2

Carriage by Air

The Indian Carriage by Air Act, 1972, applies to international carriage of goods and passengers. There is no Act in force relating to home carriage by air, though Section 4 of the Act empowers the Central Government to extend by notification the provisions of the Act to carriage by air which is not international carriage. Such notification was issued on December 17, 1963 and the provisions of the Carriage by Air Act of 1934 have since then also become applicable to home carriers by air in India.[1]

The Carriage by Air Act, 1972 replaced the original Act of 1934. This became necessary to incorporate the Hague Protocol which made certain changes in the Warsaw Convention in the interest of uniformity of rules. The principal change, of course, is that the liability of the carrier for each passenger is increased to a maximum of 250,000 francs. Some of the major amendments are as follows :

(1) The documents of carriage have been simplified.

(2) The liability in respect of passengers has been doubled ; it is raised from 1,25,000 gold francs to 2,50,000 per passenger.

(3) The carrier would be liable where damage is caused by an error in piloting or in the handling of the aircraft or in navigation.[2]

The Carriage by Air Act, 1972

[No. 69 OF 1972][3]

[*19th December, 1972*]

An Act to give effect to the Convention for the unification of certain rules[4] *relating to international carriage by air signed at Warsaw on the 12th day of October, 1929 and to the said Convention as amended by the Hague Protocol on the 28th day of September, 1955 and to make provision for applying the rules*

1. Government Notification No. 10-A/39-63, dated 17-12-1963 ; there appears to have been no notification under the Act of 1972.
2. The liability to passengers or consignors is not concerned with the air worthiness of the craft but that factor can be of some importance to tort claims. As for the liability of a Civil Aviation Authority which makes a negligent certification of airworthiness see 1986 JBL 492. For liability under the principle of product liability see 1986 JBL 242 where the differences introduced in reference to the EEC members are highlighted they being also members of the Convention.
3. Received the assent of the President on December 19, 1972, published in Gazette of India, Extra., Part II, Section 1, dated 20th December, 1972, pp. 913-933.
4. Unification of rules means adoption of uniform rules : *Grein* v *Imperial Airways Ltd.*, [1936] 2 All ER 1258 : [1937] 1 KB 50.

contained in the said Convention in its original form and in the amended form (subject to exceptions, adaptations and modifications) to non-international carriage by air and for matters connected therewith

Be it enacted by Parliament in the Twenty-third Year of the Republic of India as follows :

Prefatory Note—Statement of Objects and Reasons.—India is a signatory to the Warsaw Convention of 1929, which is an International Agreement governing the liability of the air carrier in respect of international carriage of passengers, baggage and cargo by air. Under that Convention "international carriage" means any carriage in which according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two High Contracting Parties, or within the territories of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to the Convention. The Convention provides that when an accident occurring during international carriage by air causes damage to a passenger or a shipper of cargo, there is a presumption of liability of the carrier. The carrier, however, is not liable if he proves that he or his agents had taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures. The Convention balances the imposition of a presumption of liability on the carrier by limiting his liability for each passenger to 1,25,000 gold francs (now 2,50,000). There is no limitation of liability if the damage is caused by the wilful misconduct of the carrier, or by such default on his part as, in accordance with the law of the court seized of the case, is equivalent to wilful misconduct. The Convention also contains detailed provisions regarding documents of carriage.

2. The Warsaw Convention has been given effect to in India by the enactment of the Indian Carriage by Air Act, 1934 (20 of 1934) in regard to international carriage and the provisions of that Act have been extended to domestic carriage, subject to certain exceptions, adaptations and modifications, by means of a notification issued in 1964.

3. A diplomatic conference under the auspices of International Civil Aviation Organisation was held at Hague in September 1955, which adopted a protocol to amend the provisions of the Warsaw Convention. The Hague Protocol was opened for signature on 28th September, 1955 and more than the required number of States have ratified the Protocol which came into force between the ratifying States on 1st August, 1963.

4. Some of the major amendments effected by the Hague Protocol to the Warsaw Convention are—

(*i*) simplification of the documents of carriage ;

(*ii*) an increase in the amount specified as the maximum sum for which the carrier may be liable to a passenger that is to say, the limits of the liability of the carrier in respect of a passenger has been doubled, and unless a higher figure is agreed to by a special contract, the liability is raised from 1,25,000 gold francs per passenger to 2,50,000 gold francs per passenger ;

(*iii*) making the carrier liable where the damage was caused by an error in piloting or in the handling of the aircraft or in navigation.

5. Acceptance of the Hague Protocol would put our national carrier on the same footing as many of its international competitors, since the passengers will be able to avail the limit of liability guaranteed by the Hague Protocol, the limit being double than that stipulated under the Warsaw Convention.

6. Fifty-seven countries have already ratified the Hague Protocol and passengers travelling between those countries would be ensured of the higher limit of compensation.

7. It is, therefore, proposed to enact a law, in place of the existing Indian Carriage by Air Act, 1934, to apply the existing provisions based on the Warsaw Convention to countries which would choose to be governed by that Convention and also to apply the provisions of the Warsaw Convention as amended by the Hague Protocol to countries which may accept the provisions thereof.

Under Section 4 of the Indian Carriage by Air Act, 1934, the rules contained in the Warsaw Convention have already been applied to non-international carriages subject to certain exceptions, adaptations and modifications. It is now proposed to take power to apply the rules contained in the Warsaw Convention as amended by the Hague Protocol also to non-international carriages subject to exceptions, adaptations and modifications.

8. The Bill seeks to give effect to the above objectives.

1. Short title, extent and commencement.—(1) This Act may be called the Carriage by Air Act, 1972.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*i*) "amended Convention" means the Convention as amended by the Hague Protocol on the 28th day of September, 1955 ;

(*ii*) "Convention" means the Convention for the unification of certain rules relating to international carriage by air signed at Warsaw on the 12th day of October, 1929.

3. Application of Convention to India.—(1) The rules contained in the First Schedule, being the provisions of the Convention relating to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, shall, subject to the provisions of this Act, have the force of law in India in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage.

(2) The Central Government may, by notification in the Official Gazette, certify who are the High Contracting Parties to the Convention, in respect of what territories they are parties and to what extent they have availed themselves of the provisions of Rule 36 in the First Schedule and any such notification shall be conclusive evidence of the matters certified therein.

(3) Any reference in the First Schedule to the territory of any High Contracting Party to the Convention shall be construed as a reference to all the territories in respect of which he is a party.

(4) Any reference in the First Schedule to agents to the carrier shall be construed as including a reference to servants of the carrier.

(5) Every notification issued under sub-section (2) of Section 2 of the Indian Carriage by Air Act, 1934 (20 of 1934) and in force immediately before the commencement of this Act shall be deemed to have been issued under sub-section (2) of this section and shall continue to be in force until such notification is superseded.

4. Application of amended Convention to India.—(1) The rules contained in the Second Schedule, being the provisions of the amended Convention relating to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, shall, subject to the provisions of this Act, have the force of law in India in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage.

(2) The Central Government may, by notification in the Official Gazette, certify who are the High Contracting Parties to the amended Convention and in respect of what territories they are parties, and any such notification shall be conclusive evidence of the matters certified therein.

(3) Any reference in the Second Schedule to the territory of any High Contracting Party to the amended Convention shall be construed as a reference to all the territories in respect of which he is a party.

(4) Any reference in the Second Schedule to agents of the carrier shall be construed as including a reference to servants of the carrier.

INTERNATIONAL CARRIAGE BY AIR

An international convention for the unification of the law relating to international carriage was held at Warsaw in 1929 in which a number of countries, including India, participated. The convention adopted certain rules defining the liability of the carrier for injury or death of passengers or loss of or damage to goods. The rules are to become binding upon the countries which ratify them. For India, the rules were found to be suitable and the Act of 1934 was passed adopting the convention to India. This Act has now been replaced by the Act of 1972. Section 3 of the Act declares that the rules of the convention as stated in the First Schedule to the Act shall have the force of law in India in respect of all international carriage by air, irrespective of the nationality of the aircraft performing the carriage. Section 5 further supplements this declaration by stating that the provisions of any law in force, including the Fatal Accidents Act, shall not apply. Only the convention will apply. The First Schedule of the Act determines the question of liability and the second, the persons by whom and to whom the liability is owed.[5]

Liability in case of death [Section 5]

5. *Liability in case of death.*—(1) Notwithstanding anything contained in the Fatal Accidents Act, 1855 (13 of 1855) or any other enactment or rule of law in force in any part of India, the rules contained in the First Schedule and in the Second Schedule shall, in all cases to which those rules apply, determine the liability of a carrier in respect of the death of a passenger.

(2) The liability shall be enforceable for the benefit of such of the members of the passengers family as sustained damage by reason of his death.

Explanation.—In this sub-section, the expression "member of a family" means wife or husband, parent, step-parent, grant-parent, brother, sister, half-brother, half-sister, child, step-child and grandchild :

Provided that in deducting any such relationship as aforesaid any illegitimate person and any adopted person shall be treated as being, or as having been, the legitimate child of his mother and reputed father or, as the case may be, of his adopters.

(3) An action to enforce the liability may be brought by the personal representative of the passenger or by any person for whose benefit the liability is under sub-section (2) enforceable, but only one action shall be brought in India in respect of the death of any one passenger, and every such action by whomsoever brought shall be for the benefit of all such persons so entitled as aforesaid as either are domiciled in India or not being domiciled there express a desire to take the benefit of the action.

(4) Subject to the provisions of sub-section (5), the amount recovered in any such action, after deducting any costs not recovered from the defendant, shall be divided between the persons entitled in such proportion as the Court may direct.

(5) The Court before which any such action is brought may, at any stage of the proceedings, make any such order as appears to the Court to be just and equitable in view of the provisions of the First Schedule or of the Second Schedule, as the case may be, limiting the liability of a carrier and of any proceedings which have been or are likely to be commenced outside India in respect of the death of the passenger in question.

Section 5(1) declares that in the event of death of a passenger, the liability of the carrier shall be determined in accordance with the provisions of the First and Second Schedules and not by the Fatal Accidents Act, 1855 or any other law for the time being in force.

5. *Grein* v *Imperial Airways Ltd.*, [1936] 2 All ER 1258.

The liability is enforceable for the benefit of such of the members of the passenger's family as sustain damage by reason of his death. The explanation appended to sub-section (2) says that the expression "member of a family" means wife or husband, parent, step-parent, grand parent, brother, sister, half brother, half sister, child, step-child and grandchild. The sub-section further says that in deducing any such relationship an illegitimate person and adopted person shall be treated as the legitimate child of his mother and the reputed father or of the adopter, as the case may be.

An action to enforce the liability can be brought by the personal representatives of the passenger or by any person for whose benefit the liability is enforceable. Only one action can be brought in India in respect of a passenger. An action brought by any one of the persons entitled shall be deemed to be for the benefit of all the persons mentioned above who are domiciled in India or who, not being domiciled, express a desire to take the benefit of the action.

The amount recovered, after deducting the expenses, shall be divided among the persons entitled to it in such proportion as the court may direct [sub-s. (4)].

The court before whom an action is brought is entitled, at any stage of the proceeding, to make any order which may be just and equitable in keeping with the limits of liability in the First and Second Schedules and in respect of any proceeding that may be brought outside India concerning the same passenger.[6]

Conversion of francs [Section 6]

6. ***Conversion of francs.***—Any sum in francs mentioned in Rule 22 of the First Schedule or of the Second Schedule, as the case may be, shall, for the purpose of any action against a carrier, be converted into rupees at the rate of exchange prevailing on the date on which the amount of damages to be paid by the carrier is ascertained by the Court.

The francs mentioned in the schedules are to be converted into rupees at the rate of exchange prevailing at the date on which the amount of damage to be paid by the carrier is ascertained by the court.

Suits against High Contracting Parties [Section 7]

7. ***Provisions regarding suits against High Contracting Parties who undertake carriage by air.***—(1) Every High Contracting Party to the Convention or the amended Convention, as the case may be, who has not availed himself of the provisions of the Additional Protocol thereto shall, for the purposes of any suit brought in a Court in India in accordance with the provisions, of Rule 28 of the First Schedule, or of the Second Schedule, as the case may be, to enforce claim in respect of carriage undertaken by him, be deemed to have submitted to the jurisdiction of that Court and to be a person for the purposes of the Code of Civil Procedure, 1908 (5 of 1908).

(2) The High Court may make rules of procedure providing for all matters which may be expedient to enable such suits to be instituted and carried on.

(3) Nothing in this section shall authorise any Court to attach or sell any property of a High Contracting Party to the Convention or to the amended Convention.

If any High Contracting Party who have not availed of the Additional Protocol is sued in India in accordance with the schedules, it shall be deemed

6. *See* L.R. Edwards, *The Liability of Air Carriers for Death and Personal Injuries to Passengers*, (1982) 56 Aust LJ 108. Any pecuniary benefits obtained by the dependant, such as death benefit under a contributory pension scheme are adjustable. *Smith* v *British European Airways Corpn.*, [1951] 2 KB 893.

to have submitted itself to the jurisdiction of that court and shall be regarded a "person" for the purposes of the Civil Procedure Code. The High Courts have been given the power to make expedient rules of procedure for disposing of such suits. But the section does not authorise any court to attach or sell the property of any High Contracting Party.

Where the service is being operated by a foreign national, and though there is no provision for sovereign immunity under the Act, it has been held by the High Court of Delhi that provisions of Section 86, Civil Procedure Code, 1908 would apply and permission of the Central Government would be necessary.[7] Here is what the court said :[8]

> There is no provision in the matter of sovereign immunity contained in the Act. The Code deals with procedural matters, that is, the matters relating to the machinery for the enforcement of substantive rights. Those substantive rights may be contractual or flowing from the statutory provisions, including the Act. The Act allows suits to be filed in a Civil Court relating to the matters under it, but the procedure to be followed in such suits will be governed by the provisions of the Code. The Act does not confer jurisdiction on the Civil Court or provide a special procedure in dealing with claims arising out of or under the statutory provisions. The suit had to be determined according to the law of procedure laid down in the Code. No foreign State could be sued in any Court otherwise competent to try the suit except with the consent of the Central Government certified in writing by a Secretary to that Government.

First Schedule

Meaning of International Carriage [Schedule I(1)]

The rules apply to all international carriage of persons, luggage or goods performed by aircraft for reward. They also apply to such carriage when performed gratuitously by an air transport undertaking. The rules bind the "High Contracting Parties" which means countries which are parties to the convention.[9]

The expression "international carriage" means any carriage in which the place of departure and the place of destination fall in two different countries who have adopted the convention. Where the two places are in the same country, but there is a stop *en route* in another country, that will also be an international carriage even if that country is not a high contracting party.[10] A carriage without a stopping place in a different country shall not be deemed to be an international carriage.[11] A carriage by several successive air carriers is also regarded as an

7. *Deepak Wadhwa* v *Aeroflot*, (1983) 24 DLT 1, the service was by the Russian Govt., and the decree passed against it without observing the procedure of Section 86 CPC was held to be a nullity.
8. At p. 11.
9. *Philipson* v *Imperial Airways Ltd.*, [1938] 1 All ER 759.
10. On the partition of the country into India and Pakistan, both countries became High Contracting Parties and flights between them international flights. *Parasram Perumal* v *Air India Ltd.*, (1956) 56 Bom LR 944.
11. See, for example, *Holmes* v *Bangladesh Biman Corp.*, [1989] 1 All ER 852, HL, where the flight

international carriage even if one part or portion of the journey is to be performed within the territory of a single country. This rule will apply when the parties regard such carriage as a single operation.

Applicable to public bodies but not to Postal Convention

These rules will apply to carriage performed by the State or by any legally constituted public body, but they do not apply to any carriage performed under the terms of any international postal convention.

Documents of Carriage [Chapter II, Schedule 1]

Passenger Ticket [Part 1, Rule 3]

The carrier is required to deliver to the passenger a ticket containing the particulars stated in Part I of Rule 3.

The prescribed particulars are :

(*a*) the place and date of issue ;

(*b*) the place of departure and of destination ;

(*c*) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right, the alteration shall not have the effect of depriving the carriage of its international character ;

(*d*) the name and address of the carrier or carriers ;

(*e*) a statement that the carriage is subject to the rules relating to liability contained in this Schedule.

The absence, irregularity or loss of the ticket has no effect, but if the carrier accepts a passenger without ticket, he will not be entitled to avail himself of the provisions of the schedule which exclude or limit his liability.

Luggage Ticket [Part 2, Rule 4]

Excepting the small personal objects which a passenger may keep with himself, ticket must be issued for his every other object of luggage. The other rules shall be the same as stated above in reference to passenger ticket. The information which the luggage ticket has to contain is set out in the rule.

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in which the plaintiff's husband lost his life was purely internal, i.e., Bangladesh flight from Chittagong to Dhaka, and compensation according to local laws was allowed. The British laws were held to be not applicable. Their Lordships considered the decision in *The Zollverein* (1856) SW 96 at 98, Shawcross and Beaumont, AIR LAW (1977) and DICEY AND MORRIS ON THE CONFLICT OF LAWS at p. 844 as to when extra-territorial operation of British laws would take place. "The underlying rationale for the Warsaw Convention was the adoption of a uniform code governing international air carriage in order to remove the difficulties caused by the different laws which would be applicable where an accident took place either in the country of departure or the country of destination or an intermediate country. Such difficulties do not arise in the case of purely internal carriage and it is therefore difficult to see why UK law should seek to apply to such contracts of carriage whose proper law is not in doubt and in relation to which no question of conflict of laws could otherwise arise." Comment by N.E. Palmar and Robert Merkin, COMMERCIAL LAW, (1989) All ER Annual Review, 22-23.

See *Grein* v *Imperial Airways Ltd.*, [1936] 2 All ER 1258, on meaning of agreed stopping place.

The particulars are :

(3) The luggage ticket shall contain the following particulars—

(*a*) the place and date of issue ;

(*b*) the place of departure and of destination ;

(*c*) the name and address of the carrier or carriers ;

(*d*) the number of the passenger ticket ;

(*e*) a statement that delivery of the luggage will be made to the bearer of the luggage ticket ;

(*f*) the number and weight of the packages ;

(*g*) the amount of the value declared in accordance with Rule 22(2) ;

(*h*) a statement that the carriage is subject to the rules relating to liability contained in this Schedule.

These particulars constitute *prima facie* evidence of the conclusion of the contract and of the fact of the receipt of the goods, the conditions of carriage, and of all particulars about the goods stated above. Statements relating to volume, quantity and condition are evidence against the consignor only if the air consignment note (ACN) states that these things were checked in the presence of the consignor or that they related to the apparent condition of the goods.[12]

Air Consignment Note [*Part 3 Rules* 5-16].—The carrier can require the consignor to prepare an air consignment note (ACN) in accordance with the provisions. If no such note is prepared or the note prepared does not state all the requisite particulars, the carrier will not be entitled to the advantages of the limitation of liability as stated in the rules.[13] If the consignor supplies incorrect particulars, he will be responsible for the consequences. The carriers has the right to ask the consignor to make out separate consignment notes when there are more than one packages. The prescribed particulars are stated in Rule 8 which as follows :

8. The air consignment note shall contain the following particulars.—[14]

(*a*) the place and date of its execution ;

(*b*) the place of departure and of destination ;

(*c*) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right the alteration shall not have the effect of depriving the carriage of its international character ;

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12. *Corocroft Ltd.* v *Pan American World Airways Inc.*, [1969] 1 QB 616.

13. See *Birdhi Chand* v *Assam Travels Ltd.*, AIR 1954 Cal 170 where the note did not contain the requisite particulars and, therefore, was held to be of no avail to the carrier and, further, that a contract made by an agency, and not by an airliner, is not within the rules. The last particular is the statement that the carriage is subject to rules relating to liability contained in this schedule. It has been held that these words need not be reproduced in verbatim. A statement showing that the liability is subject to convention is a sufficient compliance. See *Samuel Montagu & Co. Ltd.* v *Swiss Air Transport Co. Ltd.*, [1966]1 All ER 814 : [1966] 2 QB 306. For a contrary view see *Seth* v *BOAC*, [1964] 1 Lloyd's Rep 268.

14. Where dangerous goods were consigned under incorrect particulars, the consignor was held liable for loss to the carrier and to the other goods under carriage. *Bamfield* v *Goole Sheffield Transport Co.*, [1910] 2 KB 94, road transport.

(*d*) the name and address of the consignor ;

(*e*) the name and address of the first carrier ;

(*f*) the name and address of the consignee, if the case so requires ;

(*g*) the nature of the goods ;

(*h*) the number of the packages, the method of packing and the particular marks or numbers upon them ;

(*i*) the weight, the quantity and the volume or dimensions of the goods ;

(*j*) the apparent condition of the goods and of the packing ;

(*k*) the freight, if it has been agreed upon, the date and place of payment, and the person who is to pay it ;

(*l*) if the goods are sent for payment on delivery, the price of the goods, and if the case so requires, the amount of the expenses incurred ;

(*m*) the amount of the value declared in accordance with Rule 22(2) ;

(*n*) the number of parts of the air consignment note ;

(*o*) the documents handed to the carrier to accompany the air consignment note ;

(*p*) the time fixed for the completion of the carriage and a brief note of the route to be followed, if these matters have been agreed upon ;

(*q*) a statement that the carriage is subject to rules relating to liability contained in this Schedule.

Consignment note as prima facie evidence [*Rule 11, Part III, First Schedule*]

The air consignment note is *prima facie* evidence of the conclusion of the contract, of the receipt of the goods and of the conditions of carriage. The statements in the note relating to weight, dimensions and packing of the goods are also *prima facie* evidence of the facts stated. But statements relating to quantity, volume and condition of the goods do not constitute evidence against the carrier unless they have been checked by him in the presence of the consignor or relate to the apparent condition of the goods.

Goods at sender's disposal during carriage [*Rule 12, Part III, Schedule 1*]

During the period of the carriage the goods remain subject to the orders of the consignor. He may withdraw them from carriage, either at the aerodrome of departure or destination, or may stop them in transit or may ask the carrier to deliver them to any person other than the consignee or may ask for the goods to be brought back to the place of departure. Should the carrier find it impossible to carry out the instructions of the consignor, he should inform him accordingly. While putting the goods at the disposal of the consignor, the carrier should ask for the consignment note to be delivered to him, otherwise he may become liable to the person who had lawfully obtained the note and had thereby acquired the right to the goods, though the carrier can recover his indemnity for the same amount from the consignor. This is so because the rights of the consignor cease when those of the consignee begin. But if the consignee refuses to accept the

goods or the note or, if he cannot be contacted with, the rights of the consignor become restored.

Consignee's right to receive delivery [*Rule 13, Part III Schedule 1*]

The consignee is entitled on arrival of the goods at the appointed destination to require the carrier to hand over to him the air consignment note and to deliver the goods to him. The carrier is obliged to do so on payment of the charges due and on compliance with the conditions of carriage set out in the air consignment note. It is the duty of the carrier to give notice to the consignee as soon as the goods arrive but he can stipulate otherwise. It the carrier admits loss of the goods, or if the goods have not arrived at the expiration of seven days after the date on which they ought to have arrived, the consignee becomes entitled to put into force his rights against the carrier under the contract of carriage.

Enforcement of rights by consignor and consignee [*Rule 14, Part III, Schedule 1*]

The rights stated above can be enforced either by the consignee or consignor and either in his own interest or in the interest of the other provided that he fulfils the obligations imposed upon him under the contract.[15] These rules do not affect the position as between the parties or as between them and third persons. The provisions of Rules 12, 13 and 14 can be varied by express provisions in the consignment note.

Consignor's duty to furnish documents [*Rule 16, Part III, Schedule 1*]

The consignor has to furnish to the consignee such information and such documents with the consignment note as are necessary to enable the consignee to meet the formalities of customs, octroi or police before the goods can be delivered to the consignee. If the carrier suffers any damage on account of any irregularity in such documents the consignor is liable.[16]

Liability of Carrier [Rule 17, Chapter III Schedule 1]

The liability of the carrier is spelled out under Rules 17 to 30 of the Third Chapter.

Passengers

In reference to passengers, the liability arises if the death or injury was caused by an accident which took place on board the aircraft or in the course of any of the operations of embarking and disembarking.[17]

Luggage or goods [*Rule 18*]

In reference to loss or damage of registered luggage or goods, the liability arises if the event causing the loss took place during the carriage by air. "Carriage by air" for this purpose means the period during which the goods are in charge of the carrier, but does not extend to carriage by sea, river or land performed

15. *Agarwalla Air Transport* v *Md. Nasarutulla*, AIR 1959 Cal 755.
16. Except when it is due to the fault of the carrier himself.
17. Rule 17.

outside an aerodrome, except when it takes place for the purposes of loading, delivery or transhipment.[18]

Where the loss of the goods in question occurred not during actual carriage but from the office of the carrier at the destination where they were lying for, delivery purposes, the loss was held to be one which could not be regarded to have occurred "during carriage by air."[19] This case presents some contrast to the case in which the carrier in his own interest took away the gold consignment from the bank and stored it in the strong room of the aerodrome from where it was stolen by breaking open its door and the court did not agree with the contention that at the time of the loss the carriage by air had not begun.[20]

Liability for delay [*Rule 19*]

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, luggage or goods.

The rules relating to liability are :

When not liable [*Rules 20 and 21*]

1. The carrier is not liable if he proves that he and his agents had taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

The duty owed to passengers is thus stated in *McCawley* v *Furness Ry. Co.*[21]: "[T]he duty of a carrier of passengers is to take reasonable care of a passenger, so as not to expose him to danger, and if they negligently expose him to danger, and he is killed, they might be guilty of manslaughter; and they would certainly be liable to the relatives of the deceased in damages."

The liability for negligence could have been excluded in reference to internal carriage before the Act was made applicable to internal carriage also.[22]

2. In the carriage of goods and luggage, the carrier is not liable if he proves that the damage was occasioned by negligent pilotage or negligence in the

18. Where the goods are not lost during the carriage by air but from the office of the destination where the goods were awaiting delivery no liability of carrier arises even if the carriage of goods is an international carriage by air and even if a consignment note in the form required by Rule 8 is not issued. *Parasram Parumal* v *Air-India*, (1954) 56 Bom LR 944. Explaining the scope of the rules, SHAH J said : "If it was the intention of the contracting parties to impose a liability upon carriers for loss of goods at any stage once the goods came into the possession of the carrier for the purpose of carriage and before they were delivered to the consignee, it was necessary to make the provision which has been made under sub-rules (2) and (3) of Rule 18 of the Rules. It could then have been provided that carriage by air within the meaning of sub-rule (1) of Rule 18 comprised the entire period when goods or luggage are in charge of the carrier. Even though the carriage of goods from Karachi to Bombay was international carriage by air, and even though a consignment note in the form required by Rule 8 of the First Schedule was not issued, the liability of the defendants did not arise under Rule 18 because the goods cannot be regarded as lost during carriage by air."

19. *Parsram Parumal* v *Air-India Ltd.*, (1954) 56 Bom LR 944.

20. *Westminster Bank Ltd.* v *Imperial Airways Ltd.*, [1936] 2 All ER 890.

21. [1872] 2 QB 57.

22. *IAC* v *Madhuri Chowdhury*, AIR 1965 Cal 352, overruling *Madhuri Chowdhury* v *IAC*, AIR 1962 Cal 544. Such agreement would not be unlawful within the meaning of Section 23 of the Contract Act. *Mukul Dutta Gupta* v *IAC*, AIR 1962 Cal 311 ; *Air Carrying Corpn.* v *Shitendranath*, AIR 1959 Mad 285 ; *IAC* v *Jothaji Maniram*, AIR 1959 Mad 259.

handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage.

3. If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person, the court may exonerate the carrier wholly or partly from his liability.[23]

These rules shift the burden of proof wholly upon the carrier. It is for the carrier to show that he is not liable. The rules also, however, favour him by imposing a limit upon his liability.

Limit of liability [*Rule 22*]

In the case of passengers the limit of liability is 2,50,000 francs.[24] In the case of registered luggage and goods it is 250 francs per kilogram. A special contract for exceeding these limits of liability is allowed. In the case of goods the sender may declare the value of his goods and may pay supplementary fare if so required, in which case the carrier will become liable for the declared value, unless he proves that it was greater than the real value of the goods.[25]

As regards the objects of which the passenger takes charge himself the liability of the carrier is limited to 5,000 francs per passenger.[26]

The sub-rule (4) of Rule 22 provides that "the sums mentioned in this rule shall be deemed to refer to the French franc consisting of sixty-five and a half milligrammes gold of milliesimal fineness nine hundred".

Provisions relieving carrier of liability or lowering same, void [*Rule 23*]

Any contract by which the liability is sought to be reduced below these limits shall be void to that extent but the rest of the contract shall be valid and shall be subject to the provisions of the Schedule.

Before the notification applying the Act to internal carriage by air, the position as shown by a decision of the Calcutta High Court was that the internal carrier could exempt himself from any liablity for negligence.[27]

Persons entitled to sue [*Rule 24*]

In cases involving injury or death of a passenger, the right to sue can be exercised by the persons indicated in the schedule but the schedule causes no

23. An obvious example would be smoking at a moment when the pilot has instructed passengers against it. Another is walking near a running propeller: *Hamilton* v *O'Toole*, 1930 US Aviation Report 133; still another would be not wearing safety belt when instructed to do so; *Kimmel* v *Pennsylvania Airlines*, (1937) US Aviation Report 29.

24. The sum is to be converted into rupees at the rate of exchange prevailing at the time at which the court ascertains the liability. Section 2(5).

25. Where no such declaration of value is made, the liability remains limited to the amount specified in the rules. *Westminster Bank Ltd.* v *Imperial Airways Ltd.*, [1936] 2 All ER 890. It is a sufficient declaration of the disclosures enable the carrier to calculate his additional charges. *Bradbury* v *Sutton*, (1872) 19 WR 800, on appeal 12 WR 128 : 8 Digest (Repl) 53. See further *Corocraft* v *Pan Am Airways*, [1968] 2 All ER 1059 : [1969] 1 QB 616, where value was declared for customs purposes but not for carriage, held, case of no value declared.

26. The sums mentioned are deemed to refer to the French francs consisting of 65 1/2 milligrams gold of millesimal fineness 900.

27. *IAC* v *Madhuri Chowdhury*, AIR 1965 Cal 252, overruling *Madhuri Chowdhury* v *IAC*, AIR 1962 Cal 544.

prejudice to the questions as to who are the persons who have the right to bring the suit and what are their respective rights. This was necessary to save any dependants of the injured or deceased persons from being deprived of their respective rights.

In the case of damage to any luggage or goods, the liability is incurred only to those who come within the clauses of the Schedule.

Limits not applicable where misconduct involved [Rule 25]

The carrier cannot avail himself of these limits if the loss is due to his or his agent's misconduct acting within the scope of his employment, or such default as is in the opinion of the court equivalent to misconduct. Some explanation of the meaning of the expression "misconduct" occurs in *Horabin* v *British Airways Corpn.*[28] The plane in question was diverted several times until it crashed. The case ended in a compromise and the judgment was in the shape of instructions to the jury. The defendants admitted crash by accident and their liability to pay within the specified limits. But the plaintiff claimed that those limits were not applicable because there was wilful misconduct on the part of the crew provided by the carrier. The plaintiff was personally injured and his goods were damaged. The sequence of events was as follows :

> The plaintiff embarked at London airport on a Dakota aircraft owned and controlled by the defendants and manned and operated by their servants or agents. The aircraft left London airport at 9.50 a.m. for Bordeaux, the first of the intermediate stopping places. The plaintiff alleged that permission to land at Bordeaux was given at approximately 12.58 p.m., but the defendants' servants or agents, instead of landing there or flying to an alternative airfield as designated in the plan for the flight, set course north in the direction of London and at about 1.30 p.m. altered course in the direction of Paris, reaching the vicinity of Le Bourget airfield at approximately 2.40 p.m. The aircraft was diverted to land at Cormeilles airfield, but, instead of landing there, it made course for south-east England. At this time the pilot knew that the fuel supply of the aircraft was sufficient for only twenty minutes. At 4.6 p.m., it crashed at Barley Hill, Stowting, near Ashford, Kent. The plaintiff alleged that he suffered personal injuries, destruction and damage to goods amounting to £79 13s. 9d., and special damage amounting to £4,395 8s. 9d.

Given below is a summarised version of the judge's instructions to the jury :

> Having regard to the grave danger to life with which carriage by air is fraught, "wilful misconduct" precluding a carrier from availing himself of the provisions of Schedule I, Article 25, to the Carriage by Air Act, 1932, excluding or limiting his liability for injury to passengers and damage to goods may include even a comparatively minor breach of a safety regulation or a minor lapse from accepted standards of safety. It means misconduct to which the will is a party, and it arises when the person concerned appreciates that he is acting wrongfully, or is wrongfully omitting to act, and yet persists

28. [1952] 2 All ER 1016 QBD.

in so acting or omitting to act regardless of the consequences, or acts or omits to act with reckless indifference to what the results may be. The same act may constitute negligence in the absence of any intention to do something wrong, but wilful misconduct if that intention is present. In a civil action the jury are entitled to look at the whole of the facts, to draw an inference from them as to the state of mind and intentions of the person responsible for an act, and to decide on the balance of probabilities whether the act is mere negligence or wilful misconduct, wilful misconduct not being established if there are equal degrees of probability.[29]

The mere fact that an act was done contrary to a plan or to instructions, or even to the standards of safe flying, to the knowledge of the person doing it, does not establish wilful misconduct on his part, unless it is shown that he knew that he was doing something contrary to the best interests of the passengers and of his employers or involving them in a greater risk than if he had not done it. A grave error of judgment, particularly one apparent as such in the light of other events, is not wilful misconduct if the person responsible thought he was acting in the best interests of the passengers and of the aircraft.

In determining whether or not there has been wilful misconduct, each act must be considered independently, and, though each act may be looked at in the light of all the evidence, it is not permissible to put together several minor acts of carelessness, none of them amounting to misconduct in itself, and find that together they amount to misconduct. But the number of occasions on which acts which might be acts of carelessness are committed may be some evidence that the state of mind of the person committing them was such as to make them wilful misconduct.

These limits are also not applicable when a passenger is accepted without a ticket being delivered to him. But where a ticket is issued, its absence, irregularity or loss does not take the case out of the Schedule. Thus where the ticket did not mention the agreed stopping places, compensation was held to be payable only according to the schedule.[30]

Receipt without complaint and time for complaint [Rule 25]

Receipt by the person entitled to delivery of luggage or goods without complaint is *prima facie* evidence that the same have been delivered in good condition and in accordance with the documents of carriage.

