

1952

Present: **Rose C.J. and Pulle J.****ATHINARAYANAPILLAI**, Appellant, and **THE CEYLON WHARFAGE CO., LTD.**, Respondent

S. C. 390—D. C. Colombo, 16,437

Carrier—Deposit and loss of goods in Government warehouse—Carrier's liability—Customs Ordinance, s. 107.

A carrier is not liable for the value of goods which are lost in the Government warehouse while the goods are not under the carrier's control.

APPPEAL from a judgment of the District Court, Colombo.

H. W. Jayewardene, with *S. T. K. Mahadeva*, for the plaintiff appellant.

H. V. Perera, K.C., with *V. A. Kandiah*, for the defendant respondent.

Cur. adv. vult.

February 29, 1952. ROSE C.J.—

In this matter the plaintiff-appellant sued the defendant-respondent for the recovery of Rs. 3,600 as damages for the value of 2,000 yards of cycle valve tubes belonging to the appellant which were consigned to the appellant on board the steamship ss. 'Pakhoi'. The goods were despatched from Tuticorin to Colombo harbour and arrived there on 3.12.44. On 5.12.44 they were unloaded by the respondent's servants and deposited, upon instructions of the Port Controller, in the King's warehouse. During the detention there and prior to the payment of Customs duty by the appellant, the goods, the subject matter of the present action, were lost.

The above facts are accepted by both parties and the question to be decided is whether on these facts the respondent company is liable.

It must be remembered that at the relevant time—and this must, in my opinion, be taken to have been within the knowledge of both parties—the custom in the Port was for the Port Controller to instruct the various carrying companies as to which warehouse the goods in transit were to be taken. Such instructions had to be obeyed by the carrying company and it is clear from the evidence in the present case that once the goods have been deposited in the King's warehouse and the necessary receipt handed over to the respondent's servants, the task of guarding the warehouse and the goods in it passes on to the Customs Department who apparently employed guards for the purpose.

The matter appears to be covered in principle by *Asana Marikar v. Livera*¹ where it was held that the plaintiff could not maintain the action against the defendant (the carrying company) for the value of goods found missing in the Government warehouse as the defendant was not the bailee of the goods after they had been warehoused there and the

¹ (1903) 7 N. L. R. 158.

fact that the defendant received payment of landing charges did not imply a contract that he was to do anything more than to land and warehouse the packages with the Customs authorities.

The appellant endeavours to distinguish the present case from the above on the ground that the respondent company had undertaken, after the payment of Customs duty by the appellant, to load the goods from the King's warehouse on to the carts of the appellant. It seems to me, however, that that circumstance cannot alter the position as to the responsibility for any loss that may have occurred previously in the warehouse itself.

In my opinion to hold the defendant company liable for any such loss, while the goods admittedly were not under their control, would be to import an additional obligation into the implied contract between the parties. It would in my opinion be incorrect to import into the contract a term that the respondent company are to be the insurers of goods during the retention by the Customs authorities in the King's warehouse. It is not even suggested by the appellant that there was any specific evidence of the existence of such a special term.

I would add that on the facts of this case it would seem that the Government would be clearly liable for these losses were it not for the statutory protection afforded by Section 107 of the Customs Ordinance.

For these reasons the appeal must be dismissed with costs.

PULLE J.—I agree.

Appeal dismissed.

