

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

G P de Silva & Sons International  
(Pvt) Limited  
**Plaintiff**

SC CHC Appeal No.28/2009  
HC (Civil) 74/2006 (1)

Vs

Union Assurance Limited  
**Defendant**

And now Between

G P de Silva & Sons International  
(Pvt) Limited  
**Plaintiff-Appellant**

Vs

Union Assurance Limited  
**Defendant-Respondent**

BEFORE : PRIYASATH DEP PC, J  
SISIRA J DE ABREW J  
SARATH DE ABREW J

Counsel : MA Sumanthiran with Eranga Tegal for the  
Plaintiff-Appellant  
Nihal Fernando PC with Rajindra Jayasinghe for the  
Defendant-Respondent

Argued on : 16.6.2014

Written Submission

filed on : 18.7.2014 by the Plaintiff-Appellant  
8.8.2014 by the Defendant-Respondent

Decided on : 3.10.2014

**SISIRA J DE ABREW J.**

This is an appeal against the judgment of the learned High Court Judge of Colombo dated 29.7.2009 wherein she dismissed the claim of the plaintiff-appellant who claimed 68,605/63 USD [later reduced to 16,217/63 USD] from the defendant-respondent on the basis of a marine insurance policy.

The plaintiff-appellant is an export company which carries on business of cinnamon export. The defendant-respondent is also a company engaged in business of insurance.

On or about 22<sup>nd</sup> of December 2003, the plaintiff-appellant obtained a marine insurance policy (open cover) No ABCCQO/001 from the defendant-respondent. The defendant-respondent, by its letter dated 3.2.2004 marked P5, confirmed that the said cover includes 'loss of cargo in container whilst inland transit, theft or burglary from shipper's warehouse to the buyer's warehouse at destination'. On or about 10.3.2005, a consignment of 587 bales cinnamon quills worth USD 62,368/15 was shipped to the buyer on vessel Peking Senator with freight paid up to the buyer's warehouse in Mexico City. Subsequently, the office of the plaintiff-appellant in United States of America informed the plaintiff-appellant that the container carrying 587 bales cinnamon quills worth USD 62,368/75 had been lost whilst it was being transported by a truck from the port of discharge (Manzamillo in Mexico City) to the buyer's warehouse. Plaintiff-appellant thereafter submitted an insurance claim of USD 68,605/63 to the defendant-respondent. The defendant-respondent, by its letter dated 22.12.2005

addressed to the Managing Director of the plaintiff-appellant, marked P17, repudiated the claim on the grounds which are reproduced below.

1. The shipment had been effected by you on CIF terms and the shipment had been discharged in Mexico on or about 13.4.2005 and you therefore have no insurable interest to claim under policy.
2. The purported buyer had defaulted payments due on 10<sup>th</sup> of April 2005 and 10<sup>th</sup> of May 2005 and the Marine Contract of Insurance is not designed to cover eventualities of this nature. It is noted that you have communicated to us the alleged theft by means of your fax message dated 13.05.2005 received by on 16.05.2005 i.e. the date of transmission of the message.
3. Hanjin Shipping Company had confirmed delivery of the Cargo to the Consignee on or about 6.5.2005.
4. The consignees have breached the principles of utmost good faith applicable to Marine Insurance.
5. The consignees had failed to comply with the instructions given in the “Important Clause” attached to the policy.
6. The consignees have failed to establish a loss within the meaning of the policy.
7. There is no valid contract of sale and the purported buyer had not signed the same nor have you complied with the terms given therein.

Although the plaintiff-appellant, in its plaint, claimed USD 68,605/63, it later reduced its claim to USD 16,217/63 on the basis that its consignee in Mexico City had remitted a sum of USD 52,388 which sum the consignee had received from its insurer in Mexico.

The learned High Court Judge after trial dismissed the action of the plaintiff-appellant on the basis that it did not have insurable interest at the time of the loss of goods. Being aggrieved by the said judgment of the learned High Court Judge, the plaintiff-appellant has appealed to this court.

The main contention of the plaintiff-appellant was that the insurance cover which he obtained from the defendant-respondent includes the loss of cargo in container whilst inland transit, theft or burglary from the shipper's warehouse to the buyer's warehouse at destination. Learned counsel for the plaintiff-appellant therefore contended that the defendant-respondent should pay the claim of the plaintiff-appellant. I now advert to this contention. The Marine Insurance-Open Cover Policy No.ABCCQ/00C marked P1 on which the plaintiff-appellant based its claim states as follows:

“In order to recover under this insurance the assured must have an insurable interest in the subject matter insured at the time of the loss.”