Complaints should be made immediately or at the most in three days in the case of luggage and seven days in the case of goods.[31] If there is any cause of

29. Applying the opinion of Lord BIRKENHEAD LC in *Lancaster* v *Blackwell Colliery Co. Ltd.*, (1919) 89 LJKB 611 as to when it can be said that a thing stands proved.

30. *Preston* v *Hunting Air Transport Ltd.*, [1956] 1 All ER 443.

31. A complaint for a partial loss has also to be made within 7 days. See *Fothergill* v *Monarch Airlines Ltd.*, 1981 AC 251. Here the report of the damage to the suit case was lodged within time but that of missing contents from the suit case after seven days and the same was held to be not within time.

delay the maximum period of fourteen days may be allowed. Failing such complaint, no action lies except where the carrier is guilty of fraud. Complaint should be in writing upon the document of carriage or by separate notice in writing despatched within the times specified.

Death of person liable [*Rule 27*]

In the case of the death of the person liable an action lies against those who represent his estate.

Jurisdiction [*Rule 28*]

An action can be brought at the place where the carrier is ordinarily resident, or has his principal place of business or has an office for the purpose of making contracts or at the place of destination.[32]

Extinction of right to damages [*Rule 29*]

The right of action is extinguished if no action is brought within 2 years running from the date of arrival of the destination or from the date on which the aircraft ought to have arrived or from the date on which the carriage stopped.

Carriage by successive airlines [*Section 30*]

In case of carriage by successive airlines, the action should be brought against the carrier who performed the carriage during which the accident or delay occurred. The first carrier may be sued if he agreed to be responsible for the whole carriage. In case of loss of luggage the consignor may sue the first and the consignee the last carrier, though the carrier so sued will have the right to sue the carrier who performed the carriage during which the loss occurred.

In case of combined carriage, partly by air and partly by other modes, these provisions will apply only to the air portion.[33]

Carriers may adopt rules not contrary to these provisions

Any clause contrary to these provisions shall be void, but the carrier may adopt rules which are not inconsistent with these and an agreement may also provide for arbitration provided that the same shall take place in the territory of any of the high contracting parties.

Not applicable to trial carriages

These provisions do not apply to trial carriages performed with a view to the establishment of an airline or in extraordinary circumstances outside the normal scope of an air carrier's business.[34]

The Hague Protocol

The limits set out by the Warsaw convention, particularly for death of passengers, were the subject of criticism. Therefore another convention was called in 1955 to suggest amendments to the Warsaw convention. This is called

32. *Rotterdansche Bank NV* v *BOAC*, [1953] 3 All ER 675.
33. Chapter IV of Schedule 1 which deals with provisions relating to combined carriage.
34. Chapter V which contains general and final provisions.

the Hague Protocol. Apart from making certain improvements in the matter of procedure, the protocol increased the liability for the death of a passenger to 2,50,000 francs. The Government of India has accepted this by passing the Carriage by Air Act, 1972.

The Second Schedule

This Schedule is the result of the Hague Protocol. Its provisions supersede those of the First Schedule in reference to a country which has accepted the Protocol.

The definition clause remains the same.

Baggage check

Some change has been made in respect of baggage. Part II of Chapter II, Rule 4 provides that in respect of the carriage of registered baggage, a baggage check shall be delivered, containing the particulars prescribed. The check shall constitute *prima facie* evidence of the registration of the baggage and of the conditions of the contract of carriage. If the check is not delivered the carrier cannot avail himself of the beneficial provisions of the Schedule.

Air way-bill [Part III, Chapter 2]

The carrier has been given the right to require the consignor to make out a document called an "air way-bill" and the consignor also has the right to ask the carrier to accept it. This will constitute the contract and the existence of the contract shall not be affected by the absence, irregularity or loss of the way-bill.

The consignor has to make the way-bill in three original parts. The first shall be marked "for the carrier" and shall be signed by the consignor ; the second part "for the consignee," and signed by the consignor and shall accompany the cargo ; the third part has to be signed by the carrier and handed back to the consignor after the acceptance of his consignment.

The carrier has the right to require the consignor to make out separate way-bills when there is more than one package.

The way-bill should contain indication of the place of departure and destination ; an indication that there is a stoppage in another country ; a notice to the consignor that if the destination is in a different country or there is a stop in another country, the amended convention may be applicable.

If no way-bill is made or if the notice stated above is not included in the way-bill, the carrier shall not be able to avail himself of the limits of liability stated in the Schedule.

The consignor is responsible for the correctness of the particulars and also for liability, if any, arising out of incorrect particulars.

The way-bill is *prima facie* evidence of the contract and of the receipt of the cargo. The statements relating to weight, dimensions and packing and number of packages are *prima facie* evidence of the facts stated. But statements relating to the quantity, volume and condition of the cargo do not constitute evidence

against the carrier unless he has seen them or they relate to the apparent condition of the cargo.

Consignor's right over cargo

Subject to his liability under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the point of departure or at any subsequent stop or by requiring it to be delivered at the destination to any person other than the consignee or by requiring it to be returned to the aerodrome of departure. If the carrier finds that it is impossible to comply with any such direction, he should inform the consignor forthwith. If the carrier obeys the order without production of the way-bill he will become liable to the lawful custodian of the way-bill for his loss, if any.

The rights conferred on the consignor cease as soon as those of the consignee (as stated below) begin. But if the consignee does not accept the way-bill or the cargo, the rights of the consignor again revive. Rule 14(4) further provides that if the consignee declines to accept the goods, the consignor regains his right of disposal irrespective of the fact that the consignee's right had commenced in the meantime. But the consignor cannot exercise his right in such a manner as to prejudice the interest of the carrier or of other consignors.[35]

Consignee's right to demand possession

On arrival at destination the consignee has the right to demand possession on production of the way-bill and payment of outstanding charges, if any. If the carrier admits that the consignment has been lost or if the goods are not delivered within a week, the consignee can enforce his rights. The rights can be enforced by the consignor or the consignee.

Position of owner who is neither consignor nor consignee

This rule has given rise to the question whether the owner of the goods who is formally neither a consignor nor consignee can enforce the contract ? This was in effect the question in *Gatewhite Ltd.* v *Iberia Lineas Aereas de Esparia SA*[36]. The case involved a consignment of chrysanthemums. The ownership in the goods passed to the plaintiff upon delivery of the consignment to the carrier. The consignment arrived at Heathrow some four or five days late and in a damaged condition. The carrier contended that the plaintiff was precluded by the Warsaw Convention as amended at the Hague and as implemented by the Carriage by Air Act, 1961 from bringing an action since he was neither the consignor nor the consignee of the goods. The Common Law permits an owner to sue in such cases. The question, therefore, was whether the Convention would supplement the common law or be self-exhaustive. In addition to other provisions, Article 30(3) sets out the various circumstances in which the consignor and the consignee, and they alone, have a right of action in the case of carriage performed by successive carriers.[37] A recent decision in this area was

35. *G.G. Pvt. Ltd.* v *PAW Airways, Delhi*, AIR 1983 Del 357 : (1983) 23 DLT (SN) 10.

36. [1989] 1 All ER 944.

37. GATEHOUSE J considered authorities from other jurisdictions in which this restrictive view was taken : *Manhattan Novelty Corp.* v *Seaboard and Western Airlines Inc*, 5 Avi Cas 17229 ; *Pan*

that of PRICHARD J in the New Zealand High Court in *Tasman Pulp and Paper Co. Ltd.* v *Brambles JBO' Loghlen Ltd*[38], where the restrictive approach was rejected. Though the decision was not final, but it touched a very important point inasmuch as it refused to reject at the instance of the carrier a claim by the owner about whom the court said that he had an arguable case against the carrier under the Convention. Taking this opinion into account along with dissenting opinions expressed in *Bart*[39] and *Pan American*[40] and also the silence of the Convention on a matter where it could easily have made a provision, led GATEHOUSE J to the conclusion that it was intended to exclude the right of the owner of the goods to bring an action. "It should be recognised that in practice the consignee will often be a forwarding agent or the buyer's bank; it would be undesirable that the buyer's remedy should depend upon the ability and willingness of the actual consignee to bring an action against the carrier."[41]

Position of different carriers

In *Anil & Co.* v *Air India*,[42] the carrier was held liable when its agent delivered the goods directly to the consignee instead of, as directed, to the bank for collecting payment of the goods.

> The plaintiff booked certain goods with Air India for carriage to a New York buyer. A New York bank was named as consignee in the air way-bill. Air India carried the goods up to Paris and there entrusted them to the Trans World Airlines for carriage to New York. The latter wrongly delivered the goods to the buyer without obtaining payment.

Air India accordingly became liable for the loss. The court said[43] that under Section 30 of the Carriage by Air Act, 1972 the liability of different carriers with regard to the goods consigned remains joint and several. The present suit is by the consignor and, therefore, the right of action against the first carrier which has been the Air India clearly exists. Its agent, the successive carrier, was under duty to inform the bank so that it may collect payment and deliver the documents to the consignee. This was not done. Instead the goods were delivered without formalities, which was a fraud. The principal is liable for the misconduct of his sub-agent.

In another similar case before the High Court of Delhi,[44] goods were sent from Delhi for delivery in the U.S.A. The goods were forwarded to another carrier because the first carrier was not operating up to the delivery point. The second carrier delivered the goods in violation of instructions. The consignor

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American World Airways Inc v *S.A. Fire and Accident Ins Co. Ltd.*, 1965 (3) SA 150 and *Bart* v *British West Indian Airways Ltd.*, [1967] 1 Lloyd's Rep 239.

38. [1981] 2 NZLR 225.
39. Note 37 above.
40. *Ibid.*
41. Comment on the case by N.E. Palmer and Robert Merkin, COMMERCIAL LAW, All ER Annual Review 1989 at p. 24.
42. AIR 1986 Del 312.
43. DR KHANNA J.
44. *Rajasthan Handicrafts Emporium* v *P.A. World Airways*, AIR 1984 Del 396.

could not recover the price. The first carrier contended that because he had forwarded the consignment in its right state to the second carrier, he was not liable. But the court said this was not so. The contract of carriage in question was a single operation. The liability of all the carriers is joint and several. Therefore, the plaintiff's suit against the first carrier cannot be dismissed because of misjoinder or non-joinder of parties.[45]

Liability [Chapter III]

The principles relating to liability are the same, but the extent of liability has been enhanced. In the carriage of passengers, the liability of the carrier for each passenger is limited to the sum of 2,50,000 francs. Where, in accordance with the law of the court before which a claim is pending, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 2,50,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

In the carriage of registered baggage and of cargo, the liability is limited to 250 francs per kilogramme, unless the contract envisages, on payment of extra charges, higher limit. In such a case the carrier will be liable to pay the declared value unless the carrier proves that the declared value is more than the real value. As regards the objects of which the passenger takes charge himself the liability is limited to 5,000 francs per passenger. The meaning of the expression "registered luggage" came up for consideration in *Collins* v *British Airways Board*[46]. The usual practice of airlines is that they receive a customer's luggage, an identification card is tagged to the luggage and a part of it is delivered to the customer. There is nothing beyond this, no record and no register. The question was whether the luggage so delivered becomes a registered luggage.

> Collins and his wife were on a round trip. The tickets were plainly marked "Passenger ticket and baggage check". On the outward journey the young lady at the desk filled in the little space for "baggage check" with the figures '2/46' meaning two pieces weighing 46 kilograms. They reached safely with their baggage. They purchased a third suitcase to carry home their foreign purchases. For their homeward journey they did not arrive in time for their baggage to be put on the aircraft. They were told that it would be sent by the next aircraft. The space on the ticket for "baggage check" was left blank. The baggage was delivered to them no doubt but the contents of the suitcases were stolen. They claimed £2000. The British Airways contended under the Warsaw Convention as amended at the Hague, 1955, they were entitled to limit their liability at £ 580.20.

The county court judge held that they were not so entitled, but the Court of Appeal, with one dissent, reversed this decision. The court described this as an "amazing omission" that the convention did not say what the expression

45. The court distinguished *Union of India* v *Amar Singh*, AIR 1960 SC 233 because it simply lays down that the authority in the agent, viz., receiving carrier must necessarily be implied to appoint the forwarding carrier to act for the consignor during that part of the journey which is to be covered by the forwarding carrier.

46. [1982] 2 WLR 165.

"registered baggage" means. But the history of the convention showed that at no time did the drafting committee think there was any difference in meaning between baggage that was checked and baggage that was registered. The court, therefore, treated the baggage as registered baggage, despite the doubts expressed by Lord DENNING by reason of the total absence of any record of the baggage in a book or other register kept by the airline. "Indeed, in the context of civil aviation, it is reasonably arguable that check-in procedures, as universally followed, amounts to registration. When the baggage disappears down the conveyor belt it has been tagged with an identification number of which the passenger retains the counterpart on a small piece of cardboard normally stapled to his ticket."[47] KERR LJ remarked that the effect of the whole procedure was as if it had been agreed : "that BA or American Airlines took charge of their baggage when they [Mr and Mrs Collins] checked in and that this was registered baggage for the purposes of the Convention."

In this case the baggage check portion of the ticket was left blank. There was no notation of the number or weight of the bags in the appropriate part of the ticket. The question was whether this blank delivery amounted to notice of the limitation clause. On this Lord DENNING and EVELEIGH LJ concurred to hold that the limitation clause had become applicable, Lord DENNING said :

> "According to the original Warsaw Convention the maximum limit of 250 gold francs per kilogram is calculated with respect to the package lost or damaged, but according to the amended Convention, Article 22(2)(*b*), when the loss or damage of a package also affects the value of other packages covered by the same baggage check or air way bill, the total weight of the other affected packages may also be taken into consideration to determine the carrier's liability.[48]
>
> The 'baggage check' is the little part of the ticket designated as baggage check. Even if it is not filled in, it is still a 'baggage check' within the Warsaw Convention. It satisfies the Convention so long as it contains the statements mentioned in Article 4(1)(*a*), (*b*) and (*c*). This combined passenger ticket and baggage check did so."[49]

These limits will 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. The effect

47. Comment by A K in 1982 Journal of Business Law 145.

48. CHARLESWORTH'S MERCANTILE LAW, 593 (14th ed) by Schmitthoff and Sarre, 1984, citing *Data Card Corporation* v *Air Express International Corporation*, [1983] 2 All ER 639.

49. KERR LJ dissented on the ground that to allow limitation of liability if the baggage check was not filled in would not be in accordance with the commercial purposes of the amended Convention. He cited Lord WILBERFORCE'S statement in *Fothergill* v *Monarch Airlines*, [1981] AC 251, 272-73, noted 1981 JBL 69 that :

> "Preservation of the baggage check is important in order to establish the relevant weight upon which the limit of liability is fixed". With respect, Lord WILBERFORCE said it was 'important' but did not say it was the only way in which the weight of the baggage can be established. In *Collins* case the weight of the baggage had been admitted or agreed. 1982 JBL 146.

of these provisions is that the carrier will have to pay compensation to the extent of direct loss which may go beyond these limits, if it is due to a deliberate or reckless act either that of the carrier or his agent or servant, provided that the agent or servant acted within the scope of his employment. Where this is not so, the limits will be operative. If an action is brought against a servant or agent, he too will be entitled to the benefit of these limits. The aggregate amount recoverable from the carrier or his servants cannot exceed the limits stated in the Schedule.[50] The agent of servant, however, shall also not be entitled to avail these limits if the loss or damage was due to his intentional or reckless act or with knowledge that damage would probably result.

The right to damages stands extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination or from the date on which the aircraft ought to have arrived, or form the date on which the carriage stopped.[51]

The second part of Rule 30 provides that the method of calculating the period of limitation shall be determined by the law of the court seized of the case. The Calcutta High Court has pointed out that the effect of this provision is that no plaint can be rejected merely by looking at the two year period. The court has also to see how those two years have to be computed under the law of the court. In this case though the party had filed the case after two years, he alleged acknowledgement. The court has thus to see whether acknowledgement was there for the purposes of the Limitation Act, 1963. It was thus wrong to have rejected the claim merely by looking at two years.[52]

The period so prescribed cannot be reduced. That would be violative of Section 28 of the Indian Contract Act. Delhi High Court expressed this opinion in *Rajasthan Handicrafts Emporium* v *P.A. World Airways*[53]. In this case a clause provided that in the case of loss of cargo including non-delivery, the claim must be presented to the carrier within 120 days from the date of airway bills. This was held to be not binding. It reduced the period of limitation prescribed by the Act and, therefore, violated Section 28 of the Contract Act. The court distinguished the clause from one which extinguishes the right itself because such clauses have been held to be valid.[54] The words used were : "no action shall be maintained." The effect of these words was not to extinguish the right but to cut short the period of limitation. The court further said that commencing the period from the date of booking was not proper. Time should run from the date of loss or non-delivery. Another clause in the same way-bill providing that the

50. See, for example, *Swiss Bank Corpn.* v *Brink's-MAT Ltd.*, [1986] 2 All ER 188 where the claim to interest on damages was rejected because it would have carried the amount beyond the ceiling. The court said that "what is imposed, for better or worse, is a global limitation on the total monetary sum which the airline can find itself liable to pay", the only exception being the award of costs which is specifically provided for in Article 22(4).
51. Rule 30.
52. *British Airways* v *Art Works Export Ltd.*, AIR 1986 Cal 120 : 89 CWN 1117 (DB).
53. AIR 1984 Del 396.
54. *M.G. Bros. Lorry Service* v *Prasad Textiles*, [1983] 3 SCC 61 : AIR 1984 SC 15.

right to sue would be lost if no action was instituted within two years from the date of loss was held to be valid.[55]

The schedule appended to the Act is reproduced below :

THE FIRST SCHEDULE
(*See* Section 3)

RULES

CHAPTER I
SCOPE—DEFINITIONS

1. (1) These rules apply to all international carriage of persons, luggage or goods performed by aircraft for reward. They apply also to such carriage when performed gratuitously by an air transport undertaking.

(2) In these rules, "High Contracting Parties" means a Contracting Party to the Convention.

(3) For the purposes of these rules the expression, "international carriage" means any carriage in which according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a Party to the Convention. A carriage without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party is not deemed to be international for the purposes of these rules.

(4) A carriage to be performed by several successive air carriers is deemed, for the purposes of these rules, to be one undivided carriage, if it has been regarded by the parties as a single operation, whether it has been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within a territory subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party.

2. (1) These rules apply to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Rule 1.

(2) These rules do not apply to carriage performed under the terms of any international postal Convention.

55. To the same effect, *G.G. Pvt. Ltd.* v *P.A.W. Airways, Delhi*, AIR 1983 Del 357 : (1983) 23 DLT (SN) 10.

CHAPTER II

DOCUMENTS OF CARRIAGE

Part I—Passenger ticket

3. (1) For the carriage of passengers the carrier must deliver a passenger ticket which shall contain the following particulars—

(*a*) the place and date of issue ;

(*b*) the place of departure and of destination ;

(*c*) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right, the alteration shall not have the effect of depriving the carriage of its international character ;

(*d*) the name and address of the carrier or carriers ;

(*e*) a statement that the carriage is subject to the rules relating to liability contained in this Schedule.

(2) The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage, which shall nonetheless be subject to these rules. Nevertheless, if the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this Schedule which exclude or limit his liability.

NOTES

The Act or Rules made thereunder do not incapacitate the Indian Airlines Corporation to enter into the special contract contained in the ticket supplied to the passenger exempting the carriage from liability. *Mukul Dutta Gupta* v *Indian Airlines Corporation*, AIR 1962 Cal 311.

Part II—Luggage ticket

4. (1) For the carriage of luggage, other than small personal objects of which the passenger takes charge himself, the carrier must deliver a luggage ticket.

(2) The luggage ticket shall be made out in duplicate, one part for the passenger and the other part for the carrier.

(3) The luggage ticket shall contain the following particulars—

(*a*) the place and date of issue ;

(*b*) the place of departure and of destination ;

(*c*) the name and address of the carrier or carriers ;

(*d*) the number of the passenger ticket ;

(*e*) a statement that delivery of the luggage will be made to the bearer of the luggage ticket ;

(*f*) the number and weight of the packages ;

(*g*) the amount of the value declared in accordance with Rule 22(2) ;

(*h*) a statement that the carriage is subject to the rules relating to liability contained in this Schedule.

(4) The absence, irregularity or loss of the luggage ticket does not affect the existence or the validity of the contract of carriage, which shall nonetheless be subject to these rules. Nevertheless, if the carrier accepts luggage without a luggage ticket having been delivered, or if the luggage ticket does not contain the particulars set out at (*d*), (*f*) and (*h*) of sub-rule (3), the carrier shall not be entitled to avail himself of those provisions of this Schedule which exclude or limit his liability.

Part III—Air consignment note

5. (1) Every carrier of goods has the right to require the consignor to make out and hand over to him a document called an "air consignment note"; every consignor has the right to require the carrier to accept this document.

(2) The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of Rule 9, be nonetheless governed by these rules.

6. (1) The air consignment note shall be made out by the consignor in three original parts and be handed over with the goods.

(2) The first part shall be marked "for the carrier" and shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier and shall accompany the goods. The third part shall be signed by the carrier and handed by him to the consignor after the goods have been accepted.

(3) The carrier shall sign an acceptance of the goods.

(4) The signature of the carrier may be stamped ; that of the consignor may be printed or stamped.

(5) If, at the request of the consignor, the carrier makes out the air consignment note, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

7. The carrier of goods has the right to require the consignor to make out separate consignment notes when there is more than one package.

8. The air consignment note shall contain the following particulars—

(*a*) the place and date of its execution ;

(*b*) the place of departure and of destination ;

(*c*) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right the alteration shall not have the effect of depriving the carriage of its international character ;

(*d*) the name and address of the consignor ;

(*e*) the name and address of the first carrier ;

(*f*) the name and address of the consignee, if the case so requires ;

(*g*) the nature of the goods ;

(*h*) the number of the packages, the method of packing and the particular marks or numbers upon them ;

(*i*) the weight, the quantity and the volume or dimensions of the goods ;

(*j*) the apparent condition of the goods and of the packing ;

(*k*) the freight, if it has been agreed upon, the date and place of payment, and the person who is to pay it ;

(*l*) if the goods are sent for payment on delivery, the price of the goods, and if the case so requires, the amount of the expenses incurred ;

(*m*) the amount of the value declared in accordance with Rule 22(2) ;

(*n*) the number of parts of the air consignment note ;

(*o*) the documents handed to the carrier to accompany the air consignment note ;

(*p*) the time fixed for the completion of the carriage and a brief note of the route to be followed, if these matters have been agreed upon ;

(*q*) a statement that the carriage is subject to rules relating to liability contained in this Schedule.

9. If the carrier accepts goods without an air consignment note having been made out, or if the air consignment note does not contain all the particulars set out in Rule 8(*a*) to (*i*) inclusive and (*q*), the carrier shall not be entitled to avail himself of the provisions of this Schedule which exclude or limit his liability.

10. (1) The consignor is responsible for the correctness of the particulars and statements relating to the goods which he inserts in the air consignment note.

(2) The consignor will be liable for all damage suffered by the carrier or any other person by reason of the irregularity, incorrectness or incompleteness of the said particulars and statements.

11. (1) The air consignment note is *prima facie* evidence of the conclusion of the contract, of the receipt of the goods and of the conditions of carriage.

(2) The statements in the air consignment note relating to the weight, dimensions and packing of the goods, 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 goods do not constitute evidence against the carrier except so far as they both have been, and are stated in the air consignment note to have been checked by him in the presence of the consignor, or relate to the apparent condition of the goods.

12. (1) Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the goods by withdrawing them at the aerodrome of departure or destination, or by stopping them in the course of the journey on any landing or by calling for them to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air consignment note, or by requiring them to be returned to the aerodrome of departure. He must not exercise right

of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

(2) If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.

(3) If the carrier obeys the orders of the consignor for the disposition of the goods without requiring the production of the part of the air consignment note delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage, which may be caused thereby to any person who is lawfully in possession of that part of the air consignment note.

(4) The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Rule 13. Nevertheless, if the consignee declines to accept the consignment note or the goods, or if he cannot be communicated with, the consignor resumes his rights of disposition.

13. (1) Except in the circumstances set out in Rule 12, the consignee is entitled, on arrival of the goods at the place of destination, to require the carrier to hand over to him the air consignment note and to deliver the goods to him, on payment of the charges due and on complying with the conditions of carriage set out in the air consignment note.

(2) Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the goods arrive.

(3) If the carrier admits the loss of the goods, or if the goods have not arrived at the expiration of seven days after the date on which they ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

14. The consignor and the consignee can respectively enforce all the rights given to them by Rules 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract.

15. (1) Rules 12, 13 and 14 do not affect either the relations of the consignor or the consignee, with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

(2) The provisions of Rules 12, 13 and 14 can only be varied by express provision in the air consignment note.

16. (1) The consignor must furnish such information and attach to the air consignment note such documents as are necessary to meet the formalities of customs, octroi or police before the goods can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his agents.

(2) The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

CHAPTER III

LIABILITY OF THE CARRIER

17. The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

18. (1) The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered luggage or any goods, if the occurrence which caused the damage so sustained took place during the carriage by air.

(2) The carriage by air within the meaning of sub-rule (1) comprises the period during which the luggage or goods are in charge or the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.

(3) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transhipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

19. The carrier is liable for damage occasioned by delay in the carriage by air of passengers, luggage or goods.

20. (1) The carrier is not liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

(2) In the carriage of goods and luggage the carrier is not liable if he proves that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage.

21. If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the Court may exonerate the carrier wholly or partly from his liability.

22. (1) In the carriage of passengers of liability of the carrier for each passenger is limited to the sum of 1,25,000 francs. Where damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 1,25,000 francs. Nevertheless, by special contract the carrier and the passenger may agree to a higher limit of liability.

(2) In the carriage of registered luggage and of goods, the liability of the carrier is limited to a sum of 250 francs per kilogramme, unless the consignor had made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery 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 actual value to the consignor at delivery.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5,000 francs per passenger.

(4) The sums mentioned in this rule shall be deemed to refer to the French franc consisting of sixty-five and a half milligrammes gold of millesimal fineness nine hundred.

23. Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in these rules shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract which shall remain subject to the provisions of this Schedule.

24. (1) In the cases covered by Rules 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Schedule.

(2) In the cases covered by Rule 17, the provisions of sub-rule (1) also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

25. (1) The carrier shall not be entitled to avail himself of the provisions of this Schedule which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as is in the opinion of the Court equivalent of wilful misconduct.

(2) Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused as aforesaid by any agent of the carrier acting within the scope of his employment.

26. (1) Receipt by the person entitled to delivery of luggage or goods without complaint is *prima facie* evidence that the same have been delivered in good condition and in accordance with the document of carriage.

(2) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within three days from the date of receipt in the case of luggage and seven days from the date of receipt in the case of goods. In the case of delay the complaint must be made at the latest within fourteen days from the date on which the luggage or goods have been placed at his disposal.

(3) Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.

(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

27. In the case of the death of the person liable, an action for damages lies in accordance with these rules against those legally representing his estate.

28. An action for damages must be brought at the option of the plaintiff, either before the Court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the

contract has been made or before the Court having jurisdiction at the place of destination.

29. The right of damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or form the date on which the carriage stopped.

30. (1) In the case of carriage to be performed by various successive carriers and falling within the definition set out in sub-rule (4) of Rule 1, each carrier who accepts passengers, luggage or goods is subjected to the rules set out in this Schedule, and is deemed to be one of the contracting parties to the contract of carriage insofar as the contract deals with that part of the carriage which is performed under his supervision.

(2) In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

(3) As regards luggage or goods, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

CHAPTER IV

Provisions Relating to Combined Carriage

31. (1) In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Schedule apply only to the carriage by air, provided that the carriage by air falls within the terms of Rule 1.

(2) Nothing in this Schedule shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Schedule are observed as regards the carriage by air.

CHAPTER V

General and Final Provisions

32. Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Schedule, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the carriage of goods arbitration clauses are allowed, subject to these rules, if the arbitration is to take place in the territory of one of the High Contracting Parties within one of the jurisdictions referred to in Rule 28.

33. Nothing contained in this Schedule shall prevent the carrier either from refusing to enter into any contract of carriage, from making regulations which do not conflict with the provisions of this Schedule.

34. This Schedule does not apply to international carriage by air performed by way of experimental trial by air navigation undertakings with the view to the establishment of a regular line of air navigation, nor does it apply to carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

35. The expression "days" when used in these rules means current days, not working days.

36. When a High Contracting Party has declared at the time of ratification of or of accession to the Convention that sub-rule (1) of Rule 2 of these rules shall not apply to international carriage by air performed directly by the State, its colonies, protectorates or mandated territories or by any other territory under its sovereignty, suzerainty or authority, these rules shall not apply to international carriage by air so performed.

NOTES

The special exemption from liability given in Rule 36 is given to the carrier. Where the consignment note was by the forwarding agent and not the carrier there could be no special exemption from liability. *Birdhi Chand* v *Assam Travels Ltd.*, AIR 1954 Cal 170.

THE SECOND SCHEDULE

(*See* Section 4)

RULES

CHAPTER I

SCOPE—DEFINITIONS

1. (1) These rules apply to all international carriage of persons, baggage or cargo performed by aircraft for reward. They apply equally to gratuitous carriage by aircraft performed by an air transport undertaking.

(2) In these rules, "High Contracting Party" means a High Contracting Party to the amended Convention.

(3) For the purposes of these rules, the expression, "international carriage" means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two High Contracting Parties or within the territory of a single High Contracting Party if there is an agreed stopping place which the territory of another State, even if that State is not a High Contracting Party. Carriage between two points within the territory of a single High Contracting Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of these rules.

(4) Carriage to be performed by several successive air carriers is deemed, for the purposes of these rules, to be one undivided carriage if it has been

regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

2. (1) These rules apply to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Rule 1.

(2) These rules shall not apply to carriage of mail and postal packages.

CHAPTER II

DOCUMENTS OF CARRIAGE

Part I—Passenger ticket

3. (1) In respect of the carriage of passengers a ticket shall be delivered containing—

(*a*) an indication of the places of departure and destination ;

(*b*) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place ;

(*c*) a notice to the effect that, if the passenger's journey involves an ultimate destination or stop in a country other than the country of departure, the amended Convention may be applicable and that the amended Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss of, or damage to, baggage.

(2) The passenger ticket shall constitute *prima facie* evidence of the conclusion and conditions of the contract of carriage. The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage which shall, nonetheless, be subject to these rules. Nevertheless, if, with the consent of the carrier, the passenger embarks without a passenger ticket having been delivered, or if the ticket does not include the notice required by sub-rule (1)(*c*) of this rule, the carrier shall not be entitled to avail himself of the provisions of Rule 22.

Part II—Baggage check

4. (1) In respect of the carriage of registered baggage, a baggage check shall be delivered, which, unless combined with or incorporated in a passenger ticket which complies with the provisions of sub-rule (1) of Rule 3 shall contain—

(*a*) an indication of the places of departure and destination ;

(*b*) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place ;

(*c*) a notice to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the amended Convention may be applicable and that the amended Convention governs and in most cases limits the liability of carriers in respect of loss of, or damage to, baggage.

(2) The baggage check shall constitute *prima facie* evidence of the registration of the baggage and of the conditions of the contract of carriage. The absence, irregularity or loss of the baggage check does not affect the existence or the validity of the contract of carriage which shall, nonetheless, be subject to those rules. Nevertheless, if the carrier takes charge of the baggage without a baggage check have been delivered or if the baggage check [unless combined with or incorporated in the passenger ticket which complies with the provisions of sub-rule (1)(*c*) of Rule 3] does not include the notice required by sub-rule (1)(*c*) of this rule, he shall not be entitled to avail himself of the provisions of sub-rule (2) of Rule 22.

Part III—Air waybill

5. (1) Every carrier of cargo has the right to require the consignor to make out and hand over to him a document called an "air waybill"; every consignor has the right to require the carrier to accept this document.

(2) The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of Rule 9, be nonetheless governed by these rules.

6. (1) The air waybill shall be made out by the consignor in three original parts and be handed over with the cargo.

(2) The first part shall be marked "for the carrier", and shall be signed by the consignor. The second part shall be marked "for the consignee" ; it shall be signed by the consignor and by the carrier and shall accompany the cargo. The third part shall be signed by the carrier and handed by him to the consignor after the cargo has been accepted.

(3) The carrier shall sign prior to the loading of the cargo on board the aircraft.

(4) The signature of the carrier may be stamped; that of the consignor may be or printed stamped.

(5) If, at the request of the consignor, the carrier makes out the air waybill, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

7. The carrier of cargo has the right to require the consignor to make out separate waybills when there is more than one package.

8. The air waybill shall contain—

(*a*) an indication of the places of departure and destination ;

(*b*) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places

being within the territory of another State, an indication of at least one such stopping place ;

(*c*) a notice to the consignor to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the amended Convention may be applicable and that the amended Convention governs and in most cases limits liability of carriers in respect of loss of or damage to cargo.

9. If, with the consent of the carrier, cargo is loaded on board the aircraft without an air waybill having been made out, or if the air waybill does not include the notice required by Rule 8(*c*), the carrier shall not be entitled to avail himself of the provisions of sub-rule (2) of Rule 22.

10. (1) The consignor is responsible for the correctness of the particulars and statements relating to the cargo which he inserts in the air waybill.

(2) The consignor shall indemnify the carrier against all damage suffered by him, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor.

11. (1) The air waybill is *prima facie* evidence of the conclusion of the contract, of the receipt of the cargo and of the conditions of carriage.

(2) 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.

12. (1) Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the aerodrome of departure of destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air waybill, or by requiring it to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

(2) If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.

(3) If the carrier obeys the orders of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill.

(4) The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Rule 13. Nevertheless, if the consignee declines to accept the waybill or the cargo, or if he cannot be communicated with, the consignor resumes his right of disposition.

13. (1) Except in the circumstances set out in the preceding rule, the consignee is entitled on arrival of the cargo at the place of destination to require the carrier to hand over to him the air waybill and to deliver the cargo to him, on payment of the charges due and on complying with the conditions of carriage set out in the air waybill.

(2) Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.

(3) If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

14. The consignor and the consignee can respectively enforce all the rights given to them by Rules 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract.

15. (1) Rules 12, 13 and 14 do not affect either the relations of the consignor or the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

(2) The provisions of Rules 12, 13 and 14 can only be varied by express provision in the air waybill.

(3) Nothing in these rules prevents the issue of a negotiable air waybill.

16. (1) The consignor must furnish such information and attach to the air waybill such documents as are necessary to meet the formalities of customs, octroi or police before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his servants or agents.

