

THE INDIAN CARRIAGE OF GOODS BY SEA ACT, 1925
(ACT XXVI OF 1925)

An Act to amend the Law with respect to the carriage of goods by sea.

(21st September, 1925)

WHEREAS at the international Conference on Maritime Law held at Brussels in October, 1922, the delegates at the Conference, 1(*) agreed unanimously to recommend their respective Governments to adopt as the basis of the convention a draft Convention for the unification of certain rules relating to bills lading.

AND WHEREAS at a meeting held at Brussels in October 1923 the rules contained in the said draft convention were amended by the Committee appointed by the said Conference:

AND WHEREAS the said rules were amended by the Protocol signed at Brussels on 23rd February, 1968 and by the Protocol signed at Brussels on 21st December, 1979.

AND WHEREAS it is expedient that the said rules as so amended and set out with modifications in the Schedule, subject to the provisions of this Act, have the force of law with a view to establishing the responsibilities, liabilities, rights and immunities attaching to carriers under bills of lading; It hereby enacted as follows:

1. Short title and extent –

(1) This Act may be called THE INDIAN CARRIAGE OF GOODS BY SEA ACT, 1925

(2) It extends to the whole of India.

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 India to any other port whether in or outside India.

3. Absolute warranty of seaworthiness not to be implied in contracts to which Rules apply – There shall not be implied in any contract for the carriage of goods by sea to which the Rules apply any absolute undertaking by the carrier of the goods to provide a seaworthy ship.

1(*) The words “including the delegates representing His Majesty” omitted by the Repealing and Amending Act (LII of 1964)

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 and applied by this Act.

5. Modification of Article VI of Rules in relation to goods carried in sailing ships and by prescribed routes – Article VI of the Rules shall, in relation to--

- (a) the carriage of goods by sea in sailing ships carrying goods from any port in India to any other port whether in or outside India, and
- (b) the carriage of goods by sea in ships carrying goods from a port in India notified in this behalf in the Official Gazette by the Central Government to a port of Ceylon specified in the said notification.

-have effect as though the said Article referred to goods of any class instead of to particular goods and as though the proviso to the second paragraph of the said Article were omitted.

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 **Section 331 and Part XA** 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 Central Government may, by notification in 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.

3.

SCHEDULE

RULES RELATING TO BILL OF LADING

Article I Definitions

In the 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 charter party 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) “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.
- (d) **“Goods” includes any property including live animals as well as containers, pallets or similar articles of transport or packaging supplied by the consignor, irrespective of whether such property is to be or is carried on or under deck.**
- (e) “Ship” means any vessel used for carriage of goods by sea;

Article II Risks

Subject to provisions of Article cover 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.

Article III 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 package 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 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). **However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.**

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. **This period may, however, be extended if the parties so agree after the cause of action has arisen;**

Provided that a suit may be brought after the expiry of the period of one year referred to in this sub-paragraph within a further period of not more than three months as allowed by the court.

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 inspection 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 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, 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.

Article IV 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 1 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 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 restrictions;
- (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 there from.
5. Neither the carrier nor the ship shall in any event be or become liable for any loss of damage to or in connection with goods in an **amount exceeding 666.67 Special Drawing Rights per package or unit or two Special Drawing Rights per kilogram of gross weight of the goods lost or damaged, whichever is higher.**

Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading and as packed in such article of transport shall be deemed to be the number of packages or units for the purposes of this paragraph as far as these packages or units are concerned.

Neither the carrier nor the ship shall be entitled to the benefit of limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier, done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

Where the nature or value of the goods has been knowingly misstated by the shipper (so as to cause such entries) in the bill of lading , the liability of the carrier or ship shall not exceed the value so stated.

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 mis-stated 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.

Article V 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 charter parties, but if bills of lading are issued in the case of a ship under a charter party, 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.

Article VI Special Conditions

Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the career, 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 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 reasonable to justify a special agreement.

Article VII Limitations on the Application of the Rules

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.

Article VIII 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.

Article IX

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

STATEMENT OF OBJECTS AND REASONS:

The Gazette of India, 1925, part V, page 37, notification as to Statement of Objects and Reasons of the Carriage of Goods by Sea Act, 1925, read, --

“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 the development of trade, it became recognized as a negotiable instrument, in which shippers, the carriers and the consignees or purchasers of the goods as well as bankers and underwriters 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 kind of liability. The matter was discussed at several International Conferences between ship owners, shippers and bankers in 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 the 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 is reproduced in the Schedule. Clause 5 of the Bill exempts from these rules goods carried in the coasting trade under documents other than bill of lading whilst clause 6 saves the carrier from claims for shortage of weight in certain cases of bulk shipments where, by the custom of the

trade, the weight entered in the bill of lading is weight ascertained or accepted by a third party other than the carrier or shipper this fact is so stated in the bill of lading”.

REPORT OF JOINT COMMITTEE

The legislation was referred to a Joint Committee, which had this to say, --

“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 clause 5.

Original clause 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 opinion 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 care of goods carried by the South India Railway ferryboat from Dhanushkodi to Talaimannar. Bills of Lading are not issued for the short sea journey and cargo is carried subject to the provisions of the Railways Act”.

MINUTE OF DISSENT

The meaning and import of any statute, is sometimes deciphered by reference to the deliberations that resulted in the passage of the same. Hence it would be of immense importance to refer to the note of dissent recorded in the report of the Joint Committee, by Purshotamdas Thakurdas, in these words, --

“I think it is 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 ‘as 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 such 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 put in very great doubt as to the difference between the receipt mentioned therein which is ruled to be a non-negotiable 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 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”.
