

KRISHNA MINING CO., LTD
V.
PAN ISLAMIC STEAMSHIP CO., LTD

COURT OF APPEAL
WEERASURIYA, J., AND
DISSANAYAKE, J.
CA NO. 798/88 (F)
DC COLOMBO NO. 89785/M
DECEMBER 15, 2000

Charter Party Agreement – Demurrage – Liability of charterer to pay demurrage – Carrier's liability to pay demurrage to the Port?

The plaintiff-respondent Shipping Company sued the defendant-appellant for the recovery of a certain sum as demurrage, due to them on account of the ship chartered by the defendant-appellant, being delayed at Chittagong. The defendant-appellant denied liability to pay any demurrage and claimed in reconvention a certain sum being the value of 2000 MT of edible salt made unfit for human consumption, as a result of being contaminated with goods unlawfully stored on the hatches of the ship. District Court entered judgment for the plaintiff as prayed for and dismissed the claim in reconvention.

On appeal it was contended that demurrage is charged by the Ports Authority, and that the plaintiff-respondent had failed to prove that it was charged demurrage by the Chittagong Ports Authority and that the said demurrage was paid by the plaintiff-respondent.

Held:

- (1) On a charter-party agreement both carrier and the charterer agree in fixing a time for the purpose of loading and discharging the cargo, what is called the 'lay time'. When the cargo is booked on F.I.C.S. basis under the charter party, loading and unloading of cargo is done by the charterers stevedores. If the lay time, is exceeded by the charterers, then the vessel is said to go on demurrage.
- (II) Demurrage agreed on a charter party is payable to the carrier in respect of the ship as against demurrage paid to the port. Eventually, the carrier is liable to pay the port demurrage for the delay in moving the ship out of the port.

- (III) The liability of the charterer to pay demurrage to the carrier for delay that is caused on his behalf in unloading the cargo from the ship on the charter party is not dependent on the carrier's liability to pay demurrage to the Port.
- (IV) Plaintiff-respondent is not obliged to produce documents to show that they have paid the port demurrage when they demand demurrage which the charterer was liable to pay under the charter-party agreement.

APPEAL from the judgment of the District Court of Colombo.

Romesh de Silva, PC with *Hiran de Alwis* for defendant-appellant.

Plaintiff-respondent absent and unrepresented.

Cur. adv. vult.

May 11, 2001

DISSANAYAKE, J.

The plaintiff-respondent, a shipping company, sued the defendant-appellant company for the recovery of a sum of Rs. 1,902,899.85, the equivalent of 82,448 American Dollars as demurrage due to them on account of their ship chartered by the defendant-appellant company – being delayed at Chittagong, for a period of 27 days 11 hours 35 minutes.

The defendant-appellant company filed answer denying liability to pay any demurrage and claiming in reconvention a sum of Rs. 1,876,000 being the value of 2,000 tons of edible salt made unfit for human consumption, as a result of being contaminated with other goods – unlawfully stored on the hatches of the ship.

The case proceeded to trial on 18 issues, and at the conclusion of the trial the learned District Judge by his judgment dated 1. 11. 1988 entered judgment for the plaintiff-respondent company as prayed for in the plaint, and the learned District Judge dismissed the claim in reconvention of the defendant-appellant company.

It is from the aforesaid judgment that the defendant-appellant company preferred this appeal.

When this appeal was taken up for hearing learned President's Counsel who appeared for the defendant-appellant submitted that he is not pursuing the appeal in respect of the claim in reconvention. 20

The only contention of learned President's Counsel for the defendant-appellant was that demurrage is charged by the Ports Authority, and that in this case the plaintiff-respondent has failed to prove that it was charged demurrage by the Chittagong Ports Authority and that the said demurrage was paid by the plaintiff-respondent company.

The facts of this case briefly are as follows: The defendant-appellant entered into a Charter-party (P1) with the plaintiff-respondent company, for the carriage of 5,000 metric tonnes of edible salt in poly-propylene bags on board the plaintiff-respondent's vessel "M.S. Safina – E – Ismail" from Point Pedro to Chittagong, Bangladesh. 30

The charter-party was in standard Gencon Charter form, with Rider clauses 1 to 18. According to clause 18 of the Charter-party and Rider clause 5 the defendant-appellant was liable to pay demurrage to the plaintiff-respondent at the rate of US \$ 3,000 per day in the event lay time was exceeded at the point of loading and discharging.

Hashmi, who was the Commercial Manager, of the plaintiff-respondent company, gave evidence on behalf of the plaintiff-respondent in the lower Court. He sought to explain what was normally meant by demurrage, in relation to a Charter-party agreement in the shipping trade. 40

On a Charter-party agreement, both the carrier and the charterer normally agree in fixing a time for the purpose of loading and discharging of cargo, which is called lay time. When the cargo is booked on F.I.C.S. basis under the Charter party, like in this case loading and unloading of cargo is done by the Charterer's stevedores. If the "lay time" is exceeded by the charterers then the vessel is said to go on demurrage.

Demurrage, is damages payable by the charterer for the delay caused over and above the agreed time for discharging or loading. 50 It is to be observed that the aforesaid charter party (P1) Gencon Rule 6 and the Rider clause 3 entered into by the parties has laid down a specific laytime for the said cargo.

The demurrage agreed on a charter party is payable to the carrier in respect of the ship as against demurrage paid to the port. Eventually, the carrier is liable to pay the port demurrage for the delay in moving the ship out of the port. The liability of the charterer to pay demurrage to the carrier for delay that is caused on his behalf in unloading the cargo from the ship on the Charter party, is not dependant on the carrier's liability to pay demurrage to the port. It arises independently 60 on the Charter party.

In this case defendent-appellant has agreed by clause 18 of the Charter-party and Rider clause 5, to pay demurrage to the plaintiff-respondent at US \$ 3,000 per day. According to the aforesaid clause 18 of the Charter party and Rider clause 5, the plaintiff-respondent is not obliged to produce documents to show that they have paid the port demurrage, when they demand demurrage which the charterer was liable to pay under the Charter-party agreement.

Therefore, it is to be observed that the defendant-appellant is liable to pay the demurrage to the plaintiff-respondent. 70

Having examined the evidence and the judgment in this case I am of the view that there is no basis for this Court to interfere with the judgment of the learned District Judge.

The appeal of the defendant-appellant is dismissed without costs.

WEERASURIYA, J. – I agree.

Appeal dismissed.