(2) The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

CHAPTER III

LIABILITY OF THE CARRIER

17. The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

18. (1) The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered baggage or any cargo, if

the occurrence which caused the damage so sustained took place during the carriage by air.

(2) The carriage by air within the meaning of the preceding sub-rule comprises the period during which the baggage or cargo is in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.

(3) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transhipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

19. The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.

20. The carrier is not liable if he proves that he and his servants or agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

21. If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the Court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

22. (1) In the carriage of persons the liability of the carrier for each passengers is limited to the sum of 2,50,000 francs. Where, in accordance with the law of the Court seized of the case, damages may be awarded in the form of periodical payments the equivalent capital value of the said payments shall not exceed 2,50,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

(2) (*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.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5,000 francs per passenger.

(4) The limits prescribed in this rule shall not prevent the Court from awarding, in accordance with its own law, in addition, the whole or part of the Court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluding Court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing damage, or before the commencement of the action, if that is later.

(5) The sums mentioned in francs in this rule shall be deemed to refer to a currency unit consisting of sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into national currencies in round figures. Conversion of the sums into national currencies other than gold shall, in case of judicial proceedings, be made according to the gold value of such currencies at the date of the judgment.

23. (1) Any provision tending to relieve the carrier of liability or to fix a lower limit than which is laid down in these rules shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of these rules.

(2) Sub-rule (1) of this rule shall not apply to provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

24. (1) In the cases covered by Rules 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in these rules.

(2) In the cases covered by Rule 17 the provisions of the preceding sub-rule also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

25. 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.

26. (1) If an action is brought against a servant or agent of the carrier arising out of damage to which these rules relate, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under Rule 22.

(2) The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed and said limits.

(3) The provisions of sub-rules (1) and (2) of this rule shall not apply if it is proved that the damage resulted from an act or omission of the servant or

agent done with intent to cause damage of recklessly and with knowledge that damage would probably result.

27. (1) Receipt by the person entitled to delivery of baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage.

(2) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his disposal.

(3) Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.

(4) Failing complaint which the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

28. In the case of the death of the person liable, an action for damages lies in accordance with the terms of these rules against those legally representing his estate.

29. (1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the Court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination.

(2) Questions of procedure shall be governed by the law of the Court seized of the case.

30. (1) The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

(2) The method of calculating the period of limitation shall be determined by the law of the Court seized of the case.

31. (1) In the case of carriage to be performed by various successive carriers and falling within the definition set out in sub-rule (3) of Rule 1, each carrier who accepts passengers, baggage or cargo is subjected to the rules set out in this Schedule, and is deemed to be one of the contracting parties to the contract of carriage insofar as the contract deals with that part of the carriage which is performed under his supervision.

(2) In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

(3) As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

CHAPTER IV

PROVISIONS RELATING TO COMBINED CARRIAGE

32. (1) In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Schedule apply only to the carriage by air, provided that the carriage by air falls within the terms of Rule 1.

(2) Nothing in this Schedule shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Schedule are observed as regards the carriage by air.

CHAPTER V

GENERAL AND FINAL PROVISIONS

33. Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Schedule, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the carriage of cargo arbitration clauses are allowed, subject to these rules, if the arbitration is to take place within one of the jurisdictions referred to in sub-rule (1) of Rule 29.

34. Nothing contained in this Schedule shall prevent the carrier either from refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of this Schedule.

35. The provisions of Rules 3 to 9 (inclusive) relating to documents of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

36. The expression "days" when used in these rules means current days, not working days.

INTERNAL CARRIAGE BY AIR

8. **Application of Act to carriage by air which is not international.**—(1) The Central Government may, by notification in the Official Gazette, apply the rules contained in the First Schedule and any provision of Section 3 or Section 5 or Section 6 to such carriage by air, not being international carriage by air as defined in the First Schedule, as may be specified in the notification, subject, however, to such exceptions, adaptations and modifications, if any, as may be so specified.

(2) The Central Government may, by notification in the Official Gazette, apply the rules contained in the Second Schedule and any provision of Section 4 or Section 5 or Section 6 to such carriage by air, not being international carriage by air as defined in

the Second Schedule, as may be specified in the notification, subject, however, to such exceptions adaptations and modifications, if any, as may be so specified.

(3) Every notification issued by the Central Government under Section 4 of the Indian Carriage by Air Act, 1934 (20 of 1934) and in force immediately before the commencement of this Act shall be deemed to have been issued under sub-section (1) and shall continue to be in force until such notification is superseded.

The Carriage by Air Act, 1972, applies to international carriage of goods and passengers by air. There is no Act in force relating to home carriage by air. But Section 8 of the Act empowers the Central Government to extend the provisions of the Act to carriage by air in India which is not international carriage. Such notification was issued on December 17, 1963 and, therefore, the provisions of the Indian Carriage by Air Act, 1934 became applicable to internal air carriage also.[56] The Government has the power to issue such notification under the 1972 Act also, but no such notification seems to have been issued so far. This means that only the 1934 Act is applicable and the liability of the internal carrier by air would be determined according to the provisions of the First Schedule as given in the 1972 Act.

Before the extension of the Act to the home air carriage, such carriage was wholly a contract carriage. The consequences of a contract carriage as shown by some of the court decisions, and which now being of historical interest only, may be briefly noted.

The position and liability of the internal carrier by air in India was discussed in a lengthy judgment by PB MUKHERJI J (afterwards CJ) in *Indian Airlines* v *Madhuri Chowdhury*[57].

> The plaintiff's (respondent here) husband was killed when a dakota aeroplane crashed soon after it took off from Nagpur for Madras. The plaintiff brought an action against the corporation for damages for the benefit of the representatives of the deceased.

She had to face the following wide and sweeping exemption clause contained in the passenger's air ticket :

> The carrier shall be under no liability whatsoever to the passenger (or his representatives) for death, injury or delay to the passenger, or loss, damage, detention or delay to his baggage or personal property arising out of the carriage or any other services or operation of the carrier whether or not caused or occasioned by the act, neglect, or negligence or default of the

56. The Patna High Court noted in *Indian Airlines Corpn.* v *Akhileshwar Pd.*, AIR 1986 Pat 306 that Section 4 (now Section 8) empowered the Central Government to apply the rules and any provisions of Section 2 to internal carriage by a notification. The Central Government issued a notification bearing GSR 1967 dt. 11th January, 1964. Section 2 of the Act and the rules would apply to all carriage by air and not being international carriage by air as defined in the First Schedule. The benefit of the Act was not available in the absence of the extension. *Agarwala Air Transport* v *Nasratullah*, AIR 1959 Cal 755 . The Act could not have been pushed into service even under the concept of justice, equity and good conscience *Indian Airlines* v *Madhuri Chowdhury*, AIR 1965 Cal 252 overruling *Mukul Dutta Gupta* v *IAC*, AIR 1962 Cal 311 ; *IAC* v *Keshavlal*, AIR 1962 Cal 290.

57. AIR 1965 Cal 252.

carrier or of the pilot, flying, operational or other staff or employees or agents of the carrier or otherwise howsoever.

The inquiry into the cause of the crash revealed that it was wholly due to defective supervision and check up. The port engine of plane failed after getting airborne and revived again and the pilot instead of landing back tried to push ahead. It failed again and now even forced landing could not take place because of some defects in the warning instruments. The result was the crash and the death of the plaintiff's young businessman husband of 28.

Desperate efforts were made on the plaintiff's behalf to get over the exemption clause. It was contended that a clause which exempts a carrier from liability for negligence is against public policy and should be declared to be void under Section 23 of the Contract Act ; that the term which excluded liability for "neglect, negligence or default" was unreasonable. The trial judge held that the exemption clause was illegal, invalid and void and also that a party guilty of negligence in the performance of his contractual duty should not be permitted to shelter behind such unreasonable exclusion clauses. But the Calcutta High Court reversed this judgment.

The first point that the court had to resolve was which law governs the liability of the internal carrier by air. The court found that the Indian Carriers Act, 1865 is not applicable because this Act, by its own declaration confines itself to carriage of only goods and not passengers and that too by land and sea and not air. The Indian Carriage by Air Act, 1934, also had no application because, it had not been extended to internal air carriage at the time.[58]

Was the Contract Act to apply? In this respect the learned judge relied upon the decision of the Privy Council in *Irrawaddy Flotilla Co.* v *Bugwan Das*[59], which the court regarded as a clear authority for saying that "the liability of common carriers in India is not affected by the Indian Contract Act." Therefore, no question of testing the validity of the exemption clause with reference to Section 23 of the Contract Act can at all arise. The Contract Act does not purport to be a complete Code and the Privy Council says that it purports to do no more than to define and amend certain parts of the law.[60] The court found further support in the decision of the Division Bench of the Calcutta High Court in *Indian Airlines Corpn.* v *Keshavlal F. Gandhi*[61], where also it was held that the Airlines Corporation is a common carrier ; it is not affected by the provisions of the Contract Act, but is bound only by the common law of England and that law permits a public carier to acquire complete immunity for loss or damage.[62]

58. *See* P B MUKHERJI J at p. 264.
59. (1891) 18 IA 121 PC.
60. At p. 259.
61. 65 Cal WN 949 : AIR 1962 Cal 290.
62. At p. 260. The court noted the dissenting opinin of SANKARAN NAIR J of the Bom HC in *Bombay Steam Navigation Co.* v *Vasudev*, ILR 52 Bom 37 : AIR 1928 Bom 5 that Section 23, Contract Act would apply and the rejection of this view by the Madras High Court in *Sheikh Md. Ravuther* v *B.I.S.N. Co. Ltd.*, ILR 32 Mad 95 and again in *Indian Airlines Corpn.* v *Jothoji Maniram*, AIR 1959 Mad 285 and also the decision of the Assam High Court *Rukmanand Ajitsaria* v *Airways (India) Ltd.*, AIR 1960 Ass 71.

The court felt that by virtue of the above Privy Council decision the courts in India were bound to hold that only the common law of England would apply to carriers by air in India and that law, while, on the one hand, imposing the liability of an insurer on the carrier, permits him, on the other, to reduce his liability by special contract to zero, and in this respect there was no difference whether he is a carrier of goods or of passengers.[63]

Now that the Act of 1934 has been extended to home carriage also, the present position appears from the following passage in the judgment of the Patna High Court in *Indian Airlines Corpn.* v *Akhileshwar Prasad*:[64]

> The Indian Carriage by Air Act, 1934 was enacted in the wake of the Convention for the Unification of the Rules relating to the International Carriage by Air signed on the 12th October, 1929 at Warsaw and the preamble expressly mentions that the Convention was in relation to international carriage by air. Section 4, however, empowered the Central Government to apply the rules and any provision of Section 2 to internal carriage by air within the country by notification in the Official Gazette to that effect. In the exercise of this power, the Central Government issued a notification bearing GSR 1967 date 11th January, 1964, directing that with effect from the 1st of March, 1964, Section 2 of the Act and the rules would apply to all carriage by air and not being international carriage by air as defined in the First Schedule.

Stating the effect as to liability for loss of luggage, the court said :

> Dealing with the liability for loss of luggage in Chapter III, the Rule 22(2) prescribes the limit of the liability of the carrier in the following terms : "(2) In the carriage of registered luggage and of goods, the liability of the carrier is limited to a sum of Rs 80 per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the carrier so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that the sum is greater than the actual value to the consignor at delivery."

The plaintiff in this case did not make any special declaration of the value of his attache-case. The court had no choice but to hold that the liability of the corporation amounted to Rs 320.

63. The court considered this settled by the high authority of the House of Lord in *Luddit* v *Ginger Coote Airways Ltd.*, [1947] AC 233 and *Grand Trunk Ry. Co.* v *Robinson*, [1915] AC 740 : AIR 1915 PC 51. See the cases cited by the learned judge at p. 261. See also *Holmes* v *Bangladesh Biman Corp.*, [1989] 1 All ER 852 HL, where a British subject lost his life in an accident occurring in the course of purely internal flight, viz., from Chittagong to Dhaka, both within Bangladesh and the amount of compensation under the Bangladesh legislation which imposed a ceiling of £ 913 was held to be payable though it was much less than the ceiling imposed by UK laws.

64. AIR 1986 Pat 306 at 307 : 1986 BLJR 203 : 1986 BLJ 128 : 1986 Pat LJR 24 DB.

In answer to the contention of the corporation that the attache-case lost was not registered with it because the passenger was keeping it with himself, LALIT MOHAN SHARMA J said :

> There is no merit in this objection. Chapter II of the rules indicates that a passenger can carry with him small items of luggage in the passengers cabin and has to entrust other items to the carrier and obtain a ticket for it. The expression "registered luggage" refers to the second category.

The court accordingly held that rules as to liability would as well apply to the luggage permitted by the rules to be kept by the passenger with himself.

3

Carriage by Rail

CARRIAGE OF GOODS

Chapter IX of the Railways Act, 1989 carries provisions on this subject.

61. Maintenance of rate-books, etc., for carriage of goods.—Every railway administration shall maintain, at each station and at such other places where goods are received for carriage, the rate-books or other documents which shall contain the rate authorised for the carriage of goods from one station to another and make them available for the reference of any person during all reasonable hours without payment of any fee.

62. Conditions for receiving, etc., of goods.—(1) A railway administration may impose conditions, not inconsistent with this Act or any rules made thereunder, with respect to the receiving, forwarding, carrying or delivering of any goods.

(2) A railway administration shall maintain, at each station and at such other places where goods are received for carriage, a copy of the conditions for the time being in force under sub-section (1) and make them available for the reference of any person during all reasonable hours without payment of any fee.

63. Provision of risk rates.—(1) Where any goods are entrusted to a railway administration for carriage, such carriage shall, except where owner's risk rate is applicable in respect of such goods, be at railway risk rate.

(2) Any goods, for which owner's risk rate and railway risk rate are in force, may be entrusted for carriage at either of the rates and if no rate is opted, the goods shall be deemed to have been entrusted at owner's risk rate.

Rate-books and their availability for reference

Stations and places where goods are received for carriage have to maintain rate-books and documents containing information as to authorised rates. Any person can ask for their reference during reasonable hours and without any fee.[1]

Under Section 62 the railway administration has the power to impose conditions with respect to receiving, forwarding, carrying or delivering of any goods. A copy of such conditions has to be maintained at stations and receiving places and offered for reference to any one who needs them and without any fee.

Risk rates [Section 63]

Where owner's risk rates are not in force, goods offered for carriage shall be at railway risk rate. Where owners' risk rates and railways risk rates are both in force, there the consignor can exercise his choice for one or the other. If he exercises no choice, his goods would be carried at his risk.

1. Section 61.

Forwarding note [Section 64]

Section 64 provides for the execution of forwarding notes. The section is more fully considered under the next chapter entitled : "Responsibility of railway administration as carriers of goods."

Railway receipt [Section 65]

This section deals with grant of railway receipts on receiving goods for carriage. Also more fully considered under the next chapter.

Power to demand description of goods [Section 66]

66. Power to require statement relating to the description of goods.—(1) The owner or a person having charge of any goods which are brought upon a railway for the purposes of carriage by railway, and the consignee or the endorsee of any consignment shall, on the request of any railway servant authorised in this behalf, deliver to such railway servant a statement in writing signed by such owner or person or by such consignee or endorsee, as the case may be, containing such description of the goods as would enable the railway servant to determine the rate for such carriage.

(2) If such owner or person refuses or neglects to give the statement as required under sub-section (1) and refuses to open the package containing the goods, if so required by the railway servant, it shall be open to the railway administration to refuse to accept such goods for carriage unless such owner or person pays for such carriage the highest rate for any class of goods.

(3) If the consignee or endorsee refuses or neglects to give the statement as required under sub-section (1) and refuses to open the package containing the goods, if so required by the railway servant, it shall be open to the railway administration to charge in respect of the carriage of the goods the highest rate for any class of goods.

(4) If the statement delivered under sub-section (1) is materially false with respect to the description of any goods to which it purports to relate, the railway administration may charge in respect of the carriage of such goods such rate, not exceeding double the highest rate for any class of goods as may be specified by the Central Government.

(5) If any difference arises between a railway servant and such owner or person, the consignee or the endorsee, as the case may be, in respect of the description of the goods for which a statement has been delivered under sub-section (1), the railway servant may detain and examine the goods.

(6) Where any goods have been detained under sub-section (5) for examination and upon such examination it is found that the description of the goods is different from that given in the statement delivered under sub-section (1), the cost of detention and examination shall be borne by such owner or person, the consignee or the endorsee, as the case may be, and the railway administration shall not be liable for any loss, damage or deterioration which may be caused by such detention or examination.

For the purposes of calculation of the applicable rate for a particular carriage, the consignor, consignee or the endorsee may be called upon to furnish a statement in writing under his signature containing description of the goods. If he refuses or neglects to do so and refuses to open any package, if so required, the administration gets the right to refuse acceptance of such goods unless the person concerned pays for such carriage the highest rate for any class of goods.

If a false statement is delivered, double the highest amount leviable for any class of goods may be charged. In case of any difference of opinion as to description, the goods may be detained for the purpose of examining them. If the examination shows that the goods are of different class than the description given, the cost of such detention and examination would have to be borne by

the party giving the statement and the railway administration is not to be held liable for any loss, damage or deterioration which may be caused by such detention or examination.

Dangerous or offensive goods [Section 67]

67. Carriage of dangerous or offensive goods.—(1) No person shall take with him on a railway, or require a railway administration to carry such dangerous or offensive goods, as may be prescribed, except in accordance with the provisions of this section.

(2) No person shall take with him on a railway the goods referred to in sub-section (1) unless he gives a notice in writing of their dangerous or offensive nature to the railway servant authorised in this behalf.

(3) No person shall entrust the goods referred to in sub-section (1) to a railway servant authorised in this behalf for carriage unless he distinctly marks on the outside of the package containing such goods their dangerous or offensive nature and gives a notice in writing of their dangerous or offensive nature to such railway servant.

(4) If any railway servant has reason to believe that goods contained in a package are dangerous or offensive and notice as required under sub-section (2) or sub-section (3), as the case may be, in respect of such goods is not given, he may cause such package to be opened for the purpose of ascertaining its contents.

(5) Notwithstanding anything contained in this section, any railway servant may refuse to accept any dangerous or offensive goods for carriage or stop, in transit, such goods or cause the same to be removed, as the case may be, if he has reason to believe that the provisions of this section for such carriage are not complied with.

(6) Nothing in this section shall be construed to derogate from the provisions of the Indian Explosives Act, 1884 (4 of 1884), or rule or order made under that Act, and nothing in sub-sections (4) and (5) shall be construed to apply to any goods entrusted for carriage by order or on behalf of the Government or to any goods which a soldier, sailor, airman or any other officer of the armed forces of the Union or a police officer or a member of the Territorial Army or the National Cadet Corps may take with him on a railway in the course of his employment or duty as such.

What goods are dangerous or offensive

Where the goods belong to any category of dangerous or offensive goods as may be prescribed under the Act, every person is charged with the duty of not carrying with him or to require the administration to carry such goods unless the procedure prescribed by the section is complied with.

Notice of dangerous nature

A person carrying dangerous or offensive goods with him is under an obligation to give a notice in writing to an authorised person of the nature of the goods. Similarly, a person handing over goods to the railway for carriage has to mark on the package that the goods are of dangerous or offensive nature and also to give a similar notice in writing. If any railway man has reason to believe that the goods contained in a package are of dangerous or offensive nature but notice of that fact has not been given, he may cause such package to be opened for the purpose of ascertaining their contents. Such goods may be stopped in or removed from transit if notice of their dangerous character was not given.

The requirements of this section are not to be construed to derogate from the provisions of the Indian Explosives Act, 1884 or rules or orders made thereunder or goods carried by soldiers, etc., under Government orders.

RAILWAYS (PRESCRIPTION OF OFFENSIVE GOODS) RULES, 1990[2]

Notification No. G.S.R. 555(E), dated 7th June, 1990

In exercise of the powers conferred by clause (*b*) of sub-section (2) of Section 87 of the Railways Act, 1989 (24 of 1989), read with Section 22 of the General Clauses Act, 1897 (10 of 1897), the Central Government hereby makes the following rules, namely :—

1. Short title and commencement.—(1) These rules may be called the Railways (Prescription of Offensive Goods) Rules, 1990.

(2) The shall come into force on the date of commencement of the Railways Act, 1989 (24 of 1989).

2. Definition.—In these rules, 'Act' means the Railways Act, 1989 (24 of 1989).

3. Goods declared to be offensive in nature.—For purpose of the Act, the following goods shall be the goods of offensive nature, namely:—

(1) Dried Blood ;
(2) Corpses ;
(3) Carcasses of dead animals ;
(4) Bones excluding bleached and cleaned bones ;
(5) Municipal or street sweepings or refuse ;
(6) Manures of any kind including Mycelium except chemical manures ;
(7) Rags, other than oily rags ;
(8) Any decayed animal or vegetable matter ;
(9) Human Ashes ;
(10) Human Skeletons ;
(11) Parts of human body.

Animals suffering from diseases [Section 68]

68. Carriage of animals suffering from infectious or contagious diseases.—A railway administration shall not be bound to carry any animal suffering from such infectious or contagious disease as may be prescribed.

The prescribed list is as follows :

RAILWAYS (PRESCRIPTION OF INFECTIOUS AND CONTAGIOUS DISEASES FOR ANIMALS) RULES, 1990[3]

Notification No. G.S.R. 553(E), dated 7th June, 1990

In exercise of the powers conferred by clause (*c*) of sub-section (2) of Section 87 of the Railways Act, 1989 (24 of 1989), read with Section 22 of the General Clauses Act, 1897 (10 of 1987), the Central Government hereby makes the following rules, namely :—

1. Short title and commencement.—(1) These Rules may be called the Railways (Prescription of Infectious and Contagious Diseases for Animals) Rules, 1990.

(2) They shall come into force on the date of commencement of the Act.

2. Definition.—In these rules 'Act' means the Railways Act, 1989 (24 of 1989).

3. Animals suffering from infectious or contagious diseases.—For the purpose of Section 68 of the Act, the following diseases of animals are prescribed to be infectious or contagious in nature, namely :—

(1) *Cattle and Buffaloes.*—Rinderpest, Foot and Mouth diseases, contagious bovine Pleuropneumonia, Anthrax, Rabies, Tuberculosis, Para-Tuberculosis, Theileriosis,

2. Published in the Gazette of India Extra., Part II, Sec. 3(*i*) of 7-6-1990.
3. Published in the Gazette of India, Extra., Part II, Section 3(*i*), dated 7-6-1990.

Brucellosis, Haemorrhagic, Septicaemia, Black Quarter, Lepto pirosis, Piroplasnosis, Anaplasnosis.

(2) *Sheep and Goats.*—Rinderpest, Foot and Mouth Diseases, Anthrax, Rabies, Blue Tongue, Brucellosis, Sheep Pox, CCPP, Contagious Ecthema, Goat Pox.

(3) *Horses, Donkeys and Mules.*—Glanders, Anthrax, EIA, Equine Influenza, Rhinopneumonitis, Trypenosomiasis.

(4) *Pigs.*—Hog Cholera, Foot and Mouth Diseases, Rinderpest, Anthrax.

(5) *Poultry.*—Ranikhet Disease, Fowl Pox, Bacillary, Diarrhoea, Infectious Bronchitis, Marek's Disease, Infectious Coryza, ILT Gumboro CRD and Fowl Cholera.

(6) *Dogs and Cats.*—Rabies, Distemper, Parvovirus Infection, Leptospirosis, Hepatitis.

Carrying capacity of wagons [Section 72]

72. Maximum carrying capacity for wagons and trucks.—(1) The gross weight of every wagon or truck bearing on the axles when the wagon or truck is loaded to its maximum carrying capacity shall not exceed such limit as may be fixed by the Central Government for the class of axle under the wagon or truck.

(2) Subject to the limit fixed under sub-section (1), every railway administration shall determine the normal carrying capacity for every wagon or truck in its possession and shall exhibit in words and figures the normal carrying capacity so determined in a conspicuous manner on the outside of every such wagon or truck.

(3) Every person owning a wagon or truck which passes over a railway shall determine and exhibit the normal carrying capacity for the wagon or truck in the manner specified in sub-section (2).

(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), where a railway administration considers it necessary or expedient so to do in respect of any wagon or truck carrying any specified class of goods or any class or wagons or trucks of any specified type, it may vary the normal carrying capacity for such wagon or truck or such class of wagons or trucks and subject to such conditions as it may think fit to impose, determine for the wagon or truck or class of wagons or trucks such carrying capacity as may be specified in the notification and it shall not be necessary to exhibit the words and figures representing the carrying capacity so determined on the outside of such wagon or truck or such class of wagons or trucks.

73. Punitive charge for overloading a wagon.—Where a person loads goods in a wagon beyond its permissible carrying capacity as exhibited under sub-section (2) or sub-section (3), or notified under sub-section (4), of Section 72, a railway administration may, in addition to the freight and other charges, recover from the consignor, the consignee or the endorsee, as the case may be, charges by way of penalty at such rates, as may be prescribed, before the delivery of the goods:

Provided that it shall be lawful for the railway administration to unload the goods loaded beyond the capacity of the wagon, if detected at the forwarding station or at any place before the destination station and to recover the cost of such unloading and any charge for the detention of any wagon on this account.

The punitive charges have been prescribed as follows :

RAILWAYS (PUNITIVE CHARGES FOR OVERLOADING OF WAGON) RULES, 1990[4]

Notification No. G.S.R. 558(E), dated 7th June, 1990

In exercise of the powers conferred by clause (*d*) of sub-section (2) of Section 87 of the **Railways Act, 1989** (24 of 1989), read with Section 22 of the General Clauses Act, 1897 (10 of 1897), the Central Government hereby makes the following rules, namely :—

1. Short title and commencement.—(1) These rules may be called the **Railways (Punitive Charges for Overloading of Wagon) Rules, 1990.**

(2) They shall come into force on the date of commencement of the Act.

2. Definitions.—In these rules, unless the context otherwise requires :—

4. Published in the Gazette of India, Extra., Part II, Section 3(*i*), dated 7-6-1990.

(*a*) 'Act' means the Railways Act, 1989 (24 of 1989).

(*b*) 'Class rate' is the freight rate applicable to the class assigned to a particular commodity by the Central Government.

(*c*) 'Other charges' means charges other than freight which are incidental to or connected with carriage of goods.

(*d*) 'Permissible carrying capacity' means the normal carrying capacity determined under sub-section (2) or (3) of Section 72 or where a railway administration has determined a varied carrying capacity under sub-section (4) of Section 72, such varied carrying capacity, whichever is higher.

(*e*) 'Schedule' means the Schedule to these Rules.

(*f*) 'Section' means section of the Act.

(*g*) 'Small rate' means the freight rate applicable to the commodity when offered for carriage by Railway in 'Smalls' as distinguished from wagon load, as fixed by the Central Government by general or special order.

(*h*) Words and expressions used and not defined in these Rules but defined in the Act shall have the meaning respectively assigned to them in the Act.

3. Punitive charges for overloading.—Where goods are loaded in a wagon or truck beyond its permissible carrying capacity, the railways administration may, in addition to normal freight and other charges, recover for the distance between the forwarding station and the destination station, charges by way of penalty as specified in Part I of the Schedule in the case of goods loaded in a loose condition and Part II of the Schedule in the case of goods other than those loaded in a loose condition from the consignor, the consignee or the endorsee as the case may be.

SCHEDULE

(*See* Rule 3)

PART I

GOODS LOADED IN LOOSE CONDITION

1	2
Extent of overloading in	Charges leviable
(1) 4 *wheeled or 6 wheeled wagon.*—Where the weight of goods exceeds the permissible carrying capacity by—	
(*a*) more than 1 tonne and such overloading is detected at the forwarding station.	(*a*) overweight in excess of 1 tonne shall be charged at the smalls rate applicable to the commodity.
(*b*) more than 1 tonne but not more than 2 tonnes and such overloading is detected en route or at destination station.	(*b*) overweight in excess of 1 tonne shall be charged at the smalls rate applicable to the commodity.
(*c*) more than 2 tonnes and such overloading is detected en route or at destination station.	(*c*) overweight in excess of 1 tonne shall be charged at double the smalls rate applicable to the commodity.
(2) 8 *wheeled wagon.*—Where the weight of goods exceeds the permissible carrying capacity by—	
(*a*) more than 2 tonnes and such overloading is detected at the forwarding station.	(*a*) overweight in excess of 2 tonnes shall be charged at smalls rate applicable to the commodity.
(*b*) more than 2 tonnes but not more than 3 tonnes and such overloading is detected en route or at destination station.	(*b*) overweight in excess of 2 tonne shall be charged at the smalls rate applicable to the commodity.

(*c*) more than 3 tonnes and such overloading is detected en route or at the destination station.	(*c*) [5]overweight in excess of 2 tonnes shall be charged at double the smalls rate applicable to the commodity.

PART II

GOODS OTHER THAN THOSE LOADED IN LOOSE CONDITION

1	2
Extent of overloading in	Charges leviable
(1) *4 wheeled or 6 wheeled wagon.*—Where the weight of goods exceeds the permissible carrying capacity by—	
(*a*) 1 tonne or less.	(*a*) Weight in excess of the permissible carrying capacity shall be charged at the smalls rate applicable to the commodity.
(*b*) More than 1 tonnes.	(*b*) Weight in excess of the permissible carrying capacity shall be charged at double the highest class rate.
(2) *8 wheeled wagon.*—Where the weight of goods exceeds the permissible carrying capacity by—	
(*a*) 2 tonne or less.	(*a*) Weight in excess of the permissible carrying capacity shall be charged at smalls rate applicable to the commodity.
(*b*) More than 2 tonnes.	(*b*) Weight in excess of the permissible carrying capacity shall be charged at double the highest class rate.

Delivery of goods against railway receipt or otherwise [Section 76]

76. Surrender of railway receipt.—The railway administration shall deliver the consignment under a railway receipt on the surrender of such railway receipt:

Provided that in case the railway receipt is not forthcoming, the consignment may be delivered to the person, entitled in the opinion of the railway administration to receive the goods, in such manner as may be prescribed.

The railway administration is under a duty to deliver the consignment on the surrender of the relevant railway receipt. Where, however, the railway receipt is not forthcoming and the person who is claiming the goods is able to convince the railway administration that he is entitled to the goods, the goods may be delivered to him in the prescribed manner.

77. Power of railway administration to deliver goods or sale proceeds thereof in certain cases.—Where no railway receipt is forthcoming and any consignment or the sale proceeds of any consignment are claimed by two or more persons, the railway administration may withhold delivery of such consignment or sale proceeds, as the case may be, and shall deliver such consignment or sale proceeds in such manner as may be prescribed.

Where two or more persons are claiming a consignment and none of them is producing the railway receipt, the goods or their sale proceeds may be

5. As corrected by GSR 203(E), dt. 3-4-1991.

delivered in the prescribed manner. The following rules have been prescribed in this connection.

THE RAILWAYS (MANNER OF DELIVERY OF CONSIGNMENTS AND SALE PROCEEDS IN THE ABSENCE OF RAILWAY RECEIPT) RULES, 1990[6]

In exercise of the powers conferred by clauses (*e*) and (*f*) of sub-section (2) of Section 87 of the Railways Act, 1989 (24 of 1989) read with Section 22 of the General Clauses Act, 1897 (10 of 1897), the Central Government hereby makes the following rules, namely :—

1. Short title and commencement.—(1) These rules may be called the Railways (Manner of Delivery of Consignments and Sale Proceeds in the Absence of Railway Receipt) Rules, 1990.

(2) They shall come into force on the date of their commencement of the Act.

2. Definitions.—In these rules, unless the context otherwise requires :—

(*a*) 'Act' means the Railways Act, 1989 (24 of 1989) ;

(*b*) 'Consignee' means the person named as consignee in a railway receipt ;

(*c*) 'Consignment' means goods entrusted to a railway administration for carriage ;

(*d*) 'Consignment booked to self' means consignments booked by the consignor to 'self' at the destination instead of to a 'consignee', by name.

(*e*) 'Form' means the Form annexed to these rules ;

(*f*) 'Railway receipt' means the railway receipt issued under Section 65 of the Act ;

(*g*) 'Station Master' means a railway employee by whatever name called, in overall charge of a Railway Station and includes any other railway employee authorised by the railway administration to grant delivery of goods ;

(*h*) words and expressions used herein and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. (1) Where the railway receipt is not forthcoming, the consignment may be delivered to the delivery of consignments when the railway receipt is not forthcoming person who in the opinion of the railway administration is entitled to receive the goods and who shall receive the same on the execution of an Indemnity Note as specified in Form I :

Provided, however, that—

(*a*) if the consignee is a Government official in his official capacity, such delivery may be made on unstamped Indemnity Note ;

(*b*) if the consignment consists of perishable articles, any railway servant, authorised in this behalf, may in his discretion allow delivery on unstamped Indemnity Note.

(2) Where the railway receipt is not forthcoming and the consignment is addressed by the sender to self, delivery shall not be made unless Indemnity Note, duly executed in Forms I-A and I-B are produced by the persons claiming delivery of the consignment.

(3) Where the railway receipt is not forthcoming and the consignment is not addressed to self by the sender, delivery may be made on the basis of an Indemnity Note duly executed in Form II in lieu of Form I subject to the following conditions, namely :—

(*a*) The General Indemnity Note shall be executed on stamp paper of the appropriate value applicable to the State in which delivery is made ;

(*b*) Consignment is booked to self shall not be granted delivery on the basis of General Indemnity Notes ;

(*c*) Where delivery of a consignment is taken on the basis of a General Indemnity Note, the consignee should surrender the railway receipt within 10 days from the date of taking delivery of such consignment ;

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6. *Vide* Noti. No. G.S.R. 595(E), dated June 22, 1990, published in the Gazette of India, Extra., Part II, Section 3(*i*), dated 22nd June, 1990, pp. 10-16 [C][W]

(*d*) Where the consignee has not produced the railway receipt within the time-limit specified under clause (*c*), a separate Indemnity Note in Form I should be executed by the consignee in respect of such consignment ;

(*e*) If a consignee fails to surrender the original railway receipt or fails to execute a separate Indemnity Note in respect of any consignment taken delivery on the basis of the General Indemnity Note. Station Master may refuse to deliver further consignments on the basis of the General Indemnity Note furnished by the consignee ;

(*f*) The Railway Administration shall have the right to demand the execution of a fresh General Indemnity Note on expiry of three years from the date on which it was executed.

(4) Where the railway receipt is not forthcoming and the consignee is a State Government, delivery may be made at the discretion of the Railway Administration on the basis of General Indemnity Note specified in Form III.

