

APPLICABILITY OF PER PACKAGE LIMITATION TO MARITIME CLAIMS IN NIGERIA

Introduction

The principle of per-package limitation of liability in maritime claims is founded on the Hague Rules. In Nigeria, this is contained as a schedule to the Carriage of Goods by Sea Act, Cap 44, Laws of Federation of Nigeria, 1990 (COGSA). Article 4(5) of the Hague Rules (Nigeria) provides as follows: -

“Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding N200 per package or unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.”

In appraising the purport of this provision, it is important to state that the general rule is that the carrier/ship's liability shall not exceed N200.00 per package or unit or its equivalent in any other currency. However, by way of exception to this general rule, the liability of the carrier or ship may exceed N200.00 per package where the value of the goods were declared prior to shipment and stated on the bill of lading.

The importance of this rule to ship owners and P & I associations cannot be underestimated especially in Nigeria where there is a high incidence of cargo claims arising principally from stevedore-negligence. Plainly, by C/P agreement, the ship owner is liable for the acts and omissions of stevedores whom he does not appoint but are regarded as his embodied agents. This C/P provision - which is in certain standard for C/P continues to increase the exposure of carriers or ship owners to potential liability who watches helplessly as cargo is recklessly damaged or pilfered. Thus, the per-package limitation rule serves to ameliorate owner's losses by entitling the owner to limit his liability to a preset figure per unit or package irrespective of the quantum of loss. However, due to the abnormally low level of the limitation sum, the applicability and operation of this provision of the Nigerian COGSA remains far from settled.

What is a Package?

This question came up for consideration in the Court of Appeal in the case of Nigerian National Shipping Line -v- Gilbert Emenike (1987-1990) 3 N.S.C. 163 where it was held that package consisted of unit of carriage as distinct from unit of existence. Thus, where as in the above case, cargo is carried in containers, the containers constitute **the units for the purposes of the Hague rules as distinct from the individual items that are carried in the containers. However, this**

position was departed from by the same Court in The M/V “Caroline Mearsil” & Ors. -v- Nokoy Investment Ltd. (2000) 7 NWLR (Pt. 666) 587, where the Court of Appeal considering the above argument stated as follows:

“This could be wrong. Historical background indicates that containerization in merchant shipping began in the 60’s and 70’s long after the Hague Rules came into effect in the 20’s and 30’s. In ‘Tetley’s Maritime Cargo’ learned author has opined that the historical background is an important factor. In this perspective therefore, it is not correct to say the “container” in all cases means a “package” within the meaning of COGSA as a matter of history and dictates, of common sense.”

Notwithstanding the fact that the latter rather than the former judgment accords with commercial reality and indeed common sense, unfortunately we are faced with two irreconcilable decisions of the Court of Appeal. The question one may ask, following the decision in M/V “Caroline Maersil” is: Under what circumstance will a container not qualify as a package for the purposes of COGSA? This is a question that needs to be resolved by the Supreme Court.

The N200.00 Limitation Figure

The existence of this figure in Nigeria’s statute books has resulted in uproar amongst the cargo interest lobby. The amount is considered too meagre to qualify as compensation for loss of any magnitude whatsoever. Under the 1958 edition of the Laws of the Federation of Nigeria, the per-package figure was stated as £100.00 (One Hundred Pounds Sterling). In the process of re-codifying the entirety of Nigerian statutes and without due regard to the effects of currency devaluation and inflation, the figure was altered at the then prevailing rate of exchange of [\$1.00 to N2.00] to N200.00 (Two Hundred Naira) is approximately US\$2.00 in the 1990 edition of the Laws of the Federation of Nigeria. Today, the value of N200.00 (Two Hundred Naira) is approximately US\$2.00.

Although the application of this figure has not been specifically raised as an issue before the court, two cases indicate the thinking of the court in this regard. In the first instance the Federal High Court in the 1987 case of Owen Adikibi -v- Nigerian National Shipping Line Ltd, applying a similar provision under the 1958 Edition of the Carriage of Goods By Sea Act, held that the defendant was entitled to benefit from the provision of Article 4 Rule 5 of the Hague Rules which limits the liability of the Defendants to £100 or its equivalent.

This decision appeared to have settled the matter until the Court of Appeal in April 2000, in the case of M/V “Caroline Maersil” & Ors. -v- Nokoy Investment Ltd., stated that the interpretation of Article 4 Rule 5 must be done with reference to Article 9 of the Hague Rules which provides as follows: -

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

The court however stated that the value of N200.00 (as a package limitation figure) must be computed with reference to the value of N200.00 worth of gold in [1926] when the Hague Rules came into force and not the current value of N200.00. This position is misconceived, as it is impossible to determine the gold value of N200.00 in 1926, in view of the fact that the Naira came into existence only in 1973.

When Will The Nigerian COGSA Apply?

It is important to note that it is not in every case brought before the Nigerian Courts that the Nigerian Carriage of Goods by Sea Act will apply. This is clearly stated in Section 2 of the Nigerian Carriage of Goods by Sea Act, which provides as follows:

“Subject to the provisions of this Act, the Rules shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in Nigeria to any Port whether in or outside Nigeria.”

The Carriage of Goods By Sea Act is applicable only to contracts of carriage where the port of loading is Nigeria without reference to the port of discharge. Thus, the Nigerian court in Allied Trading Co