln(s) for ex-parte stay, permission to file additional documents and office report)

Civil Appeal No.360 of 2007  
(With office report)

Civil Appeal No.193 of 2007  
(With appln(s) for ex-parte stay and office report)

Civil Appeal No.5900 of 2006  
(With appln(s) for ex-parte stay, permission to file additional documents and office report)

Civil Appeal No.957 of 2007  
(With office report)

Date: 12/03/2013 These Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.L. GOKHALE  
HON'BLE MR. JUSTICE DIPAK MISRA

For Appellant(s) Mr. Raju Ramachandran, Sr. Adv.  
Mr. Rakesh Aggarwal, Adv.  
Mr. Pramod Dayal, Adv.  
Mr. Nikunj Dayal, Adv.  
Ms. Payal Dayal, Adv.  
Mr. Pulkit Aggarwal, Adv.

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Mr. Vishnu Mehra, Adv.  
Ms. Sakshi Mittal, Adv.  
Mr. B.K. Satija, Adv.

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Mr. B.K. Satija, Adv.  
for Mr. K.S. Rana, Adv.

Ms. Manjeet Chawla, Adv.  
Mr. V.S. Chopra, Adv.

For Respondent(s) Ms. Manjeet Chawla, Adv.  
Mr. V.S. Chopra, Adv.

Mr. Sanjiv Kakra,Adv.  
Mr. Bharat Arora,Adv.  
Mr. Arvind Minocha,Adv.

Mr. Braj Kishore Mishra,Adv.  
Mr. Anshuman Tiwari,Adv.  
Ms. Aparna Jha,Adv.  
Mr. Sunil Tiwari,Adv.  
Mr. Siddhartha Arya,Adv.  
Mr. Vikram,Adv.

Mr. Vineet Malhotra,Adv.  
Mr. Vishal Gohri,Adv.  
Ms. Rekha Palli,Adv.

Mr. Alok Mahajan,Adv.  
Mr. P.N. Gupta,Adv.  
Mr. Varun Chaudhary,Adv.

Mr. D. Bharat Kumar,Adv.  
Mr. Balasubrahmanyam Kamarsu,Adv.  
Mr. Joydip Roy,Adv.  
Mr. Sayooj Mohandas M.,Adv.  
Mr. Abhijit Sengupta,Adv.

Mr. Vijay Hansaria,Sr.Adv.  
Mr. Pranab Kumar Mullick,Adv.  
Ms. Soma Mullick,Adv.  
Mr. Neeraj Singh,Adv.

Mr. S. Guru Krishna Kumar,Sr.Adv.  
Mr. S.R. Setia,Adv.

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Mr. Manish Sharma,Adv.  
Mr. Vipin Kumar Jai,Adv.

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

Civil Appeal No.4896 of 2006, Civil Appeal No.4922 of 2006, Civil Appeal No.4933 of 2006 and Civil Appeal No.193 of 2007:

These civil appeals are dismissed.

Civil Appeal No.360 of 2007, Civil Appeal No.5900 of 2006 and Civil Appeal No.957 of 2007:

The civil appeals are disposed of.

[ Alka Dudeja ]  
A.R.-cum-P.S.

[ Sneh Lata Sharma ]  
Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4896 OF 2006

KLM Cargo

...Appellant(s)

Versus

Pearl Syntex Pvt. Ltd. and Ors.

...Respondent(s)

With Civil Appeal No.4922 of 2006, Civil Appeal No.4933 of 2006, Civil Appeal No.360 of 2007, Civil Appeal No.193 of 2007, Civil Appeal No.5900 of 2006 and Civil Appeal No.957 of 2007.

O R D E R

Civil Appeal No.4896 of 2006, Civil Appeal No.4922 of 2006, Civil Appeal No.4933 of 2006 and Civil Appeal No.193 of 2007:

The Civil Appeal Nos.4896 of 2006, 4922 of 2006 and 4933 of 2006 are seeking to challenge the order passed by National Consumer Disputes Redressal Commission dated 29th September, 2006, in Original Petition Nos.217 of 1997, 47 of 1998 and 296 of 1998 respectively. Civil Appeal No.193 of 2007 seeks to challenge the order passed by the National Consumer Disputes Redressal Commission dated 22nd November, 2006, in Original Petition No.118 of 1998. All these four appeals raise a question with respect to the liability of the appellant as a carrier.

2] To put the facts shortly: the appellant was entrusted with the despatch of jewellery of Respondent No.1 in all these four matters for carrying it to Birmingham. It is the case of these respondents that, instead of releasing the jewellery to a party authorised by the appellant's Bankers i.e., National

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Westminster Bank, the jewellery was handed over to a party which produced the faxed documents on the letter head of the said Bank. The original petitions having been filed, the National Commission held that this was a case falling under Rule 25 of the Second Schedule of Carriage by Air Act, 1972, which reads as follows:

"The limits of liability specified in rule 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such

act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment."

3] The submission of the appellant has been that it is not a case which should be falling under this Rule because, according to it, Rule 25 will get attracted only if there is an intent to cause damage to a party, or an act or omission is done recklessly and with knowledge that the damage will result. As can be seen from one of the appeals, the bill tendered to one of the parties, i.e., Pearl Syntex Private Limited, by the appellant-carrier, did have a figure of the declared value for custom purposes which, according to Respondent No.1, is the real value of the articles consigned in all these matters. The submission of the appellant that it cannot be held to have a knowledge as to what damage would have probably occurred could not, therefore, be accepted. Handing over these precious articles to someone who has not tendered the relevant documents from the Bankers concerned would undoubtedly amount to an act of recklessness. In our view, Rule 25 would squarely apply. It is also material to note that even the faxed documents (on the basis of which the

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articles were released) were not produced before the Commission in either of these cases. Rule 25 will have to be read as independently providing for an additional liability. This is apart from Rule 22(2)(a) of the Rules, which was otherwise applicable, as submitted by Mr. Raju Ramachandran for the appellant. In the circumstances, we do not find any merit in all these appeals. The civil appeals are, accordingly, dismissed.

4] In first of these three appeals, we are informed that the amount directed has been deposited with the National Commission. As far as Civil Appeal No.4896 of 2006 is concerned, Mr. Sanjiv has appeared for State Bank of India, Respondent No.2. He has informed us that State Bank of India has lodged a claim against the respondent herein and there is a decree in their favour passed by the Debts Recovery Tribunal. Respondent No.2 has filed an application before the National Commission for appropriate orders. That being so, the National Commission will not release the amount to the first respondent for a period of four weeks within which Respondent No.2 may obtain appropriate orders from the Commission. As far as the other two appeals are concerned, the National Commission will release the amount along with the accrued interest. Mr. S. Guru Krishna Kumar, learned counsel for the Respondent No.1 in Civil Appeal No.193 of 2007, in the case of KLM vs. Bholasons Exports & Ors. submits that, as per his instruction, the amount has not been deposited in that matter. In case it is not so deposited, the appellant shall positively deposit within eight weeks with interest as directed in the impugned order.

5] As far as the cross-objections filed by Netwest Bank are concerned, we do not find any merit in the same and the same are rejected.

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6] Civil Appeal No.360 of 2007, Civil Appeal No.5900 of 2006 and Civil Appeal No.957 of 2007:

In view of the order passed above, no orders are necessary to be passed in these appeals. The civil appeals are, accordingly, disposed of.

.....J.  
[H.L. GOKHALE]

.....J.  
[DIPAK MISRA]

New Delhi,  
March 12, 2013.