(5) Where the railway receipt is not forthcoming and the consignee is a Ministry of Department of the Central Government, delivery may be made at the discretion of the Railway Administration on the basis of General Indemnity Note specified in Form IV.

4. When the Railway receipt is not forthcoming and the goods in possession of the Railway Administration are claimed by two or more persons, the Railway Administration may withhold delivery of such goods unless an Indemnity Note, as specified in Form I, is executed by the person, to whom the goods are delivered or sale proceeds are paid. Delivery of consignments when Railway receipt is not forthcoming and the consignments or sale proceeds are claimed by two or more persons.

FORM I

[*See* Rule 3(1)]

FORM OF INDEMNITY NOTE

. . . . . RAILWAY

INDEMNITY NOTE

**[I/We hereby acknowledge to have received from the . . . . . Railway . . . . . valued at Rupees . . . . . which was despatched to **my/our address from the . . . . . Station of the . . . . . Railway on or about the . . . . . day of . . . . . the railway receipt for which has been . . . . . and **for myself, my heirs, executors and administrators/and for our Company/Firm, their assigns, and successors.

**I/We undertake in consideration of such delivery as aforesaid to hold.

*President of India, his agents and servants the . . . . . railway administration, its agents and servants harmless and indemnified in respect of all claims of the said goods.

**I/We also undertake to pay on demand to the railway administration freight charges, undercharges, wharfage, and any other charges that may be subsequently found due in respect of this transaction.

And **I/We the undersigned, signing below the consignee of these goods certify that first signor is the bona fide owner of the goods, and that **I/We undertake the whole of the said liability equally with the consignee, and for this purpose **I/We affix **my/our signature hereto.

Signature of Witness	Signatue of Consignee . . . . .
Father's Name	**Father's Name . . . . .
Age	Age . . . . .
Profession	Profession . . . . .
Residence	Residence . . . . .
	. . . . .
	Designation and Seal of the Co./Firm
	. . . . .
	Registered Office/Place of business

Signature of Witness	Signature of Surety . . . . .
Father's Name	**Father's Name . . . . .
Age	Age . . . . .
Profession	Profession . . . . .
Residence	Residence . . . . .

*To be struck out when the form is used on other than Government Railways.

†To be struck out when the form is used on Government Railways.

**To be struck out when Indemnity Note is executed by or on behalf of a Company/Firm.

Note.—This note is an agreement ranging under clause (c) of Article 5 of Schedule I of Indian Stamp Act 11 of 1899 and therefore, chargeable with stamp duty, irrespective of the value of the goods.

Designation and seal of the Co./Firm . . . . . .

Registered Office/Place of business

Executed in my presence.

Station Stamp

Station Master.

Date . . . . . 19 . . . . .

FORM I-A

[*See* Rule 3(2)]

FORM OF INDEMNITY NOTE

.....RAILWAY

INDEMNITY NOTE

**I/We hereby acknowledge to have received from . . . . . Railway . . . . . valued at Rs. . . . . which was despatched to **me/us booked to self/as value payable, from the . . . . . station of the . . . . . Railway on or about the . . . . . day of . . . . . the Railway Receipt for which has been . . . . . and **for myself, my heirs, executors and administrators/and for our Company/Firm, their assigns, and successors.

**I/We undertake in consideration of such delivery as aforesaid to hold.

*President of India, his agents and servants the† . . . . . railway administration, its agents and servants harmless and indemnified in respect of all claims of the said goods.

**I/We also undertake to pay on demand to the railway administration freight charges, undercharges, wharfage, and any other charges that may be subsequently found due in respect of this transaction.

And **I/We the undersigned, signing below the consignor of these goods certify that the first signor is the bona fide owner of the goods; and that **I/We undertake the whole of the said liability equally with the consignor, and for this purpose **I/We affix **my/our signature hereto.

Signature of Witness	Signatue of Consignor . . . . .
Father's Name	**Father's Name . . . . .
Age	Age . . . . .
Profession	Profession . . . . .
Residence	Residence . . . . .
	. . . . .

Designation and seal of the Co./Firm

. . . . . .

Registered Office/Place of business

---

*To be struck out when the form is used on other than Government Railways.

†To be struck out when the form is used on Government Railways.

**To be struck out when Indemnity Note is executed by or on behalf of a Company/Firm.

Note.—This note is an agreement ranging under clause (c) of Article 5 of Schedule I of Indian Stamp Act 11 of 1899 and therefore, chargeable with a stamp duty, irrespective of the value of the goods.

Signature of Witness	Signatue of surety . . . . .
Father's Name	**Father's Name . . . . .
Age	Age . . . . .
Profession	Profession . . . . .
Residence	Residence . . . . .
	Designation and seal of the Co./Firm

Executed in my presence

Station Stamp

Station Master of
Forwarding Station.

Date . . . . . 19 . . . . . .

I hereby endorse this note in favour of . . . . . whose address is . . . . . : whom I hereby authorise, to these delivery of the consignments booked by me as self/as value payable on my behalf.

Signature of Sender . . . . . .

Date . . . . . 19. . . . . .

FORM I-B

[*See* Rule 3(2)]

FORM OF INDEMNITY NOTE

. . . . . RAILWAY

INDEMNITY NOTE

**I/We hereby acknowledge to have received from the . . . . . Railway . . . . . valued at Rs. . . . . which was despatched by . . . . . from . . . . . station of the . . . . . Railway on or about the . . . . . day of . . . . . and booked to self/as value payable, the Railway Receipt for which has been . . . . . and **for myself, my heirs, executors and administrators/and for our Company/Firm, their assigns, and successors.

**I/We undertake in consideration of such delivery as aforesaid to hold.

*President of India, his agents and servants the† . . . . . † railway administration, its agents and servants harmless and indemnified, its agents and servants harmless and and indemnified in respect of all claims of the said goods.

**I/We also undertake to pay on demand to the railway administration freight charges, wharfage, and any other charges that may be subsequently found due in respect of this transaction.

**I enclose a copy of a stamped Indemnity Note executed by the consignor and countersigned by the Station Master of the Forwarding Station which has been duty endorsed by the Consignor in my favour authorising me to take delivery of the consignments on his behalf.

**I/We the undersigned, signing below the person authorised by the consignor to take delivery of the goods, I hereby certify that the first signor is the bona fide owner of the goods and that **I/We undertake the whole of the said liability equally with the signor and for this purpose **I/We affix our signature hereby.

Signature of Witness	Signatue of Consignor . . . . .
Father's Name	Father's Name . . . . .
Age	Age . . . . .
Profession	Profession . . . . .
Residence	Residence . . . . .
	. . . . .
	Designation and seal of the Co./Firm
	. . . . .
	Registered Office/Place of Business.
Signature of Witness	Signatue of Surety . . . . .
Father's Name	**Father's Name . . . . .
Age	Age . . . . .
Profession	Profession . . . . .
Residence	Residence . . . . .
	. . . . .
	Designation and seal of the Co./Firm
	. . . . .
	Registered Office/Place of Business.

Executed in my presence.
Station stamp

. . . . . Station Master.

Date . . . . . 19 . . . . . .
Signature of the person . . . . . .
authorised by the sender . . . . . .
to take delivery

*To be struck out when the form is used on other than Government Railways.

†To be struck out when the form is used on Government Railways.

**To be struck out when Indemnity Note is executed by or on behalf of a Company/Firm.

Note.—This note is an agreement ranging under clause (*c*) of Article 5 of Schedule I of Indian Stamp Act 11 of 1899 and therefore, chargeable with a stamp duty, irrespective of the value of the goods.

FORM II

[*See* Rule 3(3)]

GENERAL INDEMNITY NOTE

(*For use of other than Government Departments*)

In consideration of the President of India (hereinafter referred to as "the railway administration") agreeing to deliver from time to time to . . . . . (hereinafter referred to as "the Principal Obligor") herein, or to his agent or servants who shall be duly accredited by letters of authority on such behalf signed by . . . . . all and every description of goods and prices consigned to the name of the Principal Obligor that arrive at . . . . . and without production of the railway receipt while taking delivery of them, the Principal Obligor undertakes to hold the railway administration harmless

and indemnified in respect of all claims to the goods and losses of the railway administration arising out of the aforesaid delivery.

And we (1) . . . . . (2) . . . . . (hereinafter called "the sureties") in consideration of the . . . . . railway administration agreeing to deliver the goods to the Principal Obligor as aforesaid without production of the Railway Receipt while taking delivery, we (for ourselves and *on behalf of our heirs, successors, executors, legal representatives and assigns) agree to bind ourselves each and every one of us, to the railway administration in the terms set out hereinafter in these presents.

The Principal Obligor agrees and undertakes to surrender the original and proper railway receipts to the railway administration at . . . . . in respect of the goods delivered to them as aforesaid as soon as they are available (if not lost).

In the event of their failure to surrender the original railway receipt within ten days of the delivery of any consignment, the Principal Obligor agrees and undertakes to execute a separate Indemnity Note along with two sureties approved by the railway administration agreeing to indemnify and hold the railway administration harmless and free from any liability in respect of the delivery of such consignment.

If there is delay is surrendering railway receipts or in executing a separate Indemnity Note, as provided for above, the railway administration reserves the right to stop deliveries on the strength of this General Indemnity Note.

The Principal Obligor and the sureties shall jointly and severally, at all times, keep the railway administration and their agents and servants indemnified and harmless against all claims and demands of whatsoever nature and all losses, expenses, damages, costs and charges incurred by the Railway Administration and their Agents and servants as referred to above in consequence of the delivery to the Principal Obligor or his Agent of such goods and parcels without the production of the Railway Receipt.

The liability of the sureties shall not be impaired or discharged by reason or time-being given or for any forbearance at or/omission of the Railway Administration whatever (whether with or without the consent of the sureties) nor shall be necessary to sue the Principal Obligor before suing the sureties.

The railway administration shall have the right to call upon the Principal Obligors to execute a fresh Indemnity Note with sureties approved by the railway administration on the expiry of 3 years from the date of the original execution of these presents and until such Indemnity as aforesaid is executed with approved sureties, this indemnity shall remain in force for effecting delivery of goods/parcels without production of original railway receipt and for indemnification for loss, etc. to the railway administration in respect thereof.

Notwithstanding anything contained hereinabove, the Principal Obligor agrees that in respect of any goods consigned as aforesaid, the railway administration may demand production of banker's guarantee to its satisfaction and may on the Principal Obligor's failure to comply with such demand, decline to deliver the said goods to the Principal Obligor or his nominee.

Signed by the Principal Obligor (within mentioned)	. . . . . Signature of the Principal Obligor.
In the presence of	
1.	
2.	(Signatures of the Sureties)
Signed by the Surety (within mentioned) in the presence of	Accepted on . . . . . Designation of Officer for and on behalf of the President of India in the presence of
1.	
2.	

*Words in brackets to be struck out when the surety is a judicial person.

FORM III

[*See* Rule 3(4)]

GENERAL INDEMNITY NOTE

(*For use by State Governments*)

In consideration of the President of India (hereinafter referred to as "the railway administration") agreeing to deliver from time to time to . . . . . (hereinafter referred to as "Governor of") herein, or to his Agents or servants who shall be duly accredited by letters of authority on such behalf signed by. . . . . all and every description of goods and parcels consigned to the name of the Governor of . . . . . that arrive at . . . . . and without production of the Railway Receipt while taking delivery of them Governor of . . . . . undertakes to hold the Railway Administration harmless and indemnified in respect of all claims to the goods and losses of the Railway Administration arising out of the aforesaid delivery.

The Governor of . . . . . agrees and undertakes to surrender the original and proper Railway Receipts to the railway administration at . . . . . in respect to the goods delivered to them as aforesaid as they are available (if not lost).

The Governor of . . . . . shall at all times, keep the railway administration and their Agents and servants indemnified and harmless against all claims and demands of whatsoever nature and all losses, expenses, damage costs and charges incurred by the railway administration and their Agents and servants as referred to above in consequence of the delivery to the Governor of . . . . . or his Agents or servants of such goods and parcels without the production of the Railway Receipt.

Signature of the

. . . . . .

for and on behalf of the
Governor of . . . . . .

Accepted on . . . . . .

Designation of Officer for and
on behalf of the President of India
in the presence of—

. . . . . .

FORM IV

[*See* Rule 3(5)]

GENERAL INDEMNITY NOTE

(*For use by Ministries or Departments of Central Government*)

In consideration of the . . . . . Railway delivering from time to time all consignments belonging to . . . . . that may arrive at . . . . . specifically consigned to . . . . . without production of the Railway Receipts or when such railway receipts are not properly endorsed to . . . . . hereby agree to hold the . . . . . Railway and all other Administrations working in connection herewith and also all other Transport Agents or carriers employed by them respectively over whose Railways or by or through whose Transport Agency or Agencies such goods may be carried and their respective Agents or servants harmless and indemnified in respect of all claims for goods so delivered and further agree to defray the cost of all suits of whatsoever nature brought against the . . . . . Railway or such Railway Administration and Transport Agents or carriers as aforesaid or their respective Agents or servants for having delivered such goods without the production of the railway receipt Notes or in the absence of proper endorsement or endorsements on the same. The . . . . . also undertakes to notify the Administration of the names of the Officers authorised to act for and on behalf of . . . . . Government and take delivery of the consignments

as aforesaid and also to notify the Administration of the charges occurring in the personnel from time to time.

Signature of . . . . . .
. . . . . .
. . . . . .
. . . . . Government.

Signature of witness
1. . . . . .
2. . . . . .

Rechecking of consignment before delivery [Section 78]

78. Power to measure, weigh, etc.—Notwithstanding anything contained in the railway receipt, the railway administration may, before the delivery of the consignment, have the right to—

(*i*) re-measure, re-weigh or re-classify any consignment;

(*ii*) recalculate the freight and other charge; and

(*iii*) correct any other error or collect any amount that may have been omitted to be charged.

79 Weighment of consignment on request of the consignee or endorsee.—A railway administration may, on the request made by the consignee or endorsee, allow weighment of the consignment subject to such conditions and on payment of such charges as may be prescribed and the demurrage charges if any:

Provided that except in case where a railway servant authorised in this behalf considers it necessary so to do, no weighment shall be allowed of goods booked at owner's risk rate or goods which are perishable and are likely to lose weight in transit:

Provided further that no request for weighment of consignment in wagon-load or train-load shall be allowed if the weighment is not feasible due to congestion in the yard or such other circumstances as may be prescribed.

WEIGHMENT OF CONSIGNMENTS (IN WAGON-LOAD OR TRAIN-LOAD) RULES, 1990[7]

In exercise of the powers conferred by clause (*g*) of sub-section (2) of Section 87 read with Section 79 of the **Railway Act, 1989** (24 of 1989), the Central Government hereby makes the following rules, namely :—

1. (1) These rules may be called the **Weighment of Consignments (in Wagon-load or Train-load) Rules, 1990.**

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.—In these rules unless the context otherwise requires :

(*a*) "Act" means the Railways Act, 1989 (24 of 1989) ;

(*b*) "Schedule" means Schedule annexed to these rules ;

(*c*) "Train-load consignment" means consignment carried at train-load rate as notified by the Central Government from time to time ;

(*d*) "Wagon-load consignment" means consignment carried at wagon-load rate as notified by the Central Government from time to time ;

(*e*) Words and expressions used and not defined in these rules but defined in the Act shall have the meaning respectively assigned to them in the Act.

3. Weighment of Wagon-load or Train-load consignment at destination.—(1) The consignee or the endorsee of a wagon-load or a train-load consignment booked at railway risk rate may, if he has reason to believe that the wagon offered to him for delivery at destination does not contain the quantity of goods entrusted for carriage, make a request in writing to the Divisional Commercial Superintendent or any other railway servant authorised in this behalf for the weighment of such consignment at destination station.

7. *Vide* GSR 615(E), dt. 3-7-1990 pub. in Gaz. of India, Extra., Pt. II, S. 3(*i*) dt. 3-7-1990.

[8][(2) Subject to the provisions of Rule 4, any railway servant authorised in this behalf may allow request for weighment under sub-rule (1) on a railway weigh bridge on the payment of,—

(*i*) charges for weighment of wagons as specified in Schedule I ;

(*ii*) additional charges, for haulage of a wagon irrepsective of distance, as specified in Schedule II, if due to non-availability of railway weigh bridge at the destination station, the wagon has to be sent to another station for weighment :

Provided that if the wagon had to be sent to another station due to the weigh bridge at the destination station being out of order, no additional charges shall be levied for such haulage ;

(*iii*) demurrage charges, if any.]

4. Circumstances for disallowing weighment.—Where a request has been under Rule 3, any railway servant authorised in this behalf may disallow such request if :

(1) The consignment is received in covered wagon, and the seals of the loading station are intact and there is no other evidence of the consignment having been tampered in transit ;

(2) the consignment has been received in open wagon and there is no sign of tampering of the original packing or other evidence of such consignment having been tampered in transit ;

(3) the consignment is of perishable nature and is likely to lose weight in transit ;

(4) in the opinion of such railway servant, the weighment is not feasible due to congestion in the yard.

5. Weightment without prejudice.—Weighment done on request under Rule 3 shall be without prejudice to the rights of the railway administration to disclaim liability under the Act or under any other law for the time being in force.

[9][SCHEDULE I

[*See* Rule 3(2)]

Charges for Weighment of wagons at the destination station

Description of Wagon	Weighment charges
	Rs. P.
(*i*) Per B.G. 4-wheeled wagon	401.00
(*ii*) Per M.G. 4-wheeled wagon	216.00
(*iii*) Per N.G. 4-wheeled wagon	82.00

SCHEDULE II

[*See* Rule 3(2)(*ii*)]

Additional charges for haulage of wagons

Description of Wagon	Haulage charges
	Rs. P.
(*i*) Per B.G. 4-wheeled wagon	401.00
(*ii*) Per M.G. 4-wheeled wagon	216.00
(*iii*) Per N.G. 4-wheeled wagon	82.00

Note.—If a wagon is to be sent to another station on account of the weighbridge at the destination station being out of order, additional charges shall not be levied.

8. *Subs.* by GSR 854(E), dt. 23-10-1990 (w.e.f. 1-11-1990).
9. *Subs.* by GSR 620(E), dt. 10-10-1991 (w.e.f. 1-11-1991).

Manner of giving open delivery [Section 81]

81. Open delivery of consignments.—Where the consignment arrives in a damaged condition or shows signs of having been tampered with and the consignee or the endorsee demands open delivery, the railways administration shall give open delivery in such manner as may be prescribed.

MANNER OF GIVING OPEN DELIVERY AND PRESCRIPTION OF PARTIAL DELIVERY CERTIFICATE FORM RULES, 1990[10]

In exercise of the powers conferred by clauses (*h*) and (*i*) of sub-section (2) of Section 87 of the Railways Act, 1989 (24 of 1989), the Central Government hereby makes the following rules, namely :—

1. Short title and commencement.—(1) These rules may be called the Manner of Giving Open Delivery and Prescription of Partial Delivery Certificate Form Rules, 1990.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.—In these rules unless the context otherwise requires,—

(*a*) "Act" means the Railways Act, 1989 (24 of 1989) ;

(*b*) "Open Delivery" means delivery of a consignment given by railway administration on the demand of the consignee or endorsee when such consignment arrives in a damaged condition or shows signs of having been tampered with" ;

(*c*) "Partial Delivery" means delivery of a part of the consignment where the whole consignment has not arrived at the destination ;

(*d*) "Schedule" means the Schedule to those rules ;

(*e*) words and expressions used herein and not defined in these rules but defined in the Act shall have the meaning respectively assigned to them in the Act.

3. Open delivery of consignment.—Where any consignment arrives at the destination station in a damaged condition or shows signs of having been tampered with, the consignee or the endorsee may make a request in writing to the railway administration for open delivery of such consignment, in accordance with these rules :

Provided that any assessment of the extent of damages shall not prejudice the rights of the railway administration to repudiate its liability under the Act.

4. Condition subject to which open delivery of a damaged consignment shall be given.—A railway administration may give open delivery of a damaged consignment subject to the condition that the extent of damage to the consignment shall be assessed by the railway servant granting such open delivery on the basis of visual examination and such other chemical or physical tests as he may deem necessary.

5. Conditions subject to which open delivery of tampered consignments shall be given.—A railway administration may give open delivery of tampered consignments subject to the following conditions namely :—

(1) Assessment of the extent of shortage shall be done by the railway servant granting open delivery after comparing the details of the consignment booked for carriage as recorded in the railway receipt produced by consignee or the endorsee.

(2) The extent of shortage may, also, either be assessed, by physical counting of the packages and their contents forming the consignment, or by weighment.

6. Assessment of the value of damage or shortage.—The consignee or the endorsee shall produce the original trade invoice or beejuck or puttee or any other documentary proof indicating the contents and value of the consignment to enable the railway servant granting open delivery to compute the shortage or damage.

7. Imported consignments.—With respect of imported consignments open delivery under Rules 4 and 5, shall be given subject to the consignee or endorsee producing the Forwarding Agents clearance bill and if such consignments have been surveyed then, the survey report of such consignments.

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10. *Vide* GSR 942(E), dt. 11-12-1990, pub. in Gaz. of India, Extra., Pt. II, Sec. 3(*i*), dt. 11-12-1990.

8. Record of open delivery.--The record of open delivery shall be maintained in the form specified in Schedule I with respect to each consignment.

(2) A copy of the form referred to in sub-rule (1) shall be provided to the consignee or the endorsee as the case may be.

9. Partial Delivery Certificate.—Where partial delivery is given the railway administration shall furnish to the consignee or endorsee a Partial Delivery Certificate as specified in Schedule II.

SCHEDULE I

(*See* Rules 4 and 5)

Record of open delivery of consignment

No. . . . . dated . . . . . Station Stamp . . . . . From . . . . . To . . . . . Via . . . . . Invoice No. . . . . R.R. No. . . . . dated . . . . . Consignment of . . . . . Wagon No. . . . . Sender . . . . . Consignee/Endorsee . . . . . . Remarks on the R.R. Actual condition of packing found at the time of giving open delivery (whether relevant) . . . . . Delivery remarks (Extent of Damage/Shortage and how arrived at) . . . . . .

Signature in full of the consignee/endorsee or his authorised representative taking open delivery with date

Signature in full of the Railway Servant, with designation, granting open delivery

Name of consignee/endorsee or his authorised representative

Full Address . . . . . .

SCHEDULE II

Partial delivery certificate

(*See* Rule 9)

The . . . . . Railway has delivered . . . . . number of packages of . . . . . forming part of the consignment booked from . . . . . to . . . . . via . . . . . under Invoice No. . . . . Railway Receipt No. . . . . dated . . . . . consisting of . . . . . packages of . . . . .

Signature in full of the Railway servant, with designation, granting partial delivery.

Partial delivery [Section 82]

82. Partial delivery of consignments.—(1) The consignee or endorsee shall, as soon as the consignment or part thereof is ready for delivery, take delivery of such consignment or part thereof notwithstanding that such consignment or part thereof is damaged.

(2) In the case of partial delivery under sub-section (1), the railway administration shall furnish a partial delivery certificate, in such form as may be prescribed.

(3) If the consignee or endorsee refuses to take delivery under sub-section (1), the consignment or part thereof shall be subject to wharfage charges beyond the time allowed for removal.

The consignee or indorsee is obliged to take delivery of whatever part of the consignment is ready for delivery. He cannot refuse to do so on the ground that a part of the consignment has been damaged. In such cases, the railway administration has to give to the indorsee in the prescribed form a certificate of short delivery. If the partial consignment is refused, wharfage charges would have to be paid.

For prescribed rules see the rules cited under the preceding section.

Railway's general lien [Section 83]

83. Lien for freight or any other sum due.—(1) If the consignor, the consignee or the endorsee fails to pay on demand any freight or other charges due from him in respect of any consignment, the railway administration may detain such consignment or part thereof or, if such consignment is delivered, it may detain any other consignment of such person which is in, or thereafter comes into, its possession.

(2) The railway administration may, if the consignment detained under sub-section (1) is—

(*a*) perishable in nature, sell at once; or

(*b*) not perishable in nature, sell, by public auction.

such consignment or part thereof, as may be necessary to realise a sum equal to the freight or other charges:

Provided that where a railway administration for reasons to be recorded in writing is of the opinion that is not expedient to hold the auction, such consignment or part thereof may be sold in such manner as may be prescribed.

(3) The railway administration shall give a notice of not less than seven days of the public auction under clause (*b*) of sub-section (2) in one or more local newspapers or where there are no such newspapers in such manner as may be prescribed.

(4) The railway administration may, out of the sale proceeds received under sub-section (2), retain a sum equal to the freight and other charges including expenses for the sale due to it and the surplus of such proceeds and the part of the consignment, if any, shall be rendered to the person entitled thereto.

A general lien has been granted to railways under this section. The goods in respect of which the charges are due may be held under this right or, if they have been delivered, lien may be exercised on any consignment belonging to the person in default.

Sale of goods held under lien.—A consignment held under this power may be sold at once if it is of perishable nature. In other cases, it has to be sold by public auction. The sale should be of any such part of the consignment as should be sufficient to realise the sum due. Where a public auction cannot be conveniently organised, the goods may be sold in accordance with the prescribed rules.

If a public auction is to be held, the fact of it should be announced through one or more local newspapers. If there are no such newspapers, announcement should be made in accordance with prescribed rules.

The railways should retain out of the sale proceeds the amount due including the expenses of organising the sale and handover the rest of the sale proceeds and the rest of the goods to the person entitled to them.

For rules see under Section 84.

Unclaimed conignments [Section 84]

84. Unclaimed consignment.—(1) If any person fails to take delivery of—

(*a*) any consignment; or

(*b*) the consignment released from detention made under sub-section (1) of Section 83; or

(*c*) any remaining part of the consignment under sub-section (2) of Section 83,

such consignment shall be treated as unclaimed.

(2) The railway administration may,—

(*a*) in the case of an unclaimed consignment which is perishable in nature, sell such consignment in the manner provided in clause (*a*) of sub-section (2) of Section 83; or

(*b*) in the case of an unclaimed consignment which is not perishable in nature, cause a notice to be served upon the consignee if his name and address are known, and upon the consignor if the name and address of the consignee are not known, requiring him to remove the goods within a period of seven days from the receipt thereof and if such notice cannot be served or there is a failure to comply with the requisition in the notice, sell such consignment in the manner provided in clause (*b*) of sub-section (2) of Section 83.

(3) The railway administration shall, out of the sale proceeds received under sub-section (2), retain a sum equal to the freight and other charges including expenses for the sale due to it and the surplus, if any, of such sale proceeds shall be rendered to the person entitled thereto.

An unclaimed consignment includes goods of which delivery has not been claimed by any person or a consignment which has been released from lien or which is the remaining part of the goods after sale of the other part for releasing charges.

Power is given to the railway administration to dispose of a perishable consignment at once. In other cases, a notice should be served upon the consignee if his name and address are known and, if not, the notice should be given to the consignor. He should be required to remove the goods within a period of seven days from the date of the receipt of the notice. Where such notice cannot be served or there is no response from the side of the person on whom the notice has been served, the goods may be sold by public auction announcing it in one or two local newspapers or, if there are no such newspapers, with such publicity as has been prescribed under the rules.

DISPOSAL OF CONSIGNMENT RULES, 1990[11]

In exercise of the powers conferred by clauses (*j*) and (*k*) of sub-section (2) of Section 87 of the Railways Act, 1989 (24 of 1989), the Central Government hereby makes the following rules, namely :—

1. Short title and commencement.—(1) These rules may be called the Disposal of Consignment Rules, 1990.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Manner of disposal of detained or unclaimed consignment.—(1) If any consignment,—

(*a*) detained under Section 83 of the Railway Act, 1989, or

(*b*) treated as unclaimed in respect of which notice under Section 84 of the Railways Act, 1989 cannot be served or there is a failure to comply with the requisition in the said notice,—

is not sold by public auction, the Divisional Commercial Superintendent may, on being of the opinion that it is not expedient to hold the auction, record reasons therefor in writing and may direct the sale of consignment or part thereof by inviting offers.

(2) Offers for the purchase of consignment may be invited,—

(*a*) from the regular dealers of such goods as are in the consignment; or

(*b*) from such departments of the Central Government and of the State Government as appear likely to purchase such goods; or

(*c*) from the government undertakings.

11. Vide GSR 901(E) dt. 19-12-1990, published in Gazette of India, Extra., Pt. II, Section 3(*i*) of 12-11-1990.

(3) The highest of the offers of price may be accepted by the Divisional Commercial Superintendent and the goods may be sold to the highest offerer;

(4) Where only one offer is received, the Divisional Commercial Superintendent may, keeping in view the condition and quality of the goods and the prevailing market rate, accept that offer if he considers such offer to be a fair price for the goods and the goods be sold to that offerer.

3. **Notice for public auction.**—Where there is no local newspaper in which notice of the public auction can be published, such notice shall be displayed at a conspicuous place,—

(*a*) at the goods shed ;

(*b*) at the parcel office ;

(*c*) at the lost property office, if any, or

(*d*) at the premises where such auction is to be held.

Sale of perishables after mishaps [Section 85]

85. **Disposal of perishable consignments in certain circumstances.**—(1) Where by reason of any flood, land-slip, breach of any lines of rails, collision between trains, derailment of, or other accident to a train or any other cause, traffic on any route is interrupted and there is no likelihood of early resumption of such traffic, nor is there any other reasonable route whereby traffic of perishable consignment maybe diverted to prevent, loss or deterioration of, or damage to, such consignment, the railway administration may sell them in the manner provided in clause (*a*) of sub-section (2) of Section 83.

(2) The railway administration shall, out the sale proceeds received under sub-section (1), retain a sum equal of the freight and other charges including expenses for the sale due to it and the surplus, if any, of such sale proceeds, shall be rendered to the person entitled thereto.

If it is not possible to restore or divert traffic so quickly after a mishap as to be able to take care of perishable goods, they may be sold in the manner of perishable goods held under lien under Section 83. The sale proceeds have to be handed over to the person entitled to the goods after retaining a sum equal to the freight due and other charges including expenses of organising the sale.

86. **Sales under Sections 83 to 85 not to affect the right to suit.**—Notwithstanding anything contained in this Chapter, the right of sale under Sections 83 to 85 shall be without prejudice to the right of the railway administration to recover by suit, any freight, charge, amount or other expenses due to it.

The conduct of a sale under Sections 83 to 85 does not prejudice the right of the railway administration to recover by suit any freight, charge, amount or other expenses due it.

87. **Power to make rules in respect of matters in this Chapter.**—(1) The Central Government may, by notification, make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) goods in respect of which no forwarding note shall be executed under proviso to sub-section (1) of Section 64;

(*b*) dangerous and offensive goods for the purposes of sub-section (1) of Section 67;

(*c*) infectious of contagious diseases for the purposes of Section 68;

(*d*) rates of penalty charges under Section 73;

(*e*) the manner in which the consignment may be delivered without a railway receipt under Section 76;

(*f*) the manner of delivery of consignment or the sale proceeds to the person entitled thereto under Section 77;

(*g*) the conditions subject to which and charges payable for allowing weighment and circumstances for not allowing weighment of consignment in wagon-load or train-load under Section 79;

(*h*) the manner of giving open delivery under Section 81;

(*i*) the form of partial delivery certificate under sub-section (2) of Section 82;

(*j*) the manner of sale of consignment or part thereof under the proviso to sub-section (2) of Section 83;

(*k*) the manner in which a notice under sub-section (3) of Section 83 may be given;

(*l*) generally, for regulating the carriage of goods by the railways.

(3) Any rule made under this section may provide that a contravention thereof shall be punishable with fine which may extend to one hundred and fifty rupees.

(4) Every railway administration shall keep at each station a copy of the rules for the time being in force under this section, and shall allow any person to refer to it free of charge.

SPECIAL PROVISIONS AS TO GOODS BOOKED TO NOTIFIED STATIONS

88. Definitions.—In this Chapter, unless the context otherwise requires,—

(*a*) "essential commodity" means an essential commodity as defined in clause (*a*) of Section 2 of the Essential Commodities Act, 1955 (10 of 1955);

(*b*) "notified station" means a station declared to be a notified station under Section 89;

(*c*) "State Government", in relation to a notified station, means the Government of the State in which such station is situated, or where such station is situated in a Union territory, the administrator of that Union territory appointed under Article 239 of the Constitution.

89. Power to declare notified stations.—(1) The Central Government may, if it is satisfied that it is necessary that goods entrusted to carriage by train intended solely for the carriage of goods to any railway station should be removed without delay from such railway station, declare, by notification, such railway station to be a notified station for such period as may be specified in the notification:

Provided that before declaring any railway station to be a notified station under this sub-section, the Central Government shall have regard to all or any of the following factors, namely:—

(*a*) the volume of traffic and the storage space available at such railway station;

(*b*) the nature and quantities of goods generally booked to such railway station;

(*c*) the scope for causing scarcity of such goods by not removing them for long periods from such railway station and the hardship which such scarcity may cause to the community;

(*d*) the number of wagons likely to be held up at such railway station if goods are not removed therefrom quickly and the need for quick movement and availability of such wagons;

(*e*) such other factors (being relevant from the point of view of the interest of the general public) as may be prescribed:

Provided further that the period specified in any notification issued under this sub-section in respect of any railway station shall not exceeds six months in the first instance, but such period may, by notification, be extended from time to time by a period not exceeding six months on each occasion.

(2) If any person entrusting any goods to a railway administration to be carried to a notified station makes an application in such form and manner as may be prescribed and specifies therein the address of the person to whom intimation by registered post of the arrival of the goods at the notified station shall be given and pays the postage charges required for giving such intimation, the railway administration shall, as soon as may be after the arrival of the goods at the notified station, send such intimation accordingly.

(3) There shall be exhibited at a conspicuous place at each notified station a statement in the prescribed from setting out the description of the goods which by reason of the fact that they have

not been removed from the station within a period of seven days from the termination of transit thereof are liable to be sold, in accordance with the provision, of sub-section (1) of Section 90 by public auction and the dates on which they would be so sold:

Provided that different statements may be so exhibited in respect of goods proposed to be sold on different dates.

(4) If the goods specified in any statement to be exhibited under sub-section (3) include essential commodities, the railway servant preparing the statement shall, as soon as may be after the preparation of such statement, forward a copy thereof to—

(*a*) the representative of the Central Government nominated by that Government in this behalf;

(*b*) the representative of the State Government, nominated by that Government in this behalf; and

(*c*) the District Magistrate within the local limits of whose jurisdiction the railway station is situated.

