

**IN THE SUPREME COURT OF THE REPUBLIC OF SRI LANKA**

Loku Yaddehige Ruwan Kulunuguna  
No.244/1, Jaya Mawatha,  
Makola

Plaintiff-Respondent-Appellant

Vs  
Scanwell Customs Brokers (Pvt) Ltd.  
No.3/2, No.15, Galle Face Terrace.  
Colombo.03

Defendant-Appellant-Respondent

**S.C.Appeal No.27/2014**  
**SC/HCCCA/LA No.353/2013**  
**WP/HCCA/COL/39/2005(F)**  
**D.C.Colombo Case No.22148/MR**

**Date: 25.01.2017**

**CHITRASIRI, J.**

I had the opportunity of reading the draft judgment of Sisira de Abrew,J, and I agree with his decision to allow this appeal. However, I am not inclined to agree with his decision in respect of the quantum of damages awarded to the plaintiff-respondent-appellant. (hereinafter referred to as the plaintiff) I shall now set out the reasons for my decision to dissent from the findings of De Abrew J as to the quantum of damages awarded to the plaintiff.

This action was filed by the plaintiff to recover the monies due to him, for hiring his container carrier lorry to the defendant-appellant-respondent. (hereinafter referred to as the defendant) Learned District Judge held that there was a contract between the plaintiff and the defendant, to hire the said container carrier lorry for the use of the defendant. Accordingly, the learned District Judge decided the case in favour of the plaintiff as prayed for in the plaint. However, the learned Judges in the Civil Appellate High Court of the Western Province Holden in Colombo have held that the aforesaid contract between the two parties had been frustrated and therefore the plaintiff is not entitled for damages for breach of contract. Even though there was no issue raised in the District Court on the question of frustration of the contract, the learned Judges in the Civil Appellate High Court may have considered the said issue of frustration as a question of law and arrived at the aforesaid decision. Accordingly, they have held that the contract between the parties had been frustrated and therefore the defendant is not liable to pay damages to the hirer who was the plaintiff. Accordingly, Civil Appellate High Court Judges have decided to dismiss the action of the plaintiff.

Upon considering the facts of the case, I do not see any material to establish frustration of the contract. Hence, it is clear that the learned Judges in the Civil Appellate High Court have misdirected themselves on the question of frustration. Since De Abrew J has adequately dealt with

the said issue of frustration, it is not necessary for me to elaborate on His Lordship's decision to dismiss the appeal to which I agree.

While allowing the appeal, De Abrew J has awarded damages calculated at the rate of Rs.85/- per hour as hiring charges for the period commencing from 12.06.1998. Admittedly, the original agreement was to pay Rs.60/- per hour as hiring charges to the plaintiff with effect from 07.05.1998. On that date, the lorry belonging to the plaintiff had been hired to transport the container to the premises belonging to the defendant.

The change of hiring charges had been communicated to the respondent by the letter dated 24.09.1998 marked P3. It is a letter written by the plaintiff to the Manager of the defendant company. However, no evidence is forthcoming to establish that the defendant has accepted or agreed to pay the increased hiring charges with effect from 12.06.1998. Furthermore, no material is found to determine as to how the said date namely 12.06.1998 came into place. The plaintiff in his plaint has merely stated that he claims Rs.85/- per hour with effect from 12.06.1998 due to the increase of the transport charges. No valid reason is shown to demand such an increase. Certainly, when the parties have agreed for Rs.60/- per hour on 07.05.1998, it is improbable to have increased it to Rs.85/- per hour within a period 35 days.

Moreover, no material is found to show that the defendant has accepted or agreed to pay such an increase of the hiring charges for the lorry that was hired by it. Therefore, it is clear that there was no agreement between the parties to pay an increased amount.

In the circumstances, the plaintiff is not entitled to claim an increased amount of Rs.25/- per hour with effect from 12.06.1998 as hiring charges for the lorry. Therefore, the plaintiff is entitled only to claim Rs.60/- per hour for the entire period as agreed at the commencement. Accordingly, the issue No.4, raised before the learned District Judge should be answered in favour of the defendant.

With the variation referred to above in respect of the quantum of damages, I decide that the appeal should be allowed.

JUDGE OF THE SUPREME COURT