When I consider the above material the most important question that must be decided in this case is whether the plaintiff-appellant had an insurable interest in the consignment of cinnamon at the time of the loss. If the buyer in Mexico City has collected the consignment, can the seller who is the plaintiff-appellant have an insurable interest in it? This question, in my view, has to be answered in the negative. If the buyer has already collected the consignment, the buyer has to make the payment to the seller. After the goods were handed over to the ship, if the goods are lost in the sea, the buyer is still bound to make the payment to the seller. This view is supported by the following legal literature. In the book titled “The sale

of goods by PS Attiyah, John N Adams and Hector MacQueen” 11<sup>th</sup> edition pages 430 and 431 under the heading of ‘Passing of property and risk’ reads as follows:

“In c.i.f contracts the risk once again passes on shipment, and if the goods are lost at the sea the buyer is still bound to pay the price, although he will as a rule have the benefit of the insurance policy. The law is the same even if the seller knows that the goods have been lost when he tenders the shipping documents. So also, the inability of the buyer to have the goods discharged at the port of destination (because, for instance, he cannot obtain an import licence) is of no concern to the seller, and cannot be a frustrating event. The delivery of the goods on board the vessel, followed by the delivery of correct documents, is a complete performance by the seller of his duties under a c.i.f contract; what happens after that is of no concern to him, subject to some special cases (for instance, where the goods are shipped in an undivided bulk).”

Has the buyer collected the goods in Mexico City? What does the Managing Director of the plaintiff-appellant say in evidence on this point? I will reproduce below his evidence on this point.

Q. I am suggesting to you in this case the buyer has collected the goods from the port and the goods are supposed to have got lost whilst it was being in transshipment from the port to the buyer’s warehouse?

A. Yes.

(Vide page 330 of the brief)

Thus the plaintiff-appellant clearly admits that the buyer has collected the consignment from the port of discharge. Thus can the plaintiff-appellant have any insurable interest in the consignment? The answer is no.

The master of the ship or the shipping agent is obliged to deliver the goods only to the person who has the title to the goods namely the person who has the original bill of lading. As I pointed out earlier buyer had collected the goods. This shows that he was in possession of the original bill of lading. In fact the Managing Director of the plaintiff-appellant, in his evidence, admitted that buyer was in possession the original bill of lading. I will reproduce his evidence on this point.

Q. At that point of time the buyer had the original bill of lading and the insurance policy and all the shipping documents were with him.

A. Yes.

If the buyer had the original bill of lading it is equivalent, in law, to possession of the goods. In this connection it is relevant to consider a passage from the book titled "Payne & Ivamy's Carriage of Goods by Sea 13<sup>th</sup> edition page 92. The learned Author, at page 92, states as follows. "For many purposes possession of a bill of lading is equivalent in law to possession of goods. It enables the holder to obtain delivery of the goods at the port of destination and, during the transit, it enables him to 'deliver' the goods by merely transferring the bill of lading. These rules are particularly important in c. i. f contracts."

In *Clements Horst Co Vs Biddel Bros* [1912] AC18 "a contract was made for the sale of hops to be shipped from San Francisco to London, c i f net cash. The buyer refused to pay for the goods until they were actually delivered.

Held, that possession of bill of lading was in law equivalent to possession of goods, and that under c i f contract the seller was entitled to payment on shipping the goods and tendering to the buyer the documents of title."

In the present case the buyer was in possession of the goods and as well as the bill of lading. Thus the title of the goods has already passed to the buyer. Thus the seller did not have any insurable interest in the goods at the time of the loss.

In fact the Managing Director of the plaintiff-appellant admitted in evidence that he is not entitled to make a claim as the title to the goods had already passed to the owner. His evidence on this point is as follows.

Q . So I am suggesting to you if you don't have in your possession the original bill of lading you are not entitled to make a claim in a marine policy because the title to the goods is with the owner or a person who has the original bill of lading.

A. Yes. (Vide page 314 of the brief)

Q. I am suggesting to you that the moment you packed goods and carried it from your warehouse to the port in Colombo and put the goods on board the vessel and post or sent the shipping documents, you passed the shipping documents, sent them to the consignee, title to the goods passed to the buyer.

A. Yes.

It is important to state here that the plaintiff-appellant reduced his claim from USD 68,605/63 to USD 16,217/63 on the basis that the consignee in Mexico had remitted a sum of USD 52,338 which sum the consignee claims to have received from its insurer in Mexico. This evidence establishes the fact that buyer's insurer in Mexico had accepted the fact that the title to the goods had passed to the buyer. This too shows that that the plaintiff-appellant did not have an insurable interest in the goods at the time of the loss. When I consider all the above matters, I hold that the plaintiff-appellant did not have any insurable interest in the consignment of cinnamon at the time of its loss and as such the plaintiff-appellant is not entitled to claim any amount in the present case under the marine insurance (open cover)

policy from the defendant-respondent. In my view the learned High Court Judge was correct when he dismissed the plaintiff-appellant's action.

For the above reasons I refuse to interfere with the judgment of the learned High Court Judge and dismiss the appeal of the plaintiff-appellant with costs.

*Appeal dismissed.*

Judge of the Supreme Court.

PRIYASATH DEP PC, J

I agree.

Judge of the Supreme Court.

SARATH DE ABREW J

I agree.

Judge of the Supreme Court.