90. Disposal of unremoved goods at notified stations.—(1) If any goods entrusted for carriage to any notified station by a train intended solely for the carriage of goods are not removed from such station by a person entitled to do so within a period of seven days after the termination of transit thereof at such station, the railway administration may, subject to the provisions of sub-section (2), sell such goods by public auction and apart from exhibiting, in accordance with the provisions of sub-section (3) of Section 89, a statement containing a description of such goods, it shall not be necessary to give any notice of such public auction, but the date on which such auction may be held under this sub-section may be notified in one or more local newspapers, or where there are no such newspapers, in such manner as may be prescribed:

Provided that if at any time before the sale of such goods under this sub-section, the person entitled thereto pays the freight and other charges and the expenses due in respect thereof to the railway administration, he shall be allowed to remove such goods.

(2) If any goods which may be sold by public auction under sub-section (1) at a notified station, being essential commodities, are required by the Central Government or the State Government for its own use or if the Central Government or such State Government considers that it is necessary for securing the availability of all or any such essential commodities at fair prices so to do, it may, by order in writing, direct the railway servant in-charge of such auction to transfer such goods to it or to such agency, co-operative society or other person (being an agency, co-operative society or other person subject to the control of the Government) engaged in the business of selling such essential commodities as may be specified in the direction.

(3) Every direction issued under sub-section (2) in respect of any essential commodity shall be binding on the railway servant to whom it is issued and the railway administration and it shall be a sufficient defence against any claim by the person entitled to the goods that such essential commodities have been transferred in compliance with such direction:

Provided that—

(*a*) such direction shall not be binding on such railway servant or the railway administration—

(*i*) if it has not been received by the railway servant sufficiently in time to enable him to prevent the sale of the essential commodities to which it relates; or

(*ii*) if before the time appointed for such sale, the person entitled to such goods pays the freight and other charges and the expenses due in respect thereof and claims that he be allowed to remove the goods; or

(*iii*) if the price payable for such goods (as estimated by the Central Government or, as the case may be, the State Government) is not credited to the railway administration in the prescribed manner and the railway administration is not indemnified against any additional amount which it may become liable to pay towards the price by reason of the price not having been computed in accordance with the provisions of sub-section (4);

(*b*) where directions are issued in respect of the same goods both by the Central Government and the State Government, the directions received earlier shall prevail.

(4) The price payable for any essential commodity transferred in compliance with a direction issued under sub-section (2) shall be the price calculated in accordance with the provisions of sub-section (3) of Section 3 of the Essential Commodities Act, 1955 (10 of 1955):

Provided that—

(*a*) in the case of any essential commodity being a food-stuff in respect whereof a notification issued under sub-section (3-A) of Section 3 of the Essential Commodities Act, 1955 (10 of 1955), is in force in the locality in which the notified station is situated, the price payable shall be calculated in accordance with the provisions of clauses (*iii*) and (*iv*) of that sub-section:

(*b*) in the case of an essential commodity being any grade or variety of foodgrains, edible oil-seeds or edible oils in respect whereof no notification issued under sub-section (3-A) of Section 3 of the Essential Commodities Act, 1955 (10 of 1955), is in force in the locality in which the notified station is situated, the price payable shall be calculated in accordance with the provisions of sub-section (3-B) of that section;

(*c*) in the case of an essential commodity being any kind of sugar in respect whereof no notification issued under sub-section (3-A) of Section 3 of the Essential Commodities Act, 1955 (10 of 1955), is in force in the locality in which the notified station is situated, the price payable shall, if such sugar has been booked by the producer to himself, be calculated in accordance with the provisions of sub-section (3-C) of that section.

Explanation.—For the purposes of this clause, the expressions "producer" and "sugar" shall have the meanings assigned to these expressions in the *Explanation* to sub-section (3-C) of Section 3, and clause (*e*) of Section 2 of the Essential Commodities Act, 1955 (10 of 1955), respectively.

91. Price to be paid to person entitled after deducting dues.—(1) Out of the proceeds of any sale of goods under sub-section (1) of Section 90 of the price payable therefor under sub-section (4) of that section, the railway administration may retain a sum equal to the freight and other charges due in respect of such goods and the expenses incurred in respect of the goods and the auction thereof and render the surplus, if any, to the persons entitled thereto.

(2) Notwithstanding anything contained in sub-section (1), the railway administration may recover by suit any such freight or charge or expenses referred to therein or balance thereof.

(3) Any goods, sold under sub-section (1) of Section 90 or transferred in compliance with the directions issued under sub-section (2) of that section shall vest in the buyer or the transferee free from all encumbrances but subject to a priority being given for the sum which may be retained by a railway administration under sub-section (1), the person in whose favour such encumbrance subsists may have a claim in respect of such encumbrance against the surplus, if any referred to in that sub-section.

92. Power to make rules in respect of matters in this Chapter.—(1) The Central Government may, by notification, make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(*a*) the factors to which the Central Government shall have regard under clause (*e*) of the first proviso to sub-section (1) of Section 89;

(*b*) the form and manner in which an application may be made under sub-section (2) of Section 89;

(*c*) the form in which a statement is required to be exhibited under sub-section (3) of Section 89;

(*d*) the manner in which the dates of public auctions may be notified under sub-section (1) of Section 90;

(*e*) the manner of crediting to the railway administration the price of goods referred to in sub-clause (*iii*) of clause (*a*) of the proviso to sub-section (3) of Section 90.

RAILWAYS (DISPOSAL OF GOODS NOT REMOVED FROM NOTIFIED RAILWAY STATIONS) RULES, 1990[12]

Notification No. G.S.R. 554(E), dated 7th June, 1990

In exercise of the powers conferred by sub-section (1) of Section 92 of the Railways Act, 1989 (24 of 1989), read with Section 22 of the General Clauses Act, 1897 (10 of 1897) the Central Government hereby makes the following rules, namely:—

1. Short title and commencement.—(1) These rules may be called the Railways (Disposal of Goods not Removed from Notified Railway Stations) Rules, 1990.

(2) They shall come into force on the date of commencement of the Act.

2. Definitions.—In these rules, unless the context otherwise requires,—

(*a*) 'Act' means the Railways Act, 1989 (24 of 1989).

(*b*) 'Form' means a form set out in the Schedule.

(*c*) 'Schedule' means the Schedule to these rules.

(*d*) 'Section' means a section of the Act.

3. Form and manner in which an application may be made under sub-section (2) of Section 89.—If any person delivering to a railway administration any goods to be carried to a notified station desires that the railway administration should intimate the arrival of the goods at the notified station, he shall along with the Forwarding Note make an application in the Form J, along with necessary postage charges.

4. Form in which a statement is to be exhibited.—The Statement required to be exhibited at a conspicuous place in the notified station under sub-section (3) of Section 89 shall be in Form II.

5. Manner in which dates of public auction to be notified.—(1) Whenever it is proposed to sell any goods by public auction under sub-section (*i*) of Section 90, the railway administration shall notify the date on which such auction shall be held.

(2) Whenever such auctions are to be held regularly at a notified station, it shall be enough if the days on which such auctions shall be held are fixed and published in one or more local newspapers.

(3) The notification in the newspapers shall also indicate the time and place of such auction and mention that the particulars of the goods proposed to be sold by public auction are exhibited on the notice board in the goods shed or any other place to be specified.

(4) Whenever such auction is to be held occasionally, in addition to the particulars mentioned in sub-rules (2) and (3), the auction notice shall also broadly indicate the types of commodities proposed to be sold by auction.

(5) The date of every such auction shall be published in one or more local newspapers at least three days in advance of the date of auction (excluding the date of sale).

6. Manner of crediting the price of essential commodities referred in sub-clause (iii) of clause (a) of the proviso to sub-section (3) of Section 90.—Whenever any goods comprising of essential commodities are transferred to the Central Government or the State Government or to any agency, co-operative society or other person under sub-section (2) of Section 90, the price payable for such goods under the Act shall be paid to the railway administration in the following manner,—

(*a*) if such goods are transferred to the State Government or the Central Government, the payment may be made either by cash, bank draft, cheque, credit note in the same manner as the railway freight is paid by such Government, or in any other manner as may be agreed to between the railway administration and the Government concerned ;

(*b*) if such goods are transferred to any agency or co-operative society or other person, under the direction of the Government, the payment may be made in cash or any other mode authorised by the railway administration for payment of freight by such agency or co-operative society or other person or in any other manner as may be agreed to

12. Published in the Gazette of India, Extra., Part II, Section 3(*i*), dated 7-6-1990.

between the railway administration and such agency or co-operative society or other person.

SCHEDULE

FORM 1

(*See* Rule 3)

APPLICATION FOR INTIMATING THE ARRIVAL OF GOODS AT NOTIFIED STATION

To

The . . . . . .

. . . . . .

(Booking station)

I have separately submitted a Forwarding Note for booking goods, the particulars of which are given below :

Name of the Consignor

Station from . . . . . .

Station to . . . . . .

No. of articles and description of goods.

2. It is requested that the intimation about the arrival of the goods at the destination station . . . . . ., which is a notified in station, may be given by registered post, to the person whose name and address are given below :

Name . . . . . .

Address . . . . . Signature of sender or his agent.

FORM II

(*See* Rule 4)

THE STATEMENT OF GOODS LIABLE TO BE SOLD BY PUBLIC AUCTION UNDER SUB-SECTION (3) OF SECTION 89 OF THE RAILWAYS ACT, 1989, TO BE EXHIBITED AT A NOTIFIED STATION

Serial Number	Name of the consignor	Name of the consignee (if known)
	Booking particulars	
Station from	Station to	Invoice No. and date
Description of goods	Date of arrival of goods	Date of Auction

The Responsibility of Railway Administrationas Carriers

The responsibilities of the railway administration as carriers of goods and passengers are defined by the Indian Railways Act, 1989. The provisions of Chapter XI which runs from Sections 93 to 112 deal with the matter of responsibility.

Carriage of Goods

Execution of Forwarding Notes [Section 64]

Section 72 which requires forwarding notes to be executed in certain cases is as follows :

64. Fowarding note.—(1) Every person entrusting any goods to railway administration for carriage shall execute a forwarding note in such form as may be specified by the Central Government:

Provided that no forwarding note shall be executed in the case of such goods as may be prescribed.

(2) The consignor shall be responsible for the correctness of the particulars furnished by him in the forwarding note.

(3) The consignor shall indemnify the railway administration against any damage suffered by it by reason of the incorrectness or incompleteness of the particulars in the forwarding note.

The section requires forwarding notes to be executed in all cases except in reference to goods in respect of which it may be declared that no forwarding note shall be executed. The consignor is charged with the responsibility of assuring correctness of the particulars and indemnifying the administration against any damage caused by incorrect or incomplete particulars disclosed in the forwarding note.

The section requires forwarding notes to executed in certain cases. Such cases are grouped under two categories in the section, namely, where the goods or animals are to be carried by a train meant only for carriage of goods ; and, secondly, where the goods are to be carried by any other train and they are either to be carried at the owner's risk or they are of perishable nature, [or mentioned in the second schedule,[13] of the old Act] or they are in a defective condition or defectively packed, or they are explosives or other dangerous goods.

13. The second schedule of the old Act which has been repealed by the new Act mentioned the following goods.—(*a*) Gold and silver, coined or uncoined, manufactured or unmanufactured ; (*b*) plated articles ; (*c*) cloths and tissue lace of which gold and silver form part, not being the uniform or part of the uniform of the personnel of the armed forces or the police force or of any public officer, Indian or foreign, entitled to wear uniform ; (*d*) pearls, precious stones, jewellery and trinkets ; (*e*) watches, clocks and timepieces of any description ; (*f*) Government securities ;(*g*) Government stamps ; (*h*) bills of exchange, hundies, promissory-notes, bank-notes, and orders or other securities for payment of money ; (*i*) maps, writings and title-deeds ; (*j*) paintings, engravings, lithographs, photographs, carvings, sculpture and other works of art ; (*k*) art pottery and all articles made of glass, china and marble ; (*l*) silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials ; (*m*) * * * ; (*n*) * * * furs ; (*o*) opium ; (*p*) ivory , ebony, coral and sandalwood ; (*q*) musk, sandalwood-oil and other essential oils used in the preparation of *itr* or other perfume ; (*r*) musical and scientific instruments ; * * * Narcotic preparation of hemp ; Jade, jadestone and amber ; Crude India rubber ; Feathers ; Itr Zahir Mohra Khatai, Platinum, Iridium,

The railway administration with the approval of the Central Government can impose any conditions and require such particulars to be disclosed as may be considered necessary. At present three kinds of forwarding notes are in use : one for general merchandise ; second for dangerous goods and the third for the rest of the goods mentioned in the second schedule.

General Responsibility [Section 93]

The general principle of liability for loss or destruction of goods is laid down in Section 93. The section runs as follows :

93. General responsibility of a railway administration as carrier of goods.—Save as otherwise provided in this Act, a railway administration shall be responsible for the loss, destruction, damage or deterioration in transit, or non-delivery of any consignment, arising from any cause except the following namely :—

(*a*) act of God ;

(*b*) act of war ;

(*c*) act of public enemies ;

(*d*) arrest, restraint or seizure under legal process ;

(*e*) orders or restrictions imposed by the Central Government or a State Government or by an officer or authority subordinate to the Central Government or a State Government authorised by it in this behalf ;

(*f*) act or omission or negligence of the consignor or the consignee or the endorsee or the agent or servant of the consignor or the consignee or the endorsee ;

(*g*) natural deterioration or wastage in bulk or weight due to inherent defect, quality or vice of the goods ;

(*h*) latent defects ;

(*i*) fire, explosion or any unforeseen risk :

Provided that even where such loss, destruction, damage, deterioration or non-delivery is proved to have arisen from any one or more of the aforesaid causes, the railway administration shall not be relieved of its responsibility for the loss, destruction, damage, deterioration or non-delivery unless the railway administration further proves that it has used reasonable foresight and care in the carriage of the goods.

Railway receipt [Section 65]

65. Railway receipt.—(1) A railway administration shall,—

(*a*) in a case whether the goods are to be loaded by a person entrusting such goods on the completion of such loading ; or

(*b*) in any other case, on the acceptance of the goods by it, issue a railway receipt in such form as may be specified by the Central Government.

(2) A railway receipt shall be *prima facie* evidence of the weight and the number of packages rated therein :

Provided that in the case of a consignment in wagon-load or train-load and the weight or the number of packages is not checked by a railway servant authorised in this behalf, and a statement

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Palladium, Radium and its preparations, Tantalum, Osmium, Ruthenium, Rhodium ; Mercury (Quick silver) ; Amber, Camphor, Drawings, Drugs Narcotic, Gooroochand, Manuscripts, Medicines Narcotic, Photo-electric cells, Photographic apparatus, Photographic plates, Plans, Porcelains, Radio (wireless) valves, Stamped Paper, Statuary, Scents, Saffron, Survey instruments ; Copper, bronze and nickel coins, Television apparatus, Heavy water, Thorium and Uranium, Bank cheques, All printed material produced by the India Security Press, Nasik, Examination answer papers ; Postal Order ; Transistors (Radio component part) Amplifiers, Tape recorders, Electrograms and Ampligrams Electronic instruments NOC ; Terylene, Terycot, Terywool and Nylon and their fabrics.

the case may be, the number of packages stated therein, shall lie on the consignor, the consignee or the endorsee.

Where the goods have to be loaded by the party, on the completion of such loading and, in other cases, on acceptance of the goods, the railway administration has to issue a railway receipt in such form as may be specified by the Central Government.

Railway receipts to be prima facie evidence

A railway receipt is *prima facie* evidence of the weight and the number of packages as stated in it. But where the consignment is in wagon load or train load and the weight or the number of packages is not checked by an authorised railway servant and a statement to the effect is recorded in the railway receipt, the burden of proving the weight or the number of packages would be on the consignor, consignee or the indorsee.

Liability as common carriers

The general principle of liability laid down in the section is that the administration is liable for any loss, destruction, damage, deterioration in transit or non-delivery of the goods arising from any cause whatsoever. Thus, subject to the exceptions listed in the section, such as the act of God, the administration has accepted the principle of absolute liability. The railways have been equated with common carriers for the purposes of liability. They are liable to account for the goods at all events unless they are able to prove that the loss falls within any of the exceptions mentioned in the section. Even in such cases they will be liable unless they can prove that they used reasonable foresight and care in the carriage of the animals or goods.[14]

Thus where a consignment of liquid caustic soda was lost in an accident to the goods train occurring because of a defective wagon and the administration was not able to show when the train was last checked or what caution or foresight was exercised to prevent the happening, they were held liable. Their burden of proving that the accident occured not on account of their negligence, but on account of some unforeseen risk was not effectively discharged.[15]

The responsibility imposed upon the railways is in respect of loss, destruction, damage, deterioration in transit or non-delivery. Thus the section exhaustively covers all types of happenings with the goods while they are in transit. "Loss" means "disappearance" or the failure of the railways to account as to what has happened to the goods and it is immaterial whether it has been due to misappropriation, theft, misdelivery or any other cause whatsoever.[16]

14. See *Punjab National Bank* v *Beniprasad Maheshwari*, AIR 1981 MP 95 ; *Union of India* v *Krishna Stores*, [1984] 2 TAC 223 Orissa, where loss was caused to ground-nut oil tins in the course of transit and the evidence showed that the prescribed conditions of packing were duly complied with and the railway proved no defence, liability followed. The court distinguished *Mangilal Kadia* v *Union of India*, AIR 1963 Ori 41 because in that there was in fact contributory negligence by the consignor by reason of packing being not in accordance with requirements.
15. *Gwalior Rayon Silk Mfg (Weaving) Co. Ltd.* v *Union of India*, 1985 ACJ 739.
16. As to the meaning of the term "loss" see *Union of India* v *Meghraj*, AIR 1958 Cal 434 ; *Union of India* v *Sha Vastimal Harackchand*, ILR 1958 Mys 481 ; AIR 1959 Mys 13. See also *Sharma*

The word "destruction" should also mean more or less the same thing, for loss may also be due to destruction as much as it may be due to disappearance or wrong delivery.[17] "Deterioration" should ordinarily mean "a change for the worse" in the goods themselves.[18] But there is a distinct cleavage of judicial opinion, one stream of which attempts to impute wider meaning to the term "deterioration" so as to include loss or depreciation in the market value of the goods due to delayed delivery. But this seems to be an unnatural extension. For, if the goods are intact and the market value has been lost on account of the delay, the action should be for loss caused by delay rather than for deterioration.[19] Goods may, however, deteriorate in terms of intrinsic value on account of delay.[20]

This controversy was set at rest by the Supreme Court by its decision in *Union of India* v *Steel Stock Holders Syndicate*[21]. Here there was delay causing depreciation in terms of market value but none in intrinsic value of the goods. FAZAL ALI J adopted the natural meaning of the word "deterioration" and said :

> Having regard to the background and setting in which the word "deterioration" occurs in Section 76 [now Section 95 of the Act of 1989] of the new Act it seems to us that the Parliament intended that the word should be (understood as it is) used in (the) ordinary parlance and in a restricted sense so as to include within its ambit the actual physical act of deterioration, i.e., the physical part of it, namely, the change for the worse in the thing itself.[22]

The principle of liability an contained in this section was wholly recast by the amendment of 1961 and that section has been reproduced in the form of the present Section 93 except for the addition of the words "in transit". Prior to this amendment the position of the railways was that of a bailee under the Indian Contract Act, 1872 and the railways were, therefore, liable to take only reasonable care of the goods as defined in Section 151 of that Act. Liability would arise only if there was proof of negligence. But now this position has been wholly reversed. The railways must either deliver up the goods or be liable for their loss unless they are able to prove that the circumstances of the loss fall within any of the exceptions mentioned in the section and that it was not due to their negligence that those exceptional circumstances came into operation.

Goods v *V.W.C.C. Society*, 1987 Mh LJ at p 1004 where following the Supreme Court decision in *G.G in Council* v *Musaddi Lal*, AIR 1961 SC 725, it was held that the word "loss" would include loss caused by failure to deliver.

17. See *GIP Ry. Co.* v *Jitan Ram*, AIR 1923 Pat 235.
18. See *EIR* v *Diana Mal*, AIR 1925 Lah 255 : 85 IC 404 : 5 Lah 523 ILR.
19. See *GIP* v *Juggal Kishore*, AIR 1930 All 132 : 52 All 238 ILR.
20. See *Union of India* v *Ganesh Calndra*, AIR 1959 Cal 337 : 63 CWN 343, wagons detached without any reason, liability for deterioration by delay arose.
21. (1976) 3 SCC 108 : AIR 1976 SC 879.
22. At p. 117. The learned Judge approved the statement of law by the Lahore High Court in *EIR* v *Diana Mal*, AIR 1925 Lah 255 and rejected the view of the Allahabad Court in *GIP Ry. Co.* v *Juggal Kishore*, AIR 1930 All 132.

Explaining the reasons for this shift from one principle to another, FAZAL ALI J of the Supreme Court said :[23]

> It may be pertinent to note that Section 72(3) of the old Act expressly excluded the principles of the common law of England or of the Carriers Act of 1865 regarding the responsibility of common carriers. After our country became free and the railways entered the commercial field as one of the important wings of the Government, there was a public demand that the railway administration should accept more onerous responsibilities. On account of this demand the Government appointed an inquiry committee. This report gave birth to the amendment of 1961 under which the responsibility of the railway administration was shifted from that of a mere bailee to that of a common carrier. The railways, therefore, now incur the liability of an insurer.

When the bill was introduced the Parliament was informed that the result of the proposed changes would be that railways would have to pay claims in many cases in which at present the railways completely escape liability, for example, losses due to running train thefts, damage by wet in transit in spite of bailee's care having been taken.

The result of the amendment was thus stated :

> We are of the opinion that Section 73 of the new Act, while converting the liability of the railway administration from that of a carrier to that of an insurer, has imposed heavier responsibilities on the railway administration.[24]

The position was further clarified in the following passage :[25]

> It is well settled that the liability of an ordinary carrier even in the English common law does not extend to a damage which is indirect or remote. Loss of profit or loss of a particular market has been held by a number of decisions to be a remote damage and [compensation for such damage] can be awarded only if it is proved that [the railways] had knowledge that such a loss would be caused. Section 78(*d*), [now Section 102(*d*) of the Act of 1989] however, seeks to bar the remedy of this kind of damages.

Damages for fall in market price

Following this case, the Kerala High Court held in *Union of India* v *PK Parameswaran*[26] that the plaintiff is entitled to damages based on the fall in

23. *Ibid.* at pp. 112-113. The other cases which show this to be an established principle are : *K.R. Rajamanickam* v *Union of India*, AIR 1974 Mad 375 ; *Punjab National Bank* v *Beni Pd.*, AIR 1981 MP 95 and *Chabildas Manikdas & Bros.* v *Union of India*, AIR 1980 AP 78 and also *Babu Oil and Flour Mills* v *Union of India*, 1980 KLT 116.

24. At p. 884, AIR 1976 SC 879. See also *Union of India* v *Mahaluxmi Oil and Dal Mill*, [1991] 1 TAC 109, (Transport and Accidents cases), where also it was remarked that by the amendment of the section the railway administration became transformed from a bailee into an insurer.

25. *Ibid.* 885.

26. AIR 1986 Ker 199 : 1986 KLT 43.

market price between the due date of arrival and the actual date of delivery. It is a direct damage for which the railway administration is liable under Section 73 of the Act. Earlier the Patna High Court had held in *Union of India* v *Madan Lal*[27] that the bar of claim for damages "for loss of particular market" in clause (*d*) of Section 78 of the Railways Act [now Section 102(8) of the Act of 1989] does not relate to a claim for damages on the ground of fall in market price. UNTWALIA J accordingly held :

> That being so, an owner of the goods is entitled to claim damages from the Railway Administration for late delivery based upon the deterioration in their value due to the fall in market price. Ordinarily, it will be difficult to visualise cases where, on account of late delivery an owner of goods can claim damages on any other basis.

The court cited CHITTY ON CONTRACTS :[28]

> A carrier who fails to deliver goods within the agreed time may also cause loss of business profits to the consignee. The normal measure of damages is the difference between the market value of the goods on the due date of arrival and their market value on the actual date of delivery.[29]

The same view is expressed by MC GREGOR ON DAMAGES:[30]

> "892. The normal measure of damages is the market value of the goods at the place of delivery at the time they should have been delivered less their market value there at the time they were in fact delivered.....
>
> 893. (*a*) Carriage by land. Where the carriage of the goods is by land and the price has fallen during the period of delay, the normal measure of damages applies and damages are given for the fall in the market price....."

The plaintiff has, however, to prove the extent of loss. Damage was caused to a load of cotton by fire and water. In such cases, the court said, the assessment of loss is bound to be somewhat arbitrary and speculative.[31]

Loss by theft

A case which illustrates liability for loss by theft is the decision of the Supreme Court in *Union of India* v *Udho Ram & Sons*,[32] though the case arose before the amendment of 1961 and the railways were held liable for their failure to take the care of a bailee under Section 151 of the Contract Act :

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27. AIR 1968 Pat 94.
28. Pp. 745, para 1579 (24th ed.).
29. The Court cited MC GREGOR ON DAMAGES p. 612, paras 892-93 (14th ed.) to the same effect.
30. Paragraphs 892-893, 14th ed. For another case of liability caused by delay see *Union of India* v *Mahalaxmi Oil and Dal Mill*, [1991] 1 TAC 109 MP.
31. *Union of India* v *Orissa Textile Mills*, AIR 1979 Ori 165.
32. (1963) 2 SCR 702 : AIR 1963 SC 422.

A goods train which left Howrah was waiting at a signal at Chandanpur which was somewhat notorious for railway thefts. During the 14 minute halt at the signal at midnight one of the middle wagons was attacked by looters who removed a part of the consignment. The wagon was property rivetted and sealed at Howarh and the train was escorted by the railway protection police who were with the guard and therefore, did not know what was happening to the rest of the train. The railways contended that the loss was due to circumstances beyond their control.

Holding the railways liable, RAGHUBAR DAYAL J observed :[33]

> There is no evidence on record that the railway protection police which escorted the train was adequate in strength for the purpose of seeing that the goods were not interfered with in transit.... It may be true that any precautions taken may not be always successful against loss in transit on account of theft, but in the present case there is no evidence with respect to the extent of the precautions taken and what the protection police itself did at the place where the train had to stop. We cannot accept the contention that the police could not have move out of the guard's van due to the uncertainty of the stoppage at the signal. It was the job of its members to get down at every stoppage and to keep an eye at the wagons as best as they could. There could be no risk of the train leaving them at the spot suddenly. In fact, the necessity to get down and watch the train when it stops at a place other than a station is greater than when the train stops at a station.[34]

Loss by wet in transit

An instance of responsibility for loss by wet in transit is to be found in *Piramal Banwarilal* v *Union of India*[35].

> The consignment was of certain bags of dry chillies. On arrival at the destination about 2/3 of the bags were found to be damaged by water. The consignment was put in a leaky wagon. It was a cloudy day when the wagon was loaded and, therefore, it was tested by a train examiner, but either he or his method was incompetent so that the leaks which were visible at the destination could not be detected at the starting point. The goods were booked at the owner's risk and in such cases the railways are liable only upon proof of negligence or misconduct.[36]

Holding the railways guilty of negligence, D PAL J pointed out that the use of the wagon to carry dry chillies without taking necessary and reasonable precautions as to its watertight condition particularly when the weather was cloudy amounts to serious negligence. The learned judge cited the earlier decision of the Calcutta High Court in *Moolji Sickka* v *Dominion of India*,[37] where the use

33. At pp. 705-706.
34. For another instance of loss by theft, see *Vaghji Nagji* v *Union of India*, IV Gujarat Law Times 374 and also *Suraj Nath* v *Union of India*, AIR 1975 Cal 203.
35. AIR 1974 Cal 107.
36. Under Section 74C(3) of the old Act ; now Section 74.

of a wagon to carry tobacco leaves dring the monsoon without taking necessary precautions was held to be negligence of a grave character and the fact that water was entering into the wagon in large quantities was considered to be a case amounting to misconduct.

Wider base of liability under the amended section

A case which seems to justify the statement to Parliament on the introduction of the amendment of 1961 that by reason of the amendment the railways would become liable in many cases in which it would not be liable before, is the decision of the Patna High Court in *Union of India* v *C.S. Rai*,[38] though no liability arose on the peculiar facts of the case.

> Oil was consigned in a tanker wagon. The plaintiff alleged that on arrival at the destination, the groundnut oil was shorter by about half the quantity, and that the railway authorities, being not cooperative, he had to estimate the loss by taking depth measurement of the tank. He proved that the tank was leaking on arrival at the destination.

The court did not allow him to recover for the shortage. The court insisted that he should prove what quantity he had loaded and that there was negligence on the part of the railways. His statement as to quantity on the consignment form and the booking clerk's acceptance of it on the railway receipt were not considered to be sufficient proof of the quantity loaded.[39] In reference to the leakage it was held that the tanker was alright when loaded and that it developed leaks on the way and that was on negligence on the railways' part. In regard to the plaintiff's contention that he could prove negligence only when the railways showed as to how they had handled the consignment in its transit, the court said that it being not a case of non-delivery of the whole of the consignment, there was no burden of disclosure on the railways.[40] To the same effect is the decision of the Madhya Pradesh High Court in *Mahabir Kirana Bhandar* v *Union of India*,[41] where the goods were loaded on a wagon by the consignor himself, the

37. (1955) 59 Cal WN 976.
38. AIR 1973 Pat 244.
39. But see *Gopiram Chetram* v *Union of India*, AIR 1981 NOC 49 Gau where the weight recorded in these two documents was held to be proof of actual loading.
40. The court relied upon the unreported decision of the same High Court in *Arthur Butler & Co. Ltd.* v *Union of India*, (No. 203 of 1966) where 303 pieces of angle-iron were despatched and only 297 reached destination. The suit was dismissed because the consignor could not prove that he had actually loaded 303. Another case of the same kind was *Union of India* v *CS Bai*, AIR 1973 Pat 244 holding that when it was not shown by the consignee that a leaking or defective wagon was supplied at the despatching station, the presumption was that the wagon was in good condition. Merely because it was found leaking at destination, no inference as to negligence of railways or misconduct of its employees would be drawn. Distinguishing *Kapildeo* v *Raghunath*, AIR 1978 Pat 213 where the goods were handed over to the railway and were loaded by them and, therefore, railway was under duty of accountability.
41. (1975) MPLJ 206. To the same effect, *AV Bhatt* v *Union of India*, [1990] 2 TAC 621, Ker, loading and sealing of wagons by the consignor himself, no liability for damage unless proof is offered to show that it was due to negligence, misconduct of railway or any of its servants. *Union of India* v *Jankidas Mohanlal*, 1988 BBCJ 250, where the consignment of wheat was weighed only at the private siding of the mill, a claim for short delivery could not succeed.

railwaymen doing no checking. The railways was held not liable for shortage shown at the destination.

Weight and contents mentioned in railway receipt—Where the railway receipt shows the contents and weight of the goods, the railways will not be allowed to say afterwards that the receipt was issued recklessly. They will be accountable for the acknowledged contents and weight unless they can show that there was fraud in connivance with the consignor.[42]

When goods are booked by the consignor and the information given by the consignor is accepted as correct for the purpose of charging freight, there is no admission on the part of the railway regarding the quality or quantity of the goods. Therefore, there is no admission that the description of the goods as furnished by the consignor is correct. In the absence of independent evidence regarding quality of the goods as shown in the railway receipt, it cannot be said that quality deteriorated in transit. It is for the consignor or consignee to adduce such evidence as they are facts within their special knowledge.[43]

Section 65(2) of the new Railways Act, 1989, provides that a railway receipt shall be prima facie evidence of the weight and the number of packages stated in it. But where the consignment is in train or wagon load and the weight or the number of packages is not checked by an authorised railway man and a statement to that effect is recorded by him in the railway receipt, the burden of proving what the weight or number of packages was would be on the person claiming the goods in his capacity as a consignor, consignee or indorsee.

Arrest, restraint or seizure under legal process [Section 77(*d*)]

The consignment of pulses, after having been accepted but before being loaded into wagons, was seized by the police for alleged contravention of Maharashtra Pulses Procurement (Levy) Order, 1973. The railways did not inform the party of this fact. He was waiting unaware for the arrival of the goods. It was held that the railways could not escape responsibility for non-delivery.[44] NAIDU J said :[45]

> The liability ceases to exist in nine categories of cases. On such category is where the loss, destruction, damage, deterioration or non-delivery of the goods is due to seizure of the goods under legal process. The railway administration claiming exemption must however prove that it has used reasonable foresight and care in the carriage of the animals or goods. The

42. *Mohan Lal* v *Union of India*, AIR 1985 Del 209. A similar decree was passed in *Union of India* v *Bihar State Cooperative Marketing Union Ltd.*, 1986 PLJR (NOC) 2 it was immaterial that the goods were not weighed at the booking station, but in wagons, actual weight loaded has to be proved.

43. *Harison* v *Cuttack Cycle Supply Co.*, AIR 1965 Ori 4 ; *Union of India* v *State of Bihar*, AIR 1970 SC 843 ; *Union of India* v *Aluminium Industries Ltd.*, AIR 1987 Ori 149.

44. *Union of India* v *Gajanand Oil and Dal Mill*, [1984] 2 TAC 140 AP : [1984] 1 ALT 284 : 1984 ACJ 405.

45. At 141.

words 'foresight and care' are of wide amplitude and should not be understood to apply to the carriage of the goods only. In the case of non-delivery of the goods due to seizure of the same under legal process the 'care' to be exhibited by the railway administration takes within its ambit an obligation to intimate the factum of seizure of the goods to the consignor/consignee within a reasonable time from the date of seizure so as to enable him to pursue his legal remedies to recover the goods from the concerned authority that seized the goods under legal process.

Right to sue

Ordinarily the right to sue lies in the consignor.[46] But where the consignee has acquired interest in the consignment, he too gets the right to sue. Railway receipt is a document of title. It is transferable as such. The *bona-fide* transferee for valuable consideration gets all the rights enshrined in the railway receipt. An example in point is the decision of the High Court of Delhi in *Lalchand Madhav Das* v *Union of India*[47].

> The plaintiff was the consignee of 564 baskets of mangoes. Reasonable time for transit and delivery was five days. Railways consumed longer time than this. The consignment was damaged. Railway authorities certified the damage as to the extent of 26%. He sued for this. The railways contended that he was a mere consignee and, therefore, had no right to sue.

The court found that the plaintiff was not a mere consignee. He had advanced money to the consignor against the railway receipt and was his agent to sell on commission. Thus he was not a consignee simpliciter but had an interest in the consignment.[48] A railway receipt being a mercantile document of title, its indorsee gets a valuable right. He can, not only take delivery of the goods covered by the receipt, but he can also give a complete discharge. It follows that he is also competent to file a suit to recover damages in respect of the loss of or damage to the goods. Thus a commission agent consignee has been allowed to sue,[49] so also a wholeseller fruit agent who was an indorsee for valuable

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46. *Traders Syndicate* v *Union of India*, AIR 1983 Cal 337. A mere consignee does not have the right to sue. *Devi Charan Sri Chand* v *Union of India*, AIR 1982 All 396. A State Government can file a claim in local courts. Though filed on the Union of India, a railway claim is not a dispute between States or Centre and State and, therefore, Article 131 of the Constitution which requires such cases to be filed only in the Supreme Court does not apply. *Union of India* v *State of Rajasthan*, [1985] 1 TAC 366 SC : 1984 ACJ 710.
47. AIR 1986 Del 29.
48. The court cited *Mercantile Bank* v *Union of India*, AIR 1965 SC 1954 and *Jalan & Sons Ltd.* v *GG in Council*, AIR 1949 EP 190.
49. *Lattoo Mal Nanu Ram* v *Union of India*, cited AIR 1986 Del 29 at 31 ; *Dominion of India* v *Gaya Pd.*, AIR 1956 All 338 ; *Union of India* v *B. Prahlad & Co.*, ILR (1976) 1 Del 436 : AIR 1976 Del 236.

consideration.[50] In such a case the consignor may lose the right to sue, but he can sue if the property in the goods has not passed to the consginee.[51]

Right of pledgee of railway receipt to sue

A pledgee of railway receipts gets special interest in the goods. He can enforce delivery of goods against the railway receipts. Delivery of documents of title which would enable the pledgee to obtain possession, is equally effective to create a pledge. This right of the pledgee was recognised by the Supreme Court in *Morvi Mercantile Bank* v *Union of India*:[52]

> Certain goods were consigned with the railways to "self" from Bombay for transit to Okhla. The consignor endorsed the railway receipts to the appellant bank against an advance of Rs. 20,000. The goods having been lost in transit, the bank as an endorsee of the railway receipts and pledgee of the goods sued the railways for the loss of the goods which were worth Rs. 35,500. The trial court rejected the action. The Bombay High Court allowed recovery up to Rs. 20,000 only. There were cross-appeals against this decision.

The Supreme Court was called upon to decide whether a railway receipt could be equated with the goods covered by it for the purpose of constituting delivery of goods. SUBBA RAO J (afterwards CJ), who delivered the majority opinion, held, that delivery of railway receipts was the same thing as delivery of goods ; the pledge was, therefore, valid and the pledgee was entitled to sue for the loss, "In this vast country where goods are carried by railways over long distances and remain in transit for long periods of time, the railway receipt is regarded as the symbol of the goods for all purposes for which a bill of lading is so regarded in England."[53] The Court also held that the pledgee was entitled to recover the full value of the goods lost and not merely the amount of his advance. "A pledge being a bailment of goods as security for payment of a debt, the pledgee will have the same remedies as the owner of the goods would have against third person for deprivation of the said goods or injury to them."[54]

RAMASWAMI and MUDHOLKAR JJ dissented. They were of the view that in all cases of pledge an effective change of possession is absolutely necessary.

50. *Union of India* v *Taneja Fruit Co.*, (1981) Rajdhani LR 10 ; *Union of India* v *B. Pd. & Co.*, (1976) Rajdhani LR 278 ; *Shah Nemji Chitramal* v *Union of India*, AIR 1983 Raj (NOC) 152. In *Union of India* v *Mohar Singh Sarwan Singh*, [1989] 1 Punj LR 708 where following *Jallan and Sons Ltd.* v *G.G. in Council*, (1948) 50 Punj LR 290 it was held that endorsement of a railway receipt does transfer ownership to the transferee. The court considered : *Sarjang Prasad Ishwar Purbey* v *Union of India*, AIR 1960 Pat 571 ; *Kesrimal Ratanlal Sarda & Co.* v *Union of India*, AIR 1968 MP 199 ; *Makhan Lal Malhotra* v *Union of India*, AIR 1961 SC 392 and *Union of India* v *Tata Iron & Steel Co. Ltd.*, AIR 1975 SC 769.

51. *Union of India* v. *West Punjab Factories Ltd.*, AIR 1966 SC 395. Actual delivery of goods to the railways for carriage is necessary to charge the railways with liability. There can be no liability against a fictitious railway receipt. *Radheshyam Agarwal* v *Union of India*, AIR 1980 MP 95.

52. AIR 1965 SC 1954.

53. At pp 1960-1961.

54. *Per* SUBBA RAO J (afterwards CJ) in AIR 1988 Mys 133.

The only exception could be in favour of a bill of lading. If the pledger has goods in his physical possession he could effect the pledge by actual delivery. If, however, the goods are in the physical possession of a third person, pledge should be effected by a notification to the custodian who should acknowledge to hold the goods for the bailee. There would thus be a change of possession and constructive delivery.

It has been held by the Mysore High Court that way bills issued by a public carrier have not yet acquired the character of being documents of title and, therefore, their delivery cannot be regarded as pledge of the goods.[55]

It would be safer for a pledgee to get the fact of pledge and his possession of the railways receipts noted with the destination station. A pledgee bank was not able to recover anything from the railways in a case where after pledging the railway receipts, the consignor who was also the consignee, obtained delivery of the goods against an indemnity bond based on loss of the receipt and the railways happened to make delivery unawares.[56]

Commission agent

A commission agent who had paid an amount in advance to secure for himself the selling rights for a consignment of fruits was allowed to sue for loss caused by damage to fresh fruits.[57] In *Union of India* v *B. Prahlad & Co.*[58], AVADH BIHARI J considered the effect of the decision of the Supreme Court in *Union of India* v *West Punjab Factories*[59] and several other cases and held that a consignee can if he is a commission agent institute a suit for compensation against the railways if he is able to show that the goods represented by the railway receipt had been transferred to him or sufficient interest therein had been created in his favour. The court noted this observation of Viscount SIMON LC in *Luxor (Eastborune) Ltd.* v *Cooper*[60] that contracts with commission agents do not follow a single pattern and the primary necessity in each instance is to ascertain with precision what are the express terms of the particular contract.[61]

The learned Judge continued.—After reflection I find it easy to state that in case of loss or damage to the goods, the person who suffers the loss, well have a cause of action to sue. Therefore, the general rule is that the owner of the goods is the proper person to sue for damages.[62] This proposition is supported by Section 74 of the Indian Railways Act, 1890 relating to owner's risk rate, Sections 76 and 76-E [now Sections 95 and 96] thereof placing the burden on

55. *C.I. & B. Syndicate* v *Ram Chandra*, AIR 1968 Mys 133.
56. *Brijmohandas* v *Punjab National Bank*, 1981 MPLJ 778.
57. *Bhai Mehar Singh Kishan Singh* v *Union of India*, 1980 ACJ 110 Del.
58. AIR 1976 Del 236.
59. AIR 1966 SC 395.
60. [1941] AC 108.
61. Going by such considerations in *Union of India* v *Jashan Mal & Co.*, AIR 1976 Del 335 the commission agent was not allowed to sue because he had no right or property in the goods and had only a bare right to receive the goods and sell them on behalf of the principals. See MISRA J in *Union of India* v *Gopal Das Ramesh Chand*, ILR [1976] 2 Del 508.
62. HALSBURY'S LAWS OF ENGLAND, Hailsham J, 4th ed, Vol. 5, para 452.

the owner to prove the damage in case of delay or detention or in case of carriage over foreign railways and Section 77(4) speaking of owner's liability to demurrage and wharfage, and one might as well remember that liability of the Railways under the contract of carriage has been for over a century and a quarter governed by statutes beginning with Act 18 of 1854 and a host of rules and forms prevalent at the relevant time. Broadly such liability began as that of an insurer, then it was equated with a bailee, and under the law as it now stands, it is akin to a common carrier with an exception that it is that of a bailee for seven days after the termination of transit. It is a matter of evidence as to who is the owner of the goods when they are in transit.

In *Union of India* v *West Punjab Factories*,[63] it was contended before the Supreme Court that the consignee and not the consignor had the right to sue. The court held that ordinarily it is the consignor who can sue because the contract of carriage is between the consignor and the carrier. It, therefore, follows that where the person suing is neither consignor nor the owner of the goods and say is a consignee, he will in order to establish his claim to compensation have to show that he had interest in the goods by virtue of purchase or pledge or otherwise or some special agreement or that the consignor had despatched the goods as his agent. The right to receive the goods must be coupled with an interest so as to entitle the consignee to claim compensation. In the case of sale, it would be determined on the principles laid down in the Sale of Goods Act, whether the property in the goods had passed to the consignee during their transit. As stated in the *Commissioners for the Port of Calcutta* v *General Trading Corporation Ltd.*[64], consignee is presumed to be the owner of goods [though such a presumption is rebuttable] because he holds the railway receipt, which is a document of title under the Sale of Goods Act.

Right of insurer to sue

An insurer who has paid off the sender is subrogated to the sender's right and, therefore, gets the right to sue.[65]

New provision as to discharge from liability [*Section 108*]

A new provision brought into the Railways Act, 1989 discharges the railway from any further complication as to liability if payment is made to consignee or indorsee who produces the railway receipt.

108. Person entitled to claim compensation.—(1) If a railway administration pays compensation for the loss, destruction, damage, deterioration or non-delivery of goods entrusted to it for carriage, to the consignee or the endorsee producing the railway receipt, the railway administration shall be deemed to have discharged its liability and no application before the Claims Tribunals or any other legal proceeding shall lie against the railway administration on the ground that the consignee or the endorsee was not legally entitled to receive such compensation.

63. AIR 1966 SC 395.

64. AIR 1964 Cal 290.

65. *Union of India* v *Orissa Textiles Mills Ltd.*, AIR 1979 Ori 165, the insurance company filed the case jointly with the sender. See also *Union of India* v *Deoria Sugar Mills Ltd.*, 1980 ACJ 140, where the railway was held liable to pay the full amount including that part of the damage which had been paid by the insurer.

(2) Nothing in sub-section (1) shall affect the right of any person having any interest in the goods to enforce the same against the consignee or the endorsee receiving compensation under that sub-section.

The railway administration is discharged from all liability if compensation is paid to the consignee or endorsee who produces the railway receipt. The effect of this statutory discharge is that no application can be made either to the Claims Tribunal or in any other court by way of legal proceeding on the ground that the consignee or the indorsee was not legally entitled to receive such compensation.

Sub-section (2), however, makes it clear that this discharge of the railway would not affect the rights of any person having any interest in the goods to enforce the same against the consignee or endorsee who has collected the compensation money.

Period of Limitation

In case of short delivery of goods the period of limitation begins from the date of delivery of goods.[66] In this case the consignee had already paid a part of the price of the goods so that he was a part owner of the goods. His claim for short delivery was paid off by the insurer who claimed from the railways. The railway delivery register showed date of delivery to be March 23, 1973. Taking that to be the date of delivery and counting the period from that date, the suit which was instituted on March 18, 1976 was held to be within the period of limitation.

Goods carried at owner's Risk [Section 97]

Section 97 deals with the responsibility of the railways where the goods are consigned at owner's risk.

97. Goods carried at owner's risk rate.—Notwithstanding anything contained in Section 93, a railway administration shall not be responsible for any loss, destruction, damage, deterioration or non-delivery in transit, of any consignment carried at owner's risk rate, from whatever cause arising, except upon proof, that such loss, destruction, damage, deterioration or non-delivery was due to negligence or misconduct on its part or on the part of any of its servants :

Provided that—

(*a*) where the whole of such consignment or the whole of any package forming part of such consignment is not delivered to the consignee or the endorsee and such non-delivery is not proved by the railway administration to have been due to fire or to any accident to the train ; or

(*b*) where in respect of any such consignment or of any package forming part of such consignment which had been so covered or protected that the covering or protection was not readily removable by hand, it is pointed out to the railway administration on or before delivery that any part of that consignment or package had been pilfered in transit,

the railway administration shall be bound to disclose to the consignor, the consignee or the endorsee how the consignment or the package was dealt with throughout the time it was in its possession

66. *National Insurance Co. Ltd.* v *Union of India*, [1990] 2 TAC 535 Gan ; 1990 ACJ 825. The court considered *Union of India* v *West Punjab Factories Ltd.*, 1958-65 ACJ 602 SC where it was laid down that transfer of title to the goods to the consignee is a question of fact in each case and *Shree Shyam Stores* v *Union of India*, AIR 1971 Assam & Nagaland 59 which was to the effect that delivery date should be taken to be that which was put in the delivery book.

or control, but if negligence or misconduct on the part of the railway administration or of any of its servants cannot be fairly inferred from such disclosure, the burden of proving such negligence or misconduct shall lie on the consignor, the consignee or the endorsee.

All goods or animals are presumed to be consigned at the consignor's risk unless the consignor agrees to pay in writing the railway risk rate in which case he will be given a certificate to that effect. Where the goods are consigned at the owner's risk, the railway company is liable only if the loss etc. "was due to negligence or misconduct on the part of the railway administration or any of its servants."[67] In such cases the consignor has to prove negligence.[68] But as the goods are in the hands of the carrier and only he knows how the goods were dealt with in its course, the railways will have to show this, failing which negligence may be presumed. This was pointed out by the Calcutta High Court in *Suraj Nath* v *Union of India*.[69]

> Silver bars were consigned at Howrah railway station for carriage to Ballia in U.P. The consignment was wholly at the owner's risk. The goods were never delivered to the consignee.

It was held that "under the law, in case of non-delivery of the consignment the railway administration is bound to make a disclosure showing how the goods or consignment was dealt with at different stages as the same is within the special knowledge of the railway administration. In case of failure to make such a disclosure an adverse inference can be made against them under Section 114(*g*) of the Indian Evidence Act."[70] "If the defendant (railways) withholds any important or material evidence, the railways must suffer due to the presumption under Section 114(*g*) of the Evidence Act."[71]

In a Scottish case a switchback plant of a huge size was delivered to a railway company. The employees loaded it without taking note of its dimensions. It was hit by a bridge and damaged. The company was held to be guilty of wilful misconduct.[72] Where the wagons containing the goods were traced at a station which was not a part of the route, it was regarded as a sufficient proof of negligence on the part of railways.[73]

67. Section 97. As to the meaning of the word "misconduct" see *Shiv Nath* v *Union of India*, AIR 1965 SC 1667. *Union of India* v *Sitaram Sah*, 1980 PLJ 289, onion booked at owner's risk suffering partial deterioration because of 13 days' delay. No liability until the claimant proved that the loss was due to negligence or employee misconduct ; *Choa Mahto* v *Union of India*, 1957 BLJR 223 dealing with the extent to which the railway may be required to disclose movement of wagons ; *Union of India* v *V. Manchand Agarwal*, AIR 1967 Cal 133, consignment of mango delayed, Section 74 of the fomer Act applied and, therefore, delay by itself not sufficient to create liability. Contrary view taken is *Union of India* v *V. Shankerlal*, AIR 1972 MP 210. Similarly in *A. Rafeeq Ahmad & Co.* v *Union of India*, AIR 1972 Mad 454, it was observed that all cases of delay must be decided under Section 76 (corresponding to Section 95 of the new Act of 1989), and not Section 74, even if the consignment is at the owner's risk.
68. *Union of India* v *Universal Traders Corpn.*, AIR 1983 Ker 173.
69. AIR 1975 Cal 203.
70. See SEN GUPTA J at p. 205.
71. See BHATTACHARYA J at p. 210.
72. *Bastable* v *North British Ry.*, [1912] SC 555, Scotland.
73. *Gopiram Chetram* v *Union of India*, AIR 1981 NOC 49 Gau.

Section 97 of the new Railways Act of 1989 also clearly provides that where the whole of the consignment or the whole of any package forming part of the consignment is not delivered and the railway has not proved that the non-delivery was due to any fire or accident to the train or where the consignment was so packed that its covering or protection was not easily removable by hand and it has been pointed out to the railway that any part of the consignment or package has been pilfered in transit, the railway administration would be bound to disclose as to how the consignment was dealt with. Where such disclosure does by itself give rise to an inference as to negligence or misconduct, the claimant would have to prove negligence or misconduct.

The old provision, viz. Section 76-F dealing with burden of proof has been eliminated from the new Act. The old section was as follows :

76-F. Burden of proving misconduct in case of non-delivery or pilferage in transit of goods carried at owner's risk rate.—Notwithstanding anything contained in Section 74,—

(*a*) where the whole of a consignment of goods, or the whole of any package forming part of a consignment, carried at owner's risk rate is not delivered to the consignee and such non-delivery is not proved by the railway administration to have been due to fire or to any accident to the train, or

(*b*) where, in respect of any consignment of goods or of any package which had been so covered or protected that the covering or protection was not readily removable by hand, it is pointed out to the railway administration on or before delivery that any part of such consignment or package had been pilfered in transit,

the railway administration shall be bound to disclose to the consignor how the consignment or the package was dealt with throughout the time it was in its possession or control, but if negligence or misconduct on the part of the railway administration or of any its servants cannot be fairly inferred from such disclosure, the burden of proving such negligence or misconduct shall lie on the consignor.

The section provides that where the whole of the consignment booked is at the owner's risk and whole or any package of such consignment is not delivered and the non-delivery is not proved to be due to fire or accident to the train or where in the case of a covered consignment the covering of which is not easily removable by hand and it is shown that the package has been pilfered in transit, the railways will be bound to disclose how the consignment was dealt with in its course. When such circumstances are laid bare before the court and they give rise to an inference of negligence or misconduct on the part of the railway servants, the liability of the railways becomes obvious. But if the circumstances do not create any such inference, the consignor shall have to prove that there was negligence or misconduct on the part of the railways.

Where the railways do not disclose the manner in which the consignment was dealt with, a presumption of negligence arises. In a consignment of oil in tins, five tins were delivered empty and 21 were leaking. The railways failed to produce any record as to the circumstances in which the consignment was dealt with. They only showed that packing was defective and that this fact was noted on the way-bill. Even so the court said that loss could have been due to other

causes as well. The railways were under a duty to disclose the relevant circumstances and not to have done so created a presumption of negligence.[74]

Carriage of animals [Section 101]

101. Responsibility as a carrier of animals.—A railway administration shall not be responsible for any loss or destruction of, or injuries to, any animal carried by railway arising from fright or restiveness of the animal or from overloading of wagons by the consignor.

The principles stated above apply to carriage of goods as well as animals, but there is a special provision about animals in Section 101 replacing Section 77-A of the old Act. The amount of liability in respect of different animals is stated in the First Schedule, and that is, of course, the maximum limit of liability.

RAILWAYS (EXTENT TO MONETARY LIABILTIY AND PRESCRIPTION OF PERCENTAGE CHARGE) RULES, 1990[75]

Notification No. G.S.R. 557(E), dated 7th June 1990

In exercise of the powers conferred by sub-section (1) and clause (*c*) of sub-section (2) of Section 112 of the Railways Act, 1989 (24 of 1989) read with Section 2 of the General Clauses Act, 1897 (10 of 1897), the Central Government hereby makes the following rules, namely :—

1. Short title and commencement.—(1) These rules may be called the Railways (Extent of Monetary Liability and Prescription of Percentage Charge) Rules, 1990.

(2) They shall come into force on the date of commencement of the Act.

2. Definitions.—In these Rules unless the context otherwise requires—

(*a*) "Act" means the Railways Act, 1989 (24 of 1989).

(*b*) "Baggage" means personal effects of a passenger entrusted to a railway administration for carriage.

(*c*) "Excess value" in respect of any consignment means the amount by which the value declared by a consignor exceeds the amount of liability of a railway administration as specified or calculated under sub-rule (1) of Rule 3.

(*d*) "Percentage charge" means the percentage charge payable on excess value calculated in accordance with the rate specified in Column 2 of Schedule II.

(*e*) "Schedule" means the Schedule to these rules.

(*f*) Words and expressions used and not defined in these rules but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Monetary Liability of a railway administration.—(1) Where a railway administration is responsible or loss, damage, destruction, deterioration or non-delivery of any consignment, the amount of liability of such railway administration in respect of such loss, damage, destruction, deterioration or non-delivery shall not, unless the consignor had declared its value and paid percentage charge on excess value of such consignment, exceed,—

(*i*) in the case of any consignment consisting of animals, the amount specified in Schedule I ; or

74. *Union of India* v *Rameshwar Pd.*, AIR 1983 MP 59. Entries in railway records were held to be relevant evidence under Section. 130. *Union of India* v *Sobhraj Bhag Chand*, AIR 1980 All 163, where the railway was held liable for auctioning goods without waiting for the clearance period allowed to consignees. Where the loss was due to deviation necessitated by Chinese aggression, the burden of proving negligence was still on the claimant. *Union of India* v *Sita Ram Sah*, AIR 1980 Pat 93. The responsibility to account for the goods commences from the moment of the acceptance of the goods by railways. The burden stands shifted to them from that moment. *Union of India* v *Mohar Singh Sarwan Singh*, [1989] 1 Punj LR 708 P & H.

75. Published in the Gazette of India, Extra., Part II, Section 3(*i*), dated 7-6-1990.

(*ii*) in the case of any consignment consisting of baggage, an amount calculated at rupees one hundred per kilogramme ; or

(*iii*) in the case of any consignment other than those referred to in clauses (*i*) and (*ii*) above, an amount calculated at rupees fifty per kilogramme.

(2) Where a railway administration is responsible for loss, damage, destruction, deterioration of non-delivery of any consignor and the consignment has at the time of entrustment for carriage declared the value of such consignment and paid percentage charge on excess value at the rate specified in Part I or Part II as the case may be of Schedule II, the amount of liability of a railway administration for loss, damage, destruction, deterioration or non-delivery of such consignment shall not exceed the value of declared.

Explanation 1.—Where in respect of carriage of any consignment, the freight is chargeable on any basis, other than its actual weight, the amount of liability of a railway administration shall be determined with reference to the actual weight of such consignment.

Explanation 2.—Where the loss, damage, destruction, deterioration or non-delivery is only with respect to part of a consignment, the weight to be taken into consideration for determining the amount of liability of a railway administration is the weight of the goods lost, damaged, destroyed, deteriorated or non-delivered unless such loss, damage, destruction, deterioration or non-delivery affects the value of the entire consignment.

4. **Certain goods not to be accepted for carriage unless percentage charge paid.**—No railway administration shall accept for carriage, the goods specified in Part I of Schedule II unless the consignor declares the value of such goods and pays the percentage charge applicable to such goods as indicated in Column 2 of Schedule II.

SCHEDULE I

(1)	(2)
Description of animals	*Extent of responsibility of Railway Administration*
	(Per head) (Rs.)
Elephants	6000
Horses	3000
Mules, horned cattle or camels	800
Dogs, donkeys, goats, pigs, sheep or other animals not mentioned above	120

SCHEDULE II

Description of goods *Rate of Percentage charge*

Part I

(1)	(2)
1. Gold	13 paise per 100 rupees or part thereof on excess value per 160 kilometres or part thereof subject to a maximum of 1% of
2. Silver	
3. Pearls	
4. Precious stones	
5. Jewellery	
6. Currency notes and coins [76][other than Government Treasure]	
7. Government stamps [77][and stamped paper other than postal stationery and stamps]	

Part II

(1)	(2)
Goods other than those specified in Part I	25 paise per 100 rupees or part thereof on excess value per 160 kilometres or part thereof subject to a maximum of 1% of excess value.

If the consignor thinks that his animal is of greater value, he should declare such value and pay extra charges.[78] But in no case the railways would be liable for loss due to fright or restiveness of the animal or due to overloading of the wagon by the consignor or his agent.

Carriage of Luggage [Section 100]

100. Responsibility as carrier of luggage.—A railway administration shall not be responsible for the loss, destruction, damage, deterioration or non-delivery of any luggage unless a railway servant has booked the luggage and given a receipt therefor and in the case of luggage which is carried by the passenger in his charge, unless it is also proved that the loss, destruction, damage or deterioration was due to the negligence or misconduct on its part or on part of any of its servants.

The railway is liable for the loss only of the booked luggage. The principle of liability is the same, namely, liable at all events subject only to the exceptions stated in Section 93. The only additional formality is that the luggage should

76. *Added* by Noti. No. GSR 90(E), dt. 26-2-1991 (w.e.f. 26-2-1991).
77. *Added* by Noti. No. GSR 90(E), dt. 26-2-1991 (w.e.f. 26-2-1991).
78. Section 77-A(1) and (2).

have been handed over to a railway servant who should have given a receipt for the same. Where the passenger keeps the luggage in his own custody, the railway would be liable only if it is proved that the loss in question was due to negligence or misconduct.

Carriage of Goods in Open Vehicles [Section 104]

104. Extent of liability in respect of goods carried in open wagon.—Where any goods, which, under ordinary circumstances, would be carried in covered wagon and would be liable to damage, if carried otherwise, are with the consent of the consignor, recorded in the forwarding note, carried in open wagon, the responsibility of railway administration for destruction, damage or deterioration which may arise only by reason of the goods being so carried, shall be one-half of the amount of liability for such destruction, damage or deterioration determined under this Chapter.

Where the goods are likely to be damaged if carried in open vehicles, but even so the sender requests in the forwarding note that they may be carried in open wagons, the railway would not be liable for any loss etc. which may arise only by reason of the goods being so carried. This provision of the old Section 75-A for nil liability has been replaced by Section 104 which provides that the liability would be for half the amount of compensation which would have been otherwise due.

Where wheat was consigned to be carried in closed wagons, but they being not available, railways carried the consignment for their own convenience in open wagons covering it with tarpaulin, the Allahabad High Court rejected the railway's contention that the consignor had agreed to transmission in open wagons. All that could be said was that he consented to the goods being carried in wagons covered with tarpaulin and that was not the same thing as agreement for open wagons.[79]

Responsibility for Delay or Detention [Section 95]

For any loss or damage arising out of delay or detention, the railway is liable, unless it proves that the delay or detention arose without negligence or misconduct. Section 76 provides this in the following words :

95. Delay or retention in transit.—A railway administration shall not be responsible for the loss, destruction, damage or deterioration of any consignment proved by the owner to have been caused by the delay or detention in their carriage if the railway administration proves that the delay or detention arose for reasons beyond its control or without negligence or misconduct on its part or on the part of any of its servants.

Thus *prima facie* the railway is liable for losses arising out of delay or detention and if it wants to escape liability, burden lies upon it to prove that there was no negligence or misconduct on its part. Although the section imposes the whole of the burden of proof upon railways, the plaintiff will at least have to prove that the loss in question was caused by the delay or detention. The decision of the Madras High Court in *Union of India* v *C.A. Akhtar & Co.*[80] is an illustration of the plaintiff's initial burden.

79. *Sadi Ram Ganga Pd.* v *Union of India*, AIR 1982 All 246.
80. (1976) 1 Mad LJ 153.

> Certain bundles of dry salted cow hides were consigned from Shillong to Salt Cotarus at Madras. The goods reached destination only about two and a half months after the date of booking and they were found to be deteriorated. Although there was no evidence on either side as to what was the normal routine time between Shillong and Madras, although there is no railway line up to Shillong and the goods had to be brought up to Gauhati by trucks and although transhipment from meter to broad guage was involved *en route*, even so the court held that 2 1/2 months time was too long for the purpose and that unexplained delay had taken place and that was sufficient evidence of negligence.

The railway were, however, held to be not liable for the deterioration which had in fact taken place. The loss could have been due to the delay as well as due to inherent vice in the goods, namely, the nature of the goods was such that they could not have been preserved for more than six or seven weeks from putrefactive damage. It had, therefore, to be proved that the goods were fresh when booked. The plaintiff was not able to prove this and, therefore, the court dismissed his suit by adopting the following passage from an earlier Division Bench decision :[81]

> Unless the plaintiffs are able to place before the court, the data regarding the dates of curing and the interval also that had elapsed between slaying and the curing, there is every possibility that the inherent vice in the goods had begun to operate and brought the goods to such a condition that though they might not have deteriorated at the moment of despatch, deterioration was just round the corner, and could have taken place at any time thereafter during transit.[82]

The learned Judge cited *Abdul Shukoor & Co.* v *Union of India*[83] as the type of case in which liability for delay would arise. The wet salted sheep and goat skins were consigned from Bolanganj for Madras. The interval between booking and arrival was 23 days though normally it should have been only ten days. The cause of delay was not explained and, therefore, it was evidence of negligence. The plaintiff, on the other hand, proved that the skins in question had been properly cured and packed and, therefore, there was no possibility of deterioration due to inherent vice if they had been carried in time. The railways were accordingly held liable.[84] In another case, a consignment of 11 bags of Khopra (Coconut) reached destination about 4 months late. The goods were handed over by the Western Ry. To Northern Ry. The latter delivered the goods in a deteriorated state but was not able to prove whether the goods suffered deterioration after or before they were handed over to Northern Ry. The latter were held liable for the loss.[85] The court also found that there is no provision

81. *East Asiatic Co. (P) Ltd.* v *Union of India*, A.S. No. 193 of 1960.
82. *See* at p. 155 of RAMASWAMI J's judgment.
83. [1971] 1 Mad LJ 400.
84. The court also noted *A.R. Ahmed & Co.* v *Union of India*, AIR 1972 Mad 454 ; (1972) 85 LW 413.
85. *Union of India* v *Ram Prasad*, AIR 1982 Raj 253 following *Jetmul Bhojraj* v *D.H. Ry.*, AIR 1962 SC 1879.

in the Railways Act or the Rules authorising the consignee to claim open delivery or assessment of damages before delivery.[86]

Where, in a case before the Gujarat High Court,[87] the goods were accepted to be carried within a reasonable time, the court held that did not mean "the quickest time" and that the alleged delay of two days was not sufficient proof of negligence.[88]

Liability for Deviation [Section 69]

69. Deviation of route.—Where due to any cause beyond the control of a railway administration or due to congestion in the yard or any other operational reasons, goods are carried over a route other than the route by which such goods are booked, the railway administration shall not be deemed to have committed a breach of the contract of carriage by reason only of the deviation of the route.

Under the ordinary principles of the law of carriage, if the carrier deviates from the agreed route or from the customary or usual route, he will be absolutely liable for any loss or destruction of the goods. So is true of railways. But sometimes deviation may be quite justified. For example, if an accident has blocked a railway line, the traffic may have to be diverted to other lines. In order, therefore, to protect the railways from the consequences of such justified deviations, Section 69 has been enacted. The section provides that where due to a cause beyond the control of the railway or due to congestion in the yard or other operational reasons, goods are carried over a route other than the route by which such goods are booked, that will not amount to a breach of contract. Thus the railway would not be absolutely liable, but would be liable only if the liability would have arisen even otherwise, that is, if no diversion had taken place.

Responsibility for Wrong Delivery [Section 69]

80. Liability of railway administration for wrong delivery.—Where a railway administration delivers the consignment to the persons who produces the railway receipt, it shall not be responsible for any wrong delivery on the ground that such person is not entitled thereto or that the endorsement on the railway receipt is forged or otherwise defective.

On the production of the original railway receipt, the railway is entitled to deliver the goods to the person who produces the railway receipt. The railway will not be responsible to the person entitled to the goods only on the ground that the person to whom the goods were thus delivered was not entitled to them or that the indorsement on the receipt was forged or otherwise defective. This exemption is conferred on the railways by Section 69. While the railways have thus freed themselves from such wrong delivery, the person to whom the goods are so delivered will hold the goods on trust for the true owner and the true owner can recover the goods from him.

86. *Union of India* v *Gyani Ram*, AIR 1967 Pat 32 ; *Manbhardayal & Co.* v *Union of India*, AIR 1967 Pat 412 ; *Union of India* v *Jutha Ram*, AIR 1968 Pat 33 and *Union of India* v *Hukum Chand*, AIR 1970 MP 55.

87. *Tulsidas Vithaldas* v *Union of India*, AIR 1967 Guj 130.

88. Sub-s. (2) of the old S. 76.

Loading or Delivery at Siding [Section 94]

94. Goods to be loaded or delivered at a siding not belonging to a railway administration.—(1) Where goods are required to be loaded at a siding not belonging to a railway administration for carriage by railway, the railway administration shall not be responsible for any loss, destruction, damage or deterioration of such goods from whatever cause arising, until the wagon containing the goods has been placed at the specified point of interchange of wagons between the siding and the railway administration and a railway servant authorised in this behalf has been informed in writing accordingly by the owner of the siding.

(2) Where any consignment is required to be delivered by a railway administration at a siding not belonging to a railway administration, the railway administration shall not be responsible for any loss, destruction, damage or deterioration or non-delivery of such consignment from whatever cause arising after the wagon containing the consignment has been placed at the specified point of interchange of wagons between the railway and the siding and the owner of the siding has been informed in writing accordingly by a railway servant authorised in this behalf.

Where the goods have been loaded at a siding not belonging to the railways, no liability arises until the wagon containing the goods has been placed at the specified point of interchange of wagons between the railways and the siding and an authorised railway servant has been informed of the fact of in writing.[89]

Where the goods are agreed to be delivered at a siding which does not belong to the railway, the railway will not be responsible after the wagons have been pushed to the siding and the owner of the siding has been informed of it in writing. Thus the responsibility of the railway runs only on its own lines.[90]

Responsibility for through Traffic [Section 96]

96. Traffic passing over railways in India and railways in foreign countries.—Where in the course of carriage of any consignment from a place in India to a place outside India or from a place outside India to a place in India or from one place outside India to another place outside India or from one place in India to another place in India over any territory outside India, it is carried over the railways of any railway administration in India, the railway administration shall not be responsible under any of the provisions of this Chapter for the loss, destruction, damage or deterioration of the goods, from whatever cause arising unless it is proved by the owner of the goods that such loss, destruction, damage or deterioration arose over the railway of the railway administration.

There is no direct parallel provision to this section under the new Railways Act of 1989. The effect of the earlier provision, namely, S. 76-D is described below.

Where goods are booked with one railway administration, but they have to be carried by successive administrations to the place of destination, Section 76-D (since repealed) provides that in such cases every such successive administration shall be deemed to have contracted with the consignor. The section says that where goods are accepted by one administration and they have to pass through other administrations also or through a transport system not belonging to the railways, a contract shall be deemed to have been made with each such

89. Sub-section (1).

90. See *Orient Papers Mills Ltd.* v *Union of India*, AIR 1984 Ori 156 where there was no evidence to show the condition of wagons delivered at private siding. See also *Union of India* v *Railway Rates Tribunal*, AIR 1992 Ori 15, only normal charges for siding are leviable. It is not a special service *UPSEB* v *Union of India*, AIR 1992 All 135 Railways (Ware Housing and Wharfage) Rules, 1958, providing for levy of demurrage on rake basis and not wagon basis were held to be neither beyond powers nor arbitrary or unjust.

administration or transport system to the effect that the provisions of the Act relating to liability shall apply. If, for example, goods are booked with the Western Railway and they pass them on to the Eastern Railway, the latter shall also be deemed to have contracted with the consignor and the consignor can sue the Eastern Railway if they have lost or damaged his goods. While thus a contract is deemed to have been made with each successive railway, an action can be brought against a particular railway only in accordance with the provisions of Section 80 [now Sections 107-109]. According to this section if a consignor sues a successive railway he will have to prove that the loss occurred while the goods were in their area of operation. In a case before the Rajasthan High Court,[91] goods were booked with the Bombay Port Authority for transport to a place, which involved journey by the Western Railway up to Ahmedabad and then shifting to the meter guage system. The goods were short when delivered at the destination. The railway placed the relevant material relating to the movement of the goods before the court, but neither that material showed, nor the plaintiff was able to prove, as to where a part of the goods was lost. Therefore, the Western Railway was held not liable.

The New Section 96 reenacts this part of the earlier provision :

Where any of the successive railways involved is a foreign railway, the Indian railway administration will not be liable for loss or destruction unless the owner proves that the loss etc. took place while the goods were on the Indian railway administration.[92]

Termination of Responsibility [Section 99]

99. Responsibility of a railway administration after termination of transit.—(1) A railway administration shall be responsible as a bailee under Sections 151, 152 and 161 of the Indian Contract Act, 1872 (9 of 1872), for the loss, destruction, damage, deterioration or non-delivery of any consignment up to a period of seven days after the termination of transit :

Provided that where the consignment is at owner's risk rate, the railway administration shall not be responsible as a bailee for such loss, destruction, damage, deterioration or non-delivery except on proof of negligence or misconduct on the part of the railway administration or of any of its servants.

(2) The railway administration shall not be responsible in any case for the loss, destruction, damage, deterioration or non-delivery of any consignment arising after the expiry of a period of seven days after the termination of transit.

(3) Notwithstanding anything contained in the foregoing provisions of this section, a railway administration shall not be responsible for the loss, destruction, damage, deterioration or non-delivery of perishable goods, animals, explosives and such dangerous or other goods as may be prescribed, after the termination of transit.

(4) Nothing in the foregoing provisions of this section shall affect the liability of any person to pay any demurrage or wharfage, as the case may be, for so long as the consignment is not unloaded from the railway wagons or removed from the railway premises.

The responsibility of the railway administration as a carrier terminates with the termination of the transit. Transit terminates with the arrival of the goods at the destination and the termination of the free days allowed for clearing away

91. *Shri Mahesh Metal Works* v *Union of India*, AIR 1974 Raj 33.
92. Section 76-E.

the goods without payment of demurrage. While the liability as carrier terminates with the termination of the transit, the liability as bailee begins and continues up to seven days thereafter.[93] During this period of seven days the railways will remain liable as bailees under Sections 151, 152 and 161 of the Contract Act. They will be bound to take as much care of the goods as a reasonable person would have taken of his own goods of the same bulk and value and under similar circumstances. They will be liable if the care bestowed by them falls below this standard and they will also be liable for the consequences of their failure to deliver the goods to the owner.

The Kerala High Court faced a claim under this section in *Union of India* v *H.S.U. Koya*.[94]

> Forty three bags of betel nuts were consigned and on their arrival at the destination they were unloaded and stored in a shed. Before the free time for clearing the goods had expired, a fire started in the adjoining shed which spread and damaged a greater part of the plaintiff's goods also. The fire started in the bales of aloe fibre stacked in the other shed and before it could be put out it had caused extensive damage. The cause of the fire, however, remained unknown.

Thus the damage had taken place before the transit ended. Section 73 applied and this section provides that the liability of the railways is absolute except in the nine cases stated in the exceptions. The last among them is "fire, explosion or any unforeseen risk." The loss had thus taken place due to an excepted peril. Even in such cases the railways are liable unless they are able to prove that they used reasonable foresight and care. B ERADI J noted that in cases falling within the exceptions the liability of the administration is that of a bailee, "namely, it would be liable for the loss, unless it proves that it has used reasonable foresight and care to prevent the cause and the consequent loss."[95] The learned judge found from the material placed before him by the administration as to what they usually do to prevent fires and what they did in this case to control it, that the administration had used such foresight or care as the section required and consequently it was not liable.[96]

The Madras High Court has similarly held that :

> A reading of sub-section (1) of Section 77 [now Section 99] shows that the Railway Administration has to deal with the goods put in its care as a bailee and has to take the same amount of care for the goods as a man of ordinary prudence not only during the period of transit but for a period of

93. These seven days are to be computed exclusive of the day on which the goods arrive at the destination station. *Brijmohandas* v *Punjab National Bank*, 1981 MPLJ 778. The court considered Sections 77-C(3) and 75(3) of the Railways Act, 1890 also with the General Clauses Act, 1897. *Union of India* v *M. Veerabhadra Rao*, [1980] APLJ 41, liability for delayed delivery.

94. AIR 1973 Ker 82.

95. See at p. 87.

96. See also *M. Veerabhadra Rao* v *Union of India*, AIR 1984 AP 328 where the consignee turned up after four months.

seven days after the termination of the transit. The liability of railways is, therefore, that of a bailee as defined in the Contract Act and is not that of a common carrier as regards goods which they profess to carry, including live animals and passenger's luggage.

In this case there was absolutely no evidence as to when the shortage occurred. The onus was on the railways to show that no loss had taken place either during transit or within seven days thereafter. Railways did not prove this and were held liable.[1]

No responsibility after termination in certain cases

Sub-section (3) of the section enables railways to exclude its liability altogether after termination of transit by prescribing a list of such goods. The list which has been prescribed is as follows :

CESSATION OF RESPONSIBILITY (AFTER THE TERMINATION OF TRANSIT) RULES, 1990

In exercise of the powers conferred by clause (*b*) of sub-section (2) of Section 112 of the **Railways Act, 1989** (24 of 1989), the Central Government hereby makes the following rules namely :—

1. **Short title and commencement.**—(1) These rules may be called the Cessation of Responsibility (after the Termination of Transit) Rules, 1990.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. **Definitions.**—In these rules, unless the context otherwise requires :—

(1) "Act" means the Railways Act, 1989 (24 of 1989).

(2) "Schedule" means schedule to these rules.

(3) Words and expressions used herein and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. **Cessation of responsibility after termination of transit.**—A railway administration shall not be responsible after the termination of transit for the loss, destruction, damage, deterioration or non-delivery of the goods specified in the schedule.

SCHEDULE

(*See* Rule 3)

1. Gases, compressed, liquified or dissolved under pressure,
2. Petroleum and other inflammable liquids,
3. Inflammable solids,
4. Oxidizing substances,
5. Acids and other corrosives,
6. Poisonous (Toxic) substances,
7. All Radioactive Materials,
8. Heavy Water,
9. Drugs and Narcotics,
10. Gold,
11. Silver
12. Pearls,

1. *Rama & Co.* v *Union of India*, AIR 1985 Mad 37. Liability under Section 73 [now S. 97] is up to the time that the goods are in transit. When transit terminates Section 77 [now S. 99] takes over. *Punjab National Bank* v *Beniprasad Maheshwari*, AIR 1981 MP 95. Where the railway receipt carried this remark as to quantity "said to contain", and there was no proof as to the quantity actually entrusted for transit, the consignee could not sue for alleged short delivery. *Madhya Pradesh Coop. Marketing Federation Ltd.* v *Union of India*, 1990 MPLJ 214 MP.

13. Precious Stone,
14. Jewellery,
15. Currency notes and coins,
16. Government stamps.

Articles of Special Value [Section 77-B]

Section 77-B has been dropped by the new Act of 1989. This system of liability is no longer applicable. However, this portion of the commentary has been retained for knowledge sake.

Articles of special value means articles mentioned in the second schedule, such as gold, silver, coins, plated articles, cloth, pearls, watches etc. If the value of the package containing any such article exceeds Rs. 500, the railways will not be liable unless the consignor declared their value and paid extra charge, if so required by the administration. The amount of compensation will not exceed the value so declared. The administration may also require to be satisfied that the package really contains the articles of value as declared.[2]

The scope of liability under the section where value declared was less than the real value was considered by the Andhra Pradesh High Court in *Sri Ram Silk Factory* v *Union of India*.[3] The consignment was that of parcels of silk which, on reaching destination, were delivered to imposters who produced forged railway receipts. The claim was for full value and not merely declared value. Section 77-B which prescribes declaration for articles of special value provides that the railways would not be liable for "loss, destruction, damage or deterioration, if the requisite declaration is not made. It does not provide about 'non-delivery'. The present case arose out of non-delivery. When the word 'non-delivery' was not there in any of the provisions of the Act, the Supreme Court had adopted the view that the word 'loss' would include 'loss caused by non-delivery.'[4] While carrying out the amendment the word 'non-delivery' was added in all the relevant sections as a separate item along with four earlier items, but it was not added in Section 77-B. In the first case on the subject,[5] the Madras High Court felt that the omission of the word from this section might be intentional or accidental and, without expressing any final opinion, expressed the view that the protection of the section would nevertheless be available to railways even in cases of non-delivery. The Gujarat High Court aligned itself with this view.[6] The court in the present case did not agree with this view.[7] After surveying some authorities on techniques of interpretation, the court concluded that "it would be impermissible for this court to supply *casus omissus* by the process of interpretation. Hence Section 77-B did not apply. The consignor was

2. *Deepchand Kherajmal* v *Union of India*, AIR 1979 Mad 68.
3. [1988] 1 TAC 205 AP.
4. See *G.G. in Council* v *Mussaddi Lal*, AIR 1961 SC 725 and *Union of India* v *Mahadeolal*, AIR 1965 SC 1755.
5. *Union of India* v *Jeethmall Sukanraj*, AIR 1972 Mad 134.
6. *Union of India* v *K. Mansukhram & Sons*, AIR 1979 Guj 176.
7. See at 213, [1991] 1 TAC 205. Following *Union of India* v *Sri Rama Silk Factory*, AIR 1980 AP 47, where under the doctrine of schematic teleological method of interpretation, accidental gaps were filled up by the process of interpretation. The same approach was found acceptable in *Union of India* v *Kailash Chand Jain & Co.*, AIR 1985 All 21 : [1985] 1 TAC 15, loss by non-delivery.

not confined in his claim only to the declared value. His case was covered by Section 77 which charges the railways with general responsibility and under this section he was entitled to the full value of the non-delivered packages.

The Bombay High Court allowed a claim under Section 73 for non-delivery holding in such a case Section 77-B is not applicable. Recovery would be allowed even where the declaration was necessary but was not made.[8]

Section 78 deals with liability in cases where a declaration has been made about the goods. If the sender gives a materially false description of the goods, there would be no liability for any loss or damage which would not have arisen but for such false description and the liability would not exceed the value of the goods if such value were calculated in accordance with the description contained in the false account. There would also be no liability where the consignor or consignee or his agent practised any fraud with the railways.

Defective Condition or Defective Packing [Section 98]

98. **Goods in defective condition or defectively packed.**—(1) Notwithstanding anything contained in the foregoing provisions of this Chapter, when any goods entrusted to a railway administration for carriage,—

(*a*) are in a defective condition as a consequence of which they are liable to damage, deterioration, leakage or wastage ; or

(*b*) are either defectively packed or not packed in such manner as may be prescribed and as a result of such defective or improper packing are liable to damage, deterioration, leakage or wastage,

and the fact of such condition or defective or improper backing has been recorded by the consignor or his agent in the forwarding note, the railway administration shall not be responsible for any damage, deterioration, leakage or wastage or for the condition in which such goods are available for delivery at destination:

Provided that the railway administration shall be responsible for any such damage, deterioration, leakage or wastage or for the condition in which such goods are available for delivery at destination if negligence or misconduct on the part of the railway administration or of any of its servants is proved.

(2) Where any goods entrusted to a railway administration for carriage are found on arrival at the destination station to have been damaged or to have suffered deterioration, leakage or wastage, the railway administration shall not be responsible for the damage, deterioration, leakage or wastage of the goods on proof by railway administration,—

(*a*) that the goods were, at the time of entrustment to the railway administration, in a defective condition, or were at that time either defectively packed or not packed in such manner as may be prescribed and as a result of which were liable to damage, deterioration, leakage or wastage; and

(*b*) that such defective condition or defective or improper packing was not brought to the notice of the railway administration or any of its servants at the time of entrustment of the goods to the railway administration for carriage by railway:

Provided that the railway administration shall be responsible for any such damage, deterioration, leakage or wastage if negligence or misconduct on the part of the railway administration or of any of its servants is proved.

8. *Babubhai Cloth Stores* v *Union of India*, 1988 MhLJ 434 Bom. Another case which holds that Section 77-B is not applicable to cases of non-delivery is *Madura South India Corpn. P Ltd.* v *Union of India*, [1987] 1 Andh LT 75.

Where the goods are in a defective condition or they are not packed in accordance with railway orders, if any, and by this reason they are liable to damage, deterioration, wastage or leakage, and if the consignor himself has noted this fact on the note, there is no liability except upon proof of negligence or misconduct in handling the goods.[9]

Where the goods on arrival at the destination show damage, deterioration, wastage or leakage, the railways would not be liable if they can prove that the goods were in a defective condition or defectively packed when delivered for carriage and this fact was not brought to their notice at that time.

> Two consignments each consisting of 330 tins of oil were entrusted at out agency at Alleypey for carriage to Kanpur. The goods were carried up to Cochin by boat and then loaded into a railway wagon. The goods were found partly damaged with oil leaking out. Short delivery was certified at Kanpur.

The goods were not packed according to the railway requirements but the circumstances showed that the loss was not due to poor quality packing. The railway did not offer any reasonable and proper explanation as to the cause of damage. The court inferred that the loss must have been due to some misconduct on their part.[10]

Short delivery

This raises the question whether cases of short delivery would be within the section in the sense that if the section otherwise applies and the case is for short delivery, whether the administration would be protected. The expression 'non-delivery' does not occur in the section.

In *Shiv Saran Das v Union of India*[11] it was held by the Delhi High Court that Section 77-C [now Section 98] of the Act does not refer to loss or non-delivery of goods as it only refers to damage, deterioration, leakage or wastage and as such the railway administration in order to get itself absolved from its liability for damage must prove that defective packing was not brought to the notice of the railway administration at the time of the delivery of goods for carriage and in absence thereof Section 77-C does not absolve the railway administration from its responsibility for short delivery of goods.

The Delhi High Court while deciding the aforementioned case sought to distinguish the decision of the Patna High Court in *Sarjug Prasad* v *Union of India*.[12] In this case it was held that if in the forwarding note the factum of defective packing has been mentioned, the onus of proof would lie upon the plaintiff and not upon the railway administration. True it is and as has been pointed out in the aforementioned decision of the Delhi High Court that in the

9. *Sarjug Prasad* v *Union of India*, AIR 1960 Pat 571.
10. *Babu Oil and Flour Mills* v *Union of India*, AIR 1986 Ker 96.
11. AIR 1970 Del 261.
12. AIR 1960 Pat 571.

said case before the Patna High Court goods were packed at the owner's risk rate and not at the railway risk rate.

Conducting a survey of all the relevant cases in *Binar State Coop Marketing Union* v *Union of India*[13] SB SINHA J summarised the effect of the provisions as follows :

A case of short delivery may arise owing to various circumstances including damage, deterioration, leakage or wastage. If a short delivery takes place for some other reason it could legitimately be argued that in such situation Section 77-C [now Section 98] will not apply but it must be held that short delivery may result because of damage, deterioration, leakage or wastage of goods. The words 'loss', 'destruction' and 'non delivery' used in various provisions of the Indian Railways Act and particularly Chapter VII [now Chapter XI] thereof are words having wide amplitude and as such the same should be given its full effect. It is inconceivable that a short delivery may not occur owing to a damage or wastage of the goods which resulted as a consequence of the defective packing or defective condition.

So far as the decision of this Court in the *Bihar State Co-operative Marketing Union* is concerned, it appears that the Division Bench of this Court had relied upon a case reported in *Sheonand Rai Gajanand* v *Union of India*[14] and distinguished on facts the case of *Union of India* v *Chhotelal Shewanath Rai*.[15] In *Chhotelal* case this Court held that when the loading had been done at the station of despatch by the consignor himself and was to be unloaded by the consignee at the destination point, no admission on the part of the railway administration as to the correctness of the weight of the consignment loaded could be made out to fix the liability for short delivery of the consignment.

In the *Bihar State Co-operative Marketing Union case*[16] goods had been loaded by the labourers of the railway and loading charges were also realised and in that situation it was held that the onus of proof was upon the railway administration. Further in that case even the forwarding note was not proved. This would be evident from the following observations of the Bench :

> "In the instant case, the forwarding note which could have shown whether the package was defective or not, has not been produced by the railways and no explanation has been given for its non-production. No witness has been examined on behalf of the railways to prove that the shortage was due to the negligence and carelessness of the consignor."

However, in the instant case not only the forwarding note has been proved by the railway administration but in the forwarding note itself the manner of packing had been mentioned. In such a situation the decision in *Bihar State*

13. [1990] 1 BLJR 280 : [1990] 1 ATC 677.
14. 1968 BLJR 22.
15. AIR 1973 Pat 244.
16. AIR 1978 Pat 213.

Co-operative Marketing Union case is not applicable in the facts and the circumstances of this case.

In *Bihar State Co-operative Marketing Union of India* v *Union of India*,[17] it was held as follows:

> The forwarding note clearly establishes that the goods were defectively packed. In this situation the learned counsel for the opposite party contends that Section 77-C [now Section 98] of the Indian Railways Act is applicable and consequently it is for the plaintiff to prove negligence or misconduct. The contention appears to be correct."

Section 77 [now Section 98] of the Act states that in cases of defective packing which fact has been recorded by the sender or his agent in the forwarding note notwithstanding anything contained in the provisions of Chapter VII [now Chap. XI] of the Act, the railway administration shall not be liable for any leakage or wastage except upon proof of negligence or misconduct on the part of the railway administration or any of its servants. It is thus, clear that the forwarding note, which records defective or improper packing put the onus on the plaintiff to prove negligence or misconduct.

In *Union of India* v *Chhitarmal Ram Deyal*,[18] a Division Bench of Allahabad High Court held as follows :

> "Both the courts below concurrently found that the oil despatched in the instant case was not packed in accordance with the prescribed rules on this subject. No evidence was led by the plaintiff-consignor to show that railway or its servant had negligently dealt with the consignment or that there was any misconduct on the part of railway employees. In these circumstances, the burden of proof lay on the plaintiff to show that the loss could not have been occasioned as a consequence of defective packing of the consignment."

In *Union of India* v *Aluminium Industries Ltd.*,[19] it was noted that the Supreme Court laid down in *Hari Sao* v *State of Bihar*,[20] which also deals with the expression "S.W.A." as follows :

> "...There would be no presumption that the goods put in the wagon were chillies because the railway did not accept the consignment as such and described it as 251 bags allegedly containing chillies. Nor was there any acceptance of the weight of the goods by the railway. The endorsement "S.W.A." would negative the plea, if any, that the weight was accepted by the railway. The endorsement L/U emphasised that the loading and unloading being in charge of the consignor the railway could not be held liable for any negligence in loading or unloading."

17. 1977 BBCJ 554.
18. AIR 1979 All 294.
19. AIR 1987 Ori 419.
20. AIR 1970 SC 842, approving AIR 1950 Nag 85 and AIR 1956 Mad 175.

In *Orient Paper Mills Ltd.* v *Union of India*[21], a Division Bench of Orissa Court, held that in a suit for damages for loss of goods against the railway administration, the onus lies on the plaintiff to establish the actual loading of the goods for the loss of which the claims have been made. That was also a case where the consignment had been loaded and despatched from the siding of the consignor.

The consignor has to record the state of the goods and their packing as they are at the time of consignment. He has not to state the possible consequences of the transport in that state. Where he fails to comply with a railway order, the burden will be on him to show that the damage was due to negligence or misconduct.[22]

Exoneration from responsibility [Section 102]

102. Exoneration from liability in certain cases.—Notwithstanding anything contained in the foregoing provisions of this Chapter, a railway administration shall not be responsible for the loss, destruction, damage, deterioration or non-delivery of any consignment,—

(*a*) when such loss, destruction, damage, deterioration or non-delivery is due to the fact that a materially false description of the consignment is given in the statement delivered under sub-section (1) of Section 66, or

(*b*) where a fraud has been practised by the consignor or the consignee or the endorsee or by an agent of the consignor, consignee or the endorsee; or

(*c*) where it is proved by the railway administration to have been caused by, or to have arisen from—

(*i*) improper loading or unloading by the consignor or the consignee or the endorsee or by an agent of the consignor, consignee or the endorsee;

(*ii*) riot, civil commotion, strike, lock-out, stoppage or restraint of labour from whatever cause arising whether partial or general; or

(*d*) for any indirect or consequential loss or damage or for loss of particular market.

This section confers exoneration from responsibility in certain cases. One of the cases as specified in Clause (*c*)(*ii*) is "riot". This word has been held to include damage caused by an irresistible mob of rioters.[23] The court said :[24]

> Therefore, the acts of the agitators do constitute rioting. Therefore it comes within the fold of Section 78(*c*)(*ii*) [now Section 102] of the Act. It is also a civil commotion because several people pulled down the driver from running trains from the engine ; assaulted the crew and set fire to several wagons. Therefore it comes definitely within the meaning of civil commotion. It is proved as a fact that the goods were destroyed as a result of setting ablaze goods wagons and accordingly the loss or damage to the

21. AIR 1984 Ori 156.

22. *Prabhu Dayal Laxmi Narain* v *Union of India*, AIR 1978 Del 227, goods partly lost because of the failure to provide dunnage to the cargo of wheat as and the plaintiff not proving negligence or misconduct, the railway not liable. The Bench did not agree with the Calcutta decision in *Union of India* v *Laduram Fakirchand*, AIR 1974 Cal 207, where the court emphasised that the consignment note has not merely to mention defective or improper packing, but further that, therefore, the goods are likely to suffer the type of damage mentioned in the section. This view was also not approved in *Bihar State Coop. Marketing Union* v *Union of India*, [1990] 1 BLJR 280 : [1990] 1 TAC 677.

23. *Andhra Pradesh Paper Mills* v *Union of India*, [1988] 1 ALT 453 AP.

24. At 455.

goods has been occasioned on account of civil commotion committed by the unlawful assembly of the agitators. Accordingly, Section 78(*c*) [now Section 102] absolves the railway administration from liability on account thereof.

Burden of Proof as to Value [Section 110]

110. Burden of proof.—In an application before the Claims Tribunal for compensation for loss, destruction, damage, deterioration or non-delivery of any goods, the burden of proving—

(*a*) the monetary loss actually sustained ; or

(*b*) where the value has been declared under sub-section (2) of Section 103 in respect of any consignment that the value so declared is its true value,

shall lie on the person claiming compensation, but subject to the other provisions contained in this Act, it shall not be necessary for him to prove how the loss, destruction, damage, deterioration or non-delivery was caused.

In case of any loss etc. of the goods, the burden of proof that the loss in question comes within any of the exceptions and, therefore, the railways should not be liable, is upon the railways, failing which they will be absolutely liable for the loss.[25] But the claimant has to prove the value of the articles or animals he has lost. Thus the burden of proving value lies on him. Section 78-A [now Section 110] accordingly provides that the value of the animal, or the higher value declared under Section 77-A [now Section 110], or if the animal has only been injured, the extent of injury, will have to be proved by the claimant. In case of any parcel or package the value of which has been declared under Section 77-B [there is no parallel section in the new Act], or in case of articles mentioned in the second Schedule, not contained in any package or parcel, and the value of which was declared, in either case the burden of proving that the declared value was the real value is upon the claimant. Thus he has to prove the extent of his loss and in case the value was declared, that the declared value was the real value. The section concludes with the remark that the claimant will not have to prove how the loss etc. had taken place.

Damages are assessed according to the market value of the goods lost.[26]

The new provisions as to the extent of monetary liability are to be seen in Section 103 which is as follows :

103. Extent of monetary liability in respect of any consignment.—(1) Where any consignment is entrusted to a railway administration for carriage by railway and the value of such consignment has not been declared as required under sub-section (2) by the consignor, the amount of liability of the railway administration for the loss, destruction, damage, deterioration or non-delivery of the consignment shall in no case exceed such amount calculated with reference to the weight of the consignment as may be prescribed, and where such consignment consists of an animal, the liability shall not exceed such amount as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), where the consignor declares the value of any consignment at the time of its entrustment to a railway administration for carriage by

25. See *Union of India* v *Bihar State Food & Civil Supply Corpn.*, [1991] TAC 718 Pat, where the railways offered no evidence as to the cause of short delivery and damage or what care of the goods was taken, liability followed as a matter of course. *Bhavan* v *Union of India*, [1991] 2 TAC 495 Ker, railways not able to justify pilferage and short delivery, liable.

26. *Union of India* v *Sagauli Sugar Works*, (1976) 3 SCC 32.

railway, and pays such percentage charge as may be prescribed on so much of the value of such consignment as is in excess of the liability of the railway administration as calculated or specified, as the case may be, under sub-section (1), the liability of the railway administration for the loss, destruction, damage, deterioration or non-delivery of such consignment shall not exceed the value so declared.

(3) The Central Government may, from time to time, by notification, direct that such goods as may be specified in the notification shall not be accepted for carriage by railway unless the value of such goods is declared and percentage charge is paid as required under sub-section (2).

Section 105 which has been introduced as a new provision in the Act of 1989 empowers the railway administration to check the contents of certain consignment or luggage. The new provision is as follows :

105. Right to railway administration to check contents of certain consignment or luggage.—Where the value has been declared under Section 103 in respect of any consignment a railway administration may make it a condition of carrying such consignment that a railway servant authorised by it in this behalf has been satisfied by examination or otherwise that the consignment tendered for carriage contain the articles declared.

Notice of Loss [Section 106]

A notice of claim should be loged with the railway concerned within six months from the date of booking, not from the date of loss etc. If notice is not given within this time, the right to refund of overcharge, if any, or compensation for loss etc., shall be lost. This section lays down the statutory limit of period for the making of a claim. The section provides :

106. Notice of claim for compensation and refund of overcharge.—(1) A person shall not be entitled to claim compensation against a railway administration for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway, unless a notice is served by him or on his behalf,—

(*a*) to the railway administration to which the goods are entrusted for carriage; or

(*b*) to the railway administration on whose railway the destination station lies, or the loss, destruction, damage or deterioration occurs,

within a period of six months from the date of entrustment of the goods.

(2) Any information demanded or enquiry made in writing from, or any complaint made in writing to, any of the railway administration mentioned in sub-section (1) by or on behalf of the person within the said period of six months regarding the non-delivery or delayed delivery of the goods with particulars sufficient to identify the goods shall, for the purpose of this section, be deemed to be a notice of claim for compensation.

(3) A person shall not be entitled to a refund of nay overcharge in respect of goods carried by the railway unless a notice therefor has been served by him or on his behalf to the railway administration to which the overcharge has been paid within six months from the date of such payment or the date of delivery of such goods at the destination station, whichever is later.

Notice should be given within six months of the date of consignment, i.e., from the date of entrustment of the goods.[27] It should be given to the railway administration to which the goods were delivered for carriage, or on whose railway the destination station lies or on whose railway the goods were actually

27. The notice may be sent by the plaintiff himself or by someone on his behalf. The notice does not become bad only because the sender did not say that he was doing so on the plaintiffs behalf. The court further said that no presumption of service arises where the notice is sent by certificate of posting and is not properly addressed. *Union of India* v *Punjab State Coop. S & M Fed. Ltd.*, AIR 1984 P & H 41. See further *Traders Syndicate* v *Union of India*, AIR 1983 Cal 337 where it was held that the claim lodged at the destination station within six months is good and that time begins to run when the consignment ought to have been delivered in the ordinary course.

lost or damaged. In a case where the goods were not delivered and the person entitled to them made an inquiry about them, that was considered as sufficient notice for this purpose.[28] The court said that "if a person says that his consignment has not been delivered as it should have been delivered according to the contract between him and the railway administration, it must be regarded as making it clear that he would be holding the railway administration to its contractual engagement which necessarily involves the payment of damages." Following this it was held by the Gauhati High Court that a letter to the proper person apprising him of the whole situation and indicating the intention to hold the railways responsible was a sufficient notice.[29]

Whether the notice should reach within six months or whether it would be sufficient if it is posted within that time, has divided the High Courts, but the preponderance of judicial opinion is that notice should reach within six months. The section says that the claim should be "preferred" within six months. "To say that addressing a claim to the railway administration and posting it through a registered post within the prescribed period would amount to preferring the claim would be stretching the meaning of the word 'preferred'. In the context in which the word 'preferred' is used it can reasonably be interpreted only to mean 'served' and not merely despatched or posted."[30]

28. *Jetmal Bhojraj* v *Darjeeling Himmalyan Railway*, AIR 1962 SC 1879; *Union of India* v *Western Coal Fields Ltd.*, [1991] 2 TAC 184, MP, unsubstantiated claim of loss of some G.I Pipes.

29. *Union of India* v *Rawatmal Bhairondas Kundalla*, [1991] 1 TAC 594 Gau. The letter was in this form:

"Should you under the circumstances, fail to arrange for delivery of the consignment on acceptance of the freight as charged by the booking station without payment of D/C and W/C Charges within the time specified above, we shall take it as a case of non-delivery of the consignment and shall hold the Railways and for the matter of that the Union of India liable for the entire value of the consignment and incidental costs for loss which, please note."

30. See *Union of India* v *Amin Chand*, AIR 1974 Punj 190 at p. 192. The court found support in *Narain Ram Chandra Kelkar* v *Union of India*, (1961) All LJ 983. This view has the support of Kerala and Nagpur High Courts also. See *Union of India* v *Lakshmi Textiles*, AIR 1968 Ker 23. But the Patna and Madhya Pradesh High Court have differed. See *Union of India* v *Ashrafi Devi*, AIR 1957 MP 114 and *Ram Gopal Marwari* v *Bengal and North Western Ry.*, AIR 1927 Pat 241. The Patna High Court, has again reiterated in *Union of India* v *Bihar State Food and Civil Supply Corpn. Ltd.*, [1991] 1 TAC 718 Pat, that posting of the claim within time is a sufficient compliance. The counsel for the railways relied upon *G.G. in Council* v *Mussadi Lal*, AIR 1961 SC 725 for the contrary view. The court relied upon *Union of India* v *Mahadeolal Prabhu Dayal*, AIR 1965 SC 1775 where the consignment was booked on Feb. 1, 1947 and a part of it was delivered on Dec. 21, 1947. Notice of loss by registered post was sent on April 10, 1948. It was held that the notice was valid. The court also relied upon the provisions of Section 140 which prescribes the mode of service of notices on railway administration and reproduced it:

"Section 140. *Service of notices on railway administration.*—Any notice or other document required or authorised by this Act to be served on a railway administration may be served, in the case of a railway administered by the Government on the Manager or the Chief Commercial Superintendent and in the case of a railway administered as a railway company, on the Agent in India of the railway company—

(*a*) by delivering the notice or other document to the Manager or the Chief Commercial Superintendent or Agent, or

(*b*) by leaving at his office, or

(*c*) by forwarding it by post in a prepaid letter addressed to the Manager or the Chief Commercial Superintendent or Agent at his office and registered under the *Indian Post Office Act*, 1898."

The words "railway administration" for the purposes of this section mean the manager of railway concerned, and not any person below him. Thus in a case before the Allahabad High Court notice given to the office of the Chief Commercial Superintendent, Gorakhpur, was held to be not sufficient.[31] The requirement of notice is mandatory.[32] No formal notice was considered necessary where an open delivery of goods, believed to be damaged, was demanded by means of a letter to which the railway agreed and which was accompanied by the inspection report of railway officers, insurance company and of the consignor noting the external damage. All this amounted to an implied demand for compensation and a sufficient compliance of the requirements of the section. The correspondence had taken place within six months. The action could not be said to be time-barred.[33] Noting the object of the section, the court[34] cited the following statement from a judgment of the Supreme Court :[35]

> The High Courts in India have taken the view that the object of service of notice under this provision is essentially to enable the railway administration to make an enquiry and investigation as to whether the loss, destruction or deterioration was due to the consignor's laches or to the wilful neglect of the railway administration and its servants and further to prevent stale and possibly dishonest claims being made when owing to delay it may be practically impossible to trace the transaction or to check the allegations of the consignor. Bearing in mind the object of the section it has also been held by several High Courts that a notice under Section 77 should be liberally construed. The purpose of the legislature must have been to afford a protection to the railway administration against fraud and not to provide a reason for depriving the consignors of their legitimate claims.[36]

Notice under Section 80 of Civil Procedure Code

Section 80, CPC requires notice to be given to the State before instituting any proceedings against it and the present Section 78-B [now S. 106] requires notice to be given to the railway administration sought to be made liable. This requirement of twin notices may, however, be fulfilled by a single notice. Accordingly, the Bombay High Court held that a notice in respect of compensation given to the general manager and thereafter on its basis a suit filed against

31. *Ram Padarath* v *Union of India*, AIR 1974 All 465.
32. *Union of India* v *Jorhat Consumer Goods Wholesale Coop. Soc.*, AIR 1974 Gau 60. See also *Union of India* v *Bansidhar*, AIR 1976 All 491 ; *Union of India* v *Banarashi Lal Agarwal*, AIR 1975 Cal 417.
33. *State of Mysore* v *Union of India*, AIR 1982 Kant 292.
34. *Ibid.*
35. *Jetmull Bhojraj* v *Darjeeling Himalayan Rys.*, AIR 1962 SC 1879.
36. The court cited some earlier decisions to the same effect : *Bala Pd.* v *BNW Ry. Co.*, AIR 1927 Oudh 478 ; *Amarchand Pannalal* v *Union of India*, AIR 1955 Ass 221 ; *Govindlal* v *G.G. in Council*, ILR 1947 Nag 369 ; AIR 1948 Nag 17. The Patna High Court laid down in *Union of India* v *Bihar State Food and Civil Supply Corpn. Ltd.*, [1991] 1 TAC 718 Pat that filing of a claim within time is a sufficient compliance. "It must be held that when a complainant avails the statutory procedure of the Act within six months then it is a sufficient compliance of Section 78-B [now Section 106].

the Union of India would be competent. Such notice is proper and not open to be challenged on the ground that it had not been given to the Union of India. The court cited the following statement from the judgment of the Supreme Court in *State of A.P.* v *Gundugola Venkata S. Garu.*[37]

> "The object of the notice under Section 80. Civil Procedure Code is to give the Government or the public servant concerned an opportunity to reconsider its or his legal position and if that course is justified to make amends to settle the claim out of court. The section is imperative and must be strictly construed. Failure to serve a notice complying with the requirements of the statute will entail dismissal of the suit. But the notice must be reasonably construed. Every minor error or defect cannot be permitted to be sufficient to defeat a just claim. If on a reasonable reading but not so as to make undue assumptions, the plaintiff is shown to have given the information which the statute requires him to give, any incidental defects or errors may be ignored. In each case in considering whether the imperative provisions of the statute are complied with, the court must see whether the following requirements are present : (1) whether the name, description and residence of the plaintiff are given so as to enable the authorities to identify the person serving the notice : (2) whether the cause of action and relief which the plaintiff claims are set out with sufficient particularity : (3) whether the notice in writing has been delivered to or left at the office of the appropriate authority mentioned in the section; (4) whether the suit is instituted after the expiration of two months next after notice has been served, and the plaint contains a statement that such a notice has been so delivered or left."

An action can be brought by the sender or by an indorsee of the railway receipts,[38] provided that he has acquired the ownership of the goods. The Supreme Court in *Union of India* v *West Punjab Factories Ltd.*[39] laid down three propositions. Firstly, that ordinarily it is the consignor who can sue, because the contract is between him and the railway administration. Secondly, where the property and the goods carried have passed from the consignor to the consignee, the latter may be able to sue, and, thirdly, whether title to the goods has passed from the consignor to the consignee depends on the facts of each case. Thus a mere indorsee may not be able to sue unless he proves that he became the owner of the goods under a valid contract.[40]

This matter has now been simplified by the provision in Section 77 by declaring that the property would pass to the consignee or indorsee on delivery of the railway receipt to him. The provision is as follows :

> **74. Passing of property in the goods covered by railway receipt.**—The property in the consignment covered by a railway receipt shall pass to the consignee or the endorsee, as the case

37. AIR 1965 SC 11.
38. *I.S.P. Trading Co.* v *Union of India*, AIR 1973 Cal 74.
39. AIR 1966 SC 395.
40. *Rohtas Industries Ltd.* v *Union of India*, AIR 1975 Pat 225.

may be, on the delivery of such railway receipt to him and he shall have all the rights and liabilities of the consignor.

Right of stoppage in transit protected [Section 75]

Section 75 qualifies the provision in Section 74 as to deemed passing of property by protecting the consignor's right to stop the goods in transit if he is still an unpaid seller. The provision is as follows :

75. Section 74 not to affect right of stoppage in transit or claims for freight.—Nothing contained in Section 74 shall prejudice or affect—

(*a*) any right of the consignor for stoppage of goods in transit as an unpaid vendor [as defined under the Sale of Goods Act, 1930 (3 of 1930)] on his written request to the railway administration ;

(*b*) any right of the railway to claim freight from the consignor ; or

(*c*) any liability of the consignee or the endorsee, referred to in that section by reason of his being such consignee or endorsee.

The section also saves the right of the railway to claim freight from the consignor. The section also does not relieve the consignee or indorsee of any liable which he might have incurred as such consignee or indorsee.

The scope of the exceptions as stated in Section 93 has already been considered in connection with the exceptions to the absolute liability of a common carrier under the Carriers Act, the subject-matter of the first chapter here. See at pp. 28-38.

Place of Suing [Sections 107, 109]

107. Applications for compensation for loss, etc., of goods.— An application for compensation for loss, destruction damage, deterioration or non-delivery of goods shall be filed against the railway administration on whom a notice under Section 106 has been served.

109 Railway administration against which application for compensation for personal injury is to be filed.—An application before the Claims Tribunal for compensation for the loss of life or personal injury to a passenger, may be instituted against,—

(*a*) the railway administration from which the passenger obtained his pass or purchase his ticket, or

(*b*) the railway administration on whose railway the destination station lies or the loss or personal injury occurred.

The combined effect of the provisions is to provide for jurisdiction at three places, viz.,

(1) in a court having jurisdiction over the place at which the goods were delivered for carriage or a passenger purchased his ticket,[41]

41. Where the railway failed to provide berths or seats as reserved, it was held that an action could be filed at the place of booking or destination *Union of India* v *Unikrishnan Menon*, [1990] 2 KLT 945 Ker. The court said that the word 'injury' would include both physical injury and mental agony. The court relied on, *Surendra Singh* v *Lal Sheoraj*, AIR 1975 MP 85 as to the meaning of injury. The court opined that Section 67 [now Section 51] which provides for refund of ticket money when no room is available in the train does not apply to cases of reserved accommodation. *Mahendra Chandra* v *El Ry Co.*, AIR 1927 Pat 352 ; *Shankar Narayan* v *Barsi Light Ry. Co.*, AIR 1947 Bom 390 and *Union of India* v *Shri Nivas Mal*, AIR 1955 Pat 282, being ruling under Section 67 [now Section 51], not applicable here. *Pravudayal* v *Ram Kumar*, AIR 1956 Cal 41, liability, even when damages cannot be calculated with mathematical accuracy.

(2) in a court having jurisdiction over the place in which the destination station lies,[42] and

(3) in a court having jurisdiction over the place at which the loss etc. took place.[43]

On the other hand, Section 20 of the Civil Procedure Code also provides for jurisdiction in civil matters and permits suits to be filed at the place where the defendant resides or carriers on business. These two provisions, to the extent to which they are different, legitimately raise the question whether they are mutually exclusive or whether Section 80 [now Ss. 107, 109] is additional to Section 20 of CPC. Some cleavage of judicial opinion is there. The position has been reviewed by the Madras High Court in *Hindustan Machine Tools Ltd.* v *Union of India*[44].

> A consignment of printing machines was handed over to the Southern Railway at Cochin for delivery at Baidyanath Dam. At this place the machine fell down while being unloaded sustaining heavy damage. The case was filed by the insurance company which had paid out the HMT. This company had its office at Madras and the Southern Railway also had their head office at Madras. The case was filed at Madras.

The court allowed it. Section 20 of the Civil Procedure Code allows suits to be filed at the place where the defendant institution has its head office and Section 80 of the Railways Act does not exclude it.[45] Section 80 [now Ss. 107, 109] provides for some additional jurisdictions and does not have the effect of repealing Section 20 of the Civil Procedure Code.[46]

Railway administration sought to be sued

Where the goods were booked at Simla but the frame of the suit showed that the claim for compensation was against the Eastern Railway on whose

42. *Barakar Eng. & Foundry Works* v *Union of India*, AIR 1982 Pat 140.

43. No action was allowed to be filed at the place where the railway receipt was handed over and payment received. That place was not within the categories. *South Eastern Railways Administration* v *Govindlal Gopikisan Mundra*, [1985] 1 TAC 416 Bom.

44. AIR 1985 Mad 130.

45. The Calcutta High Court allowed a claim of this kind in *Traders Syndicate* v *Union of India*, AIR 1981 Cal 223.

46. PADMANABHAN J surveyed the following cases : *Annamalai Chettiar* v *Union of India*, 94 Mad LW 447 : AIR 1982 NOC 86, where the same view was expressed ; *Union of India* v *C.R. Prabhanna & Sons*, AIR 1977 Kant 132, where the contrary view was expressed ; *New India Assurance Co. Ltd.* v *Union of India*, AIR 1981 Del 135, where the court said that a special provision must override the general ; *South India Corpn. P Ltd.* v. *Secretary, Board of Revenue*, AIR 1964 SC 207 and *Delhi Administration* v *Ram Singh*, AIR 1962 SC 63, both to the effect that Section 80 enacts a complete Code. The special provisions exclude the general provision of Section 20 of CPC. *Union of India* v *Indian Hume Pipe Co. Ltd.*, AIR 1981 Bom 414, where it was said that both the provisions can be read harmoniously. To the same effect is *Union of India* v *New Kerala Eng. Works*, (1981) 94 Mad LW 790 ; *Union of India* v *Ganpat Rai*, AIR 1983 Cal 14. Where a State Government filed a suit against a railway administration, the Supreme Court held that it was not a dispute between States or a State and the Union so as to attract Article 131 of the Constitution. It was an ordinary civil litigation. *Union of India* v *State of Rajasthan*, (1984) 4 SCC 238, 246 : AIR 1984 SC 1675.

railway the destination station lay, it was held that the suit could not be instituted at Simla courts.[47] The court endorsed the similar view of the Allahabad High Court.[48]

Section 107 now makes things very simple by providing that a claim can be filed on that railway administration on whom notice under S. 106 has been served.

Traffic Facilities

Section 27 of the old Act carried the provision requiring that every railway administration should according to its powers, afford all reasonable facilities for the receiving, forwarding and delivering of traffic. The facilities to be afforded under the section were to include the due and reasonable receiving, forwarding and delivering of through traffic.[49] Thus railways were bound to provide facilities only according to their means. They could refuse traffic which was not within their means to carry or they might accept goods at the owner's risk.[50] There is no provision equal to this section in the new Act.

Facilities to passenger traffic have to be on equal basis. There can be no discrimination. Passengers may, however, be classified according to any reasonable criterion.[51] For example, Section 58 enables the ear-marking of compartments etc. for ladies.

Section 27-A [now Section 71] empowers the Central Government to direct the railway administration in public interest to give special facilities or preference to the transport of any goods or class of goods.

71. Power to give direction in regard to carriage of certain goods.—(1) The Central Government may, if it is of the opinion that it is necessary in the public interest so to do, by general or special order, direct any railway administration—

47. *Union of India* v *Potato Suppliers Syndicate*, 1981 Sim LC 39.

48. *Union of India* v *Krishna Prasad Katiyar*, 1974 All LJ 722. The court cited the following Supreme Court observation in *State of Kerala* v *G.M., SR Mad*, AIR 1976 SC 2538 as to the significance of different railway administrations :

"The significance of treating the various railway administrations as separate units, even though they may be state-owned, is to be found in Section 80 [now Sections 107 and 109] of the Act, and Section 80 of the Code of Civil Procedure. For claiming a decree against the Union of India under the Act the plaintiff has got to specify the railway administration or administrations on account of which liability is sought to be fastened upon the Union of India, as contemplated by Section 80 [now Sections 107 and 109] of the Act. The institution of the suit has to be preceded by service of notice under Section 77 [now Section 106] of the Act and Section 80 of the Code to the appropriate authority which is the General Manager of the railway concerned. The requirement of clause (*b*) of Section 80 of the Code that a notice in the case of a suit against the Central Government where it relates to a railway must go to the General Manager of the concerned railway or railways is also based upon the assumption that it is primarily the liability of the railway administration of the said railway or railways to satisfy the claim of the suitor in accordance with Section 80 [now Sections 107 and 109] of the Act."

49. These provisions were based upon the observation in Halsbury's LAWS OF ENGLAND (Vol. XVII, 2nd ed.).

50. *Pratap Shipping & Weaving Co.* v *G.I.P. Ry. Co.*, 29 Bom LR 944.

51. In *Emperor* v *Narayan Krishna*, 47 Bom LR 465 where special facilities for Europeans and Anglo-Indians were approved, but this is not now possible by virtue of the Constitution of India.

(*a*) to give special facilities for, or preference to, the carriage of such goods or class of goods consigned by or to the Central Government or the Government of any State or of such other goods or class of goods ;

(*b*) to carry any goods or class of goods by such route or routes and at such rates ;

(*c*) to restrict or refuse acceptance of such goods a class of goods at or to such station for carriage,

as may be specified in the order.

(2) Any order made under sub-section (1) shall cease to have effect after the expiration of a period of one year from the date of such order, but may, by a like order, be renewed from time to time for such period not exceeding one year at a time as may be specified in the order.

(3) Notwithstanding anything contained in this Act, every railway administration shall be bound to comply with any order given under sub-section (1) and any action taken by a railway administration in pursuance of any such order shall not be deemed to be a contravention of Section 70.

Section 70 prohibits undue preference. Restrictions or preferences should not cause unreasonable prejudice in any respect whatsoever.

70. Prohibition of undue preference.—A railway administration shall not make or give any undue or unreasonable preference or advantage to, or in favour of, any particular person or any particular description of traffic in the carriage of goods.

The question of the validity of the provisions as to preferences came before the Supreme Court in *Viklad Coal Merchant* v *Union of India*.[52] In this case there was a restriction as to loading of coal in small quantities at wayside railway stations, the reasons being lack of facilities and the desire of the Government to make more wagons available to items according to planned priorities. The court held that this did not amount to prohibition as to be violative of Article 19(1)(*g*). The court said that the planned and regulated movement of coal to meet priority needs is not an unreasonable restriction even if it results in denial of facility to non-priority sector. The court also said that Section 28 [now Section 70] of the Act is in consonance with Article 14 in as much as it forbids discrimination in the matter of transport of goods against a class. But this section is subject to the permissible classification under Section 27-A [now Section 71]. Undue preference by railways is statutorily prohibited but preferential treatment in respect of goods or class of goods can be accorded if the Central Government by a special or general order in public interest so directs.

In the subsequent case of *Bansal & Co.* v *Union of India*,[53] the Supreme Court distinguished this case and said :

> It is true that in the aforesaid case, this court permitted the preferential traffic system on the basis of priority 'C' and one of the main conditions of priority 'C' was that booking of coal must be from collieries. But the situation like the one we have before us is that in areas having coal fields or having excess quantity of coal (which can be made) available for use in other parts of the country, having no railway station in the collieries cannot

52. (1984) 1 SCC 619 : AIR 1984 SC 95 : (1984) 1 SCR 657. See also *B.G. Yadav* v *Union of India*, AIR 1986 Del 353 where rejects of coal and washery sinks middlings have been regarded as coal for this purpose.

53. AIR 1986 SC 452.

supply coal to those places in the Punjab and North where coal is required. This would be contrary to the system of equitable and reasonable readjustment of rights between different sectors, upon the whole basis of which the decision of this court rested in *Viklad* case, unless the nominated stations, stations nominated by the railways, are treated as 'railway stations' in collieries in the spirit of *Viklad* case. We read it accordingly.

Implied condition in respect of accidents at sea [Section 111]

111. Extent of liability of railway administration in respect of accidents at sea.—When a railway administration contracts to carry passengers or goods partly by railway and partly by sea, a condition exempting the railway administration from responsibility for any loss of life, personal injury or loss of or damage to goods which may happen during the carriage by sea from act of God, public enemies, fire, accidents from machinery, boilers and steam and all and every other dangers and accidents of the seas, rivers and navigation of whatever nature and kind shall, without being expressed, be deemed to be part of the contract, and, subject to that condition, the railway administration shall, irrespective of the nationality or ownership of the ship used for the carriage by sea, be responsible for any loss of life, personal injury or loss of or damage to goods which may happen during the carriage by sea, to the extent to which it would be responsible under the Merchant Shipping Act, 1958 (44 of 1958), if the ships were registered under that Act and the railway administration were owner of the ship and not to any greater extent.

(2) The burden of proving that any such loss, injury or damage as is mentioned in sub-section (1) happened during the carriage by sea shall lie on the railway administration.

Where the railway undertakes to carry passengers or goods partly by railway and partly by sea, there would be an implied condition that the railway would not be liable in certain events like, act of God, mentioned in the section (which correspond to those enumerated in Section 93). In cases where the exceptions are not applicable, the liability would arise but it would arise only under circumstances enumerated under the Merchant Shipping Act, 1958 with this supposition that the ship used by the railway was registered under this Act irrespective of the nationality to which it may belong.

The burden of proving that the loss, injury or damage in question happened during the carriage at sea is upon the railway administration.

112. Power to make rules in respect of matters in this Chapter.—(1) The Central Government may, by notification, make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(*a*) the manner of packing of goods entrusted to a railway administration under clause (*b*), sub-section (1) of Section 98;

(*b*) the goods for the purposes of sub-section (3) of Section 99; and

(*c*) the maximum amount payable by the railway administration for the loss, destruction, damage, deterioration or non-delivery of any consignment under sub-section (1) of Section 103.

Responsibility to pay freight

A contract of carriage is generally made with the sender of goods and, therefore, the responsibility to pay or arrange payment of freight belongs to him. This will be so even if the goods are consigned on the basis that freight would be paid by the sendee of the goods. A Division Bench decision of the Patna High Court offers some explanation of this problematic issue.[54] The consignees

54. *Dehri Rohtas Light Rly. Co. Ltd.* v *East Keshalpur Colliery*, AIR 1963 Pat 46.

refused to take delivery of the goods on their arrival at the destination or to pay the freight which was payable under the contract on delivery to consignees. The court observed as follows :[55]

> "It is well settled that the person who is primarily liable for the payment of freight is the consignor and this liability of consignor is to be implied from the fact that he had made over the goods to the carrier for the purpose of being carried to destination and that this liability of the consignor may, in some cases, be even independent of the question of actual ownership of the goods. If follows that the consignee as such is not liable to pay the freight, because ordinarily he is not to be treated as a party to the contract of carriage. But if the facts of the case show that the consignor acted to the knowledge of the carrier as agent only, the person on whose behalf he acted as agent is in reality the principal and liable for the freight. Thus, the consignee is liable for the freight, when he has made himself liable by express contract or when he is treated as the undisclosed principal of the consignor or when it is understood between the consignor and the carrier that freight is to be paid by the consignee. In view of these well settled principles, the mere fact that the entry "to pay" is made in the relevant column of the railway receipt or the forwarding note is not sufficient to show that the consignee was liable to pay the freight."[56]

Liability to pay Demurrage

A consignee who wants delivery has to pay demurrage. He cannot insist upon open delivery. Under Section 77(4), the consignee has liability to pay demurrage or wharfage so long as the goods are not unloaded from the wagon or removed from the railway premises. As the consignee has no right to demand that the goods shall be opened and inspected in the railway premises before he can be called upon to take delivery, he cannot leave the consignment at the railway premises or in the wagon and call upon the railway officials to re-weigh the consignment and contend that as there was shortage as found out on re-weighment, he is not liable for wharfage.[57]

Carriage of Passengers

Liability of Railway Administration for Death and Injury to Passengers Due to Accidents

This provisions are contained in Chapter XIII of the Railways Act, 1989.

123. Definitions.—In this Chapter, unless the context otherwise requires,—

(*a*) "accident" means an accident of the nature described in Section 124 ;

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55. At 48.
56. Cited with approval by the Kerala High Court in *Mogu Lines Ltd.* v *Manipal Printers and Publishers P Ltd.*, AIR 1991 Ker 183 at 187-188 in its application to carriers by sea.
57. [1991] 1 Ker LT [case No. 45 (S.N.) AS 87 of 1986 relying upon *State of Kerala* v *Union of India*, [1990] 1 KLJ 673 : [1990] 2 TAC 299, even when the goods were found less in weight, refund of demurrage which was already paid was not allowed [1990] 1 KLT 396 ; *Union of India* v *I.G. Tobacco Merchant*, AIR 1966 MP 52 ; 1983 Pat 46 and 1967 Pat 32.

(*b*) "dependant" means any of the following relatives of a deceased passenger, namely :—

(*i*) the wife, husband, son and daughter, and in case the deceased passenger is unmarried or is a minor, his parent;

(*ii*) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a predeceased son, if dependant wholly or partly on the deceased passenger;

(*iii*) a minor child of a predeceased daughter, if wholly dependant on the deceased passenger ;

(*iv*) the paternal grand parent wholly dependant on the deceased passenger.

The section confines the definition of the term 'accident' to the meaning of the expression given in Section 124. It also gives the list of persons who come under the category of dependants for the purpose of claiming compensation for the death of a passenger.

124. Extent of liability.—When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or has suffered a loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident.

Explanation.—For the purposes of this section "passenger" includes a railway servant on duty.

The Supreme Court has stated the ingredients of liability under the section. Thakkar J said :[58]

(1) The machinery of the section is set in motion only when there is an accident.

(2) The accident must be to the train or part of the train carrying passengers.

(3) The accident may be due to (*a*) collision of two trains one of which is carrying passengers, or (*b*) derailment of such train or (*c*) other accident to such a train.

(4) In case any passenger travelling by such train dies or sustains injury to his person or property, as a result or on account of such accident, the amount of compensation specified in the section becomes payable.[59]

(5) Such compensation shall be payable regardless of whether or not the accident is due to negligence or fault on the part of the railway administration.

The claimant in this case fell from a coach when it received a sudden jerk in shunting either because he was standing at a point from where he could fall or

58. *Union of India* v. *Sunil Kumar Ghosh*, [1984] 4 SCC 246 at 249 : AIR 1984 SC 1737 ; on appeal from MP High Court decision in *Sunil Kumar* v. *Union of India*, AIR 1983 MP 138.

59. Not exceeding rupees two lakh in the case of any one passenger.

because he was trying to board or get out of the coach at that precise moment. The coach itself, however, suffered no accident. Quite naturally the decision was that the section was not attracted.

The Court continued :

> What is the position when a passenger falls down from the train while the bogie, in which he is travelling, is being shunted? Say, when he is standing in the door frame or is trying to get in or get out of the train, on account of the jolt to the bogie at the time of impact with the rest of the train? Is it an accident 'to the train' so as to attract the liability under Section 82-A? The answer substantially depends on the answer to the question : what is an 'accident'? An accident is an occurrence or an event which is unforeseen and startles one when it takes place but does not startle one when it does not take place. It is the happening of the unexpected, not the happening of the expected, which is called an accident. In other words, an event or occurrence the happening of which is ordinarily expected in the normal course by almost everyone undertaking a rail journey cannot be called an 'accident'. But the happening of something which is not inherent in the normal course of events, and which is not ordinarily expected to happen or occur, is called a mishap or an accident. Now a collision of two trains or derailment of a train or blowing up of a train is something which no one ordinarily expects in the course of a journey. That is why it falls within the parameters of the definition of accident. But a jolt to the bogie which is detached from one train and attached to another cannot be termed as an accident. No shunting can take place without such a jerk or an impact at least when it is attached or annexed to a train by a shunting engine. If a passenger tumbles inside the compartment or tumbles out of the compartment when he is getting inside the compartment, or stepping out of the compartment, it cannot be said that an accident has occurred *to the train* or a part of the train. It is doubtless an accident 'to the passenger". But not to the train. Otherwise it will have to be held that every time a bogie is detached in the course of shunting operation and attached or annexed to a train in the course of the said operation the train meets with an accident. And if such an event of occurrence is to be ordinarily expected as a part of everyday life, it cannot be termed as an accident—accident *to the train* (or a part of it).
>
> In the case of a mishap to the passenger in such circumstances it cannot be said that there has been an accident *to the train* and the mishap has nexus with it. The liability under Section 82-A [now S. 124] will not therefore be attracted in such cases.[60]

60. Under Sections 82-A, 66, 68, 113 and 122 the expression passenger does not include a trespasser. Accordingly compensation is not payable to a person travelling without ticket, pass or any other authority. *Ulahannan Rajan* v *Union of India*, AIR 1992 Ker 230, train starting all of a sudden without warning or whistle, injury was caused to a lady getting down on a platform (which was not raised on gauge conversion) with a child in one hand, no contributory negligence on her part.

RAILWAY ACCIDENTS (COMPENSATION) RULES, 1990[61]

Notification No. G.S.R. 552(e), dated 7th June, 1990

In exercise of the powers conferred by Section 129 of the **Railways Act, 1989** (24 of 1989) read with Section 22 of the General Clauses Act, 1897 (10 of 1897) and in supersession of the Railway Accidents (Compensation) Rules, 1989 except in respect of things done or omitted to be done before such supersession, the Central Government hereby makes the following rules namely :

PRELIMINARY

1. Short title and commencement.—These rules may be called the **Railway Accidents (Compensation) Rules, 1990.**

(2) They shall come into force on the date of commencement of the Act.

2. Definitions.—In these rules, unless the context otherwise requires,—

(*a*) "accident" means an accident of the nature described in Section 124 of the Act ;

(*b*) 'Act' means the Railways Act, 1989 (24 of 1989) ;

(*c*) "Claims Tribunal" means the Railway Claims Tribunals established under Section 3 of the Railway Claims Tribunal Act, 1987 (54 of 1987) ;

(*d*) "Schedule" means the schedule to these rules ; and

(*e*) Words and expressions used herein and not defined but defined in the Act shall have the meaning respectively assigned to them in the Act.

CLAIMS FOR COMPENSATION

3. Amount of Compensation.—(1) The amount of compensation payable in respect of death or injuries, shall be as specified in the Schedule.

(2) The amount of compensation payable for an injury not specified in Part II or Part III of the Schedule but which, in the opinion of the Claims Tribunal is such as to deprive a person of all capacity to do any work, shall be rupees two lakhs.

(3) The amount of compensation payable in respect of any injury (other than an injury specified in the Schedule or referred to in sub-rule (2) resulting in pain and suffering, shall be such as the Claims Tribunal may after taking into consideration medical evidence, besides other circumstances of the case, determine to be reasonable :

Provided that if more than one injury is caused by the same accident, compensation shall be payable in respect of each such injury :

Provided further that the total compensation in respect of all such injuries shall not exceed rupees forty thousand.

(4) Where compensation has been paid for any injury which is less than the amount which would have been payable as compensation if the injured person had died and the person subsequently dies as a result of the injury, a further compensation equal to the difference between the amount payable for death and the already paid shall become payable.

(5) Compensation for loss, destruction or deterioration of goods or animals shall be paid to such extent as the Claims Tribunal may, in all the circumstances of the case, determine to be reasonable.

4. Limit of Compensation.—Notwithstanding anything contained in Rule 3, the total compensation payable under that rule shall in no case exceed rupees two lakh in respect of any one person.

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61. Published in the Gazette of India, Extra., Part II, Section 3(*i*), dated 7-6-1990.

SCHEDULE
(*See* Rule 3)

COMPENSATION PAYABLE FOR DEATH AND INJURIES

		Amount of compensation (in Rs.)
	PART I	
For death		2,00,000
	PART II	
(1)	For loss of both hands or amputation at higher sites	2,00,000
(2)	For loss of hand and a foot	2,00,000
(3)	For double amputation through leg or thigh or amputation through leg or thigh on one side and loss of other foot.	2,00,000
(4)	For loss of sight of such an extent as to render the claimant unable to perform any work for which eye sight is essential	2,00,000
(5)	For very severve facial disfigurement	2,00,000
(6)	For absolute deafness	2,00,000
	PART III	
(1)	For amputation through shoulder joint	1,80,000
(2)	For amputation below shoulder with stump less than 8" from tip of acromion	1,60,000
(3)	For amputation from 8" from tip acromion to less than 4 1/2" below tip of olecranon	1,40,000
(4)	For loss of a hand or the thumb and four fingers of one hand or amputation from 4 1/2" below tip of olecranon	1,20,000
(5)	For loss of thumb	60,000
(6)	For loss of thumb and its metacarpal bone	80,000
(7)	For loss of four fingers of one hand	1,00,000
(8)	For loss of three fingers, of one hand	60,000
(9)	For loss of two fingers of one hand	40,000
(10)	For loss of terminal phalanx of thumb	40,000

(11)	For amputation of both feet resulting in end bearing stumps	1,80,000
(12)	For amputation through both feet proximal to the metatarso-phalangeal joint	1,60,000
(13)	For loss of all toes of both feet through the metatarso-phalangeal joint	80,000
(14)	For loss of all toes of both feet proximal to the proximal interphalangeal joint	60,000
(15)	For loss of all toes of both feet distal to the proximal inter-phalangeal joint	40,000
(16)	For amputation at hip	1,80,000
(17)	For amputation below hip with stump not exceeding 5" in length measured from hip of great trenchanter	1,60,000
(18)	For amputation below hip with stump exceeding 5" in length measured from tip of great trenchanter but not beyond middle thing	1,40,000
(19)	For amputation below middle thing to 3 1/2" below knee	1,20,000
(20)	For amputation below knee with stump exceeding 3 1/2" but not exceeding 5"	1,00,000
(21)	Fracture of Spine with Paraplegia	1,00,000
(22)	For amputation below knee with stump exceeding 5"	80,000
(23)	For loss of one eye without complications the other being normal	80,000
(24)	For amputation of one foot resulting in end-bearing	60,000
(25)	For amputation through one foot proximal to the metatarso-phalangeal joint	60,000
(26)	Fracture of Spine without paraplegia	60,000
(27)	For loss of vision of one eye without complications of disfigurement of eye ball, the other being normal	60,000
(28)	For loss of all toes of one foot through the metatarso-phalangela joint	40,000

(29)	Fracture of Hip-joint	40,000
(30)	Fracture of Major Bone Femur Tibia both limbs	40,000
(31)	Fracture of Major Bone Humerus Radius both limbs	30,000
(32)	Fracture of Pelvis not involving joint	20,000
(33)	Fracture of Major Bone Femur Tibia one limb	20,000
(34)	Fracture of Major Bone Humerus Radius Ulna one limb	16,000

125. Application for compensation.—(1) An application for compensation under Section 124 may be made to the Claims Tribunal—

(*a*) by the person who has sustained the injury or suffered any loss, or

(*b*) by any agent duty authorised by such person in this behalf, or

(*c*) where such person is a minor, by his guardian, or

(*d*) where death has resulted from the accident, by any dependant of the deceased or where such a dependant is a minor, by his guardian.

(2) Every application by a dependant for compensation under this section shall be for the benefit of every other dependant.

126. Interim relief by railway administration.—(1) Where a person who has made an application for compensation under Section 125 desires to be paid interim relief, he may apply to the railway administration for payment of interim relief along with a copy of the application made under that section.

(2) Where, on the receipt of an application made under sub-section (1) and after making such inquiry as it may deem fit, the railway administration is satisfied that circumstances exist which require relief to be afforded to the applicant immediately, it may, pending determination by the Claims Tribunal of the actual amount of compensation payable under Section 124 pay to any person who has sustained the injury or suffered any loss, or where death has resulted from the accident, to any dependant of the deceased, such sum as it considers reasonable for affording such relief, so however, that the sum paid shall not exceed the amount of compensation payable at such rates as may be prescribed.

(3) The railway administration shall, as soon as may be, after making an order regarding payment of interim relief under sub-section (2), send a copy thereof to the Claims Tribunal.

(4) Any sum paid by the railway administration under sub-section (2) shall be taken into account by the Claims Tribunal while determining the amount of compensation payable.

127. Determination of compensation in respect of any injury or loss of goods.—(1) Subject to such rules as may be made, the rates of compensation payable in respect of any injury shall be determined by the Claims Tribunal.

(2) The compensation payable in respect of any loss of goods shall be such as the Claims Tribunal may, having regard to the circumstances of the case, determine to be reasonable.

128. Saving as to certain rights.—(1) The right of any person to claim compensation under Section 124 shall not affect the right of any such person to recover compensation payable under the Workmen's Compensation Act, 1923 (8 of 1923), or any other law for the time being in force; but no person shall be entitled to claim compensation more than once in respect of the same accident.

(2) Nothing in sub-section (1) shall affect the right of any person to claim compensation payable under any contract or scheme providing for payment of compensation for death or personal injury or for damage to property or any sum payable under any policy of insurance.

129. Power to make rules in respect of matters in this Chapter.—(1) The Central Government may, by notification, make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(*a*) the compensation payable for death;

(*b*) the nature of the injuries for which compensation shall be paid and the amount of such compensation.

56. Power to refuse to carry persons suffering from infectious or contagious diseases.—(1) A person suffering from such infectious or contagious diseases, as may be prescribed, shall not enter or remain in any carriage on a railway or travel in a train without the permission of a railway servant authorised in this behalf.

(2) The railway servant giving permission under sub-section (1), shall arrange for the separation of the person suffering from such disease from other persons in the train and such person shall be carried in the train subject to such other conditions as may be prescribed.

(3) Any person who enters or remains in any carriage or travels in a train without permission as required under sub-section (1) or in contravention of any condition prescribed under sub-section (2), such person and a person accompanying him shall be liable to the forfeiture of their passes or tickets and removal from railway by any railway servant.

CARRIAGE OF PASSENGERS SUFFERING FROM INFECTIOUS OR CONTAGIOUS DISEASES RULES, 1990[62]

Notification No. G.S.R. 556(E), dated 7th June, 1990

In exercise of the powers conferred by clauses (*e*) and (*f*) of sub-section (2) of Section 60 of the Railways Act, 1989 (24 of 1989), read with Section 22 of the General Clauses Act, 1897 (10 of 1897), the Central Government hereby makes the following rules for carriage of passengers suffering from Infectious or Contagious diseases, namely :—

1. Short title.—(1) These rules may be called the Carriage of Passengers Suffering from Infectious or Contagious Diseases Rules, 1990.

(2) They shall come into force on the date of commencement of the Railways Act, 1989 (24 of 1989).

2. Persons suffering from any Infectious or Contagious diseases.—(1) A railway administration shall not carry, except in accordance with the conditions laid down in these rules, persons suffering from the following infectious or contagious diseases :—

(*i*) Cerebro-Spinal meningitis.

(*ii*) Chicken-pox.

(*iii*) Cholera.

(*iv*) Diphtheria.

(*v*) Leprosy.

(*vi*) Measles.

(*vii*) Mumps.

(*viii*) AIDS

(*ix*) Scarlet fever.

(*x*) Typhus fever.

(*xi*) Typhoid fever, and

(*xii*) Whooping cough.

(2) Nothing in sub-rule (1) shall apply in the case of closed (non-infective) leprosy patients carrying a certificate from a Registered Medical Practitioner certifying them to be non-infective and such a certificate shall be produced on demand inside railways premises by any railway servant.

(*a*) A person suffering from any of such diseases, as mentioned in sub-rule (1) of this rule, shall not enter or remain in any carriage on a railway or travel in a train without the permission

62. Published in the Gazette of India, Extra., Part II, Section 3(*i*), dated 7-6-1990.

of the Station Master of other railway servant incharge of the place where such persons enters upon the railways.

(4) A railway servant giving such permission may, on the person suffering from the disease, agreeing to pay the usual number of fares for reserving a compartment, arrange for his separation from other persons being or travelling upon the railway.

3. Detention of Passengers attacked with any Infectious or Contagious diseases.—When a passenger is detained at railway station by a Medical Officer, as a measure for prevention of the spread of infectious or contagious diseases referred to in sub-rule (1) of Rule 2 and when such a passenger is unable to continue the Journey by the train for which the ticket is issued and the period of its availability in terms laid down for break of journey en route is exceeded, the Station Master in the authority of certificate from the Medical Officer, shall make the ticket available for the further journey by an endorsement on the back of the ticket as under :—

"Available by No. . . . . Train . . . . . (date) from . . . . . (Station)" and sign his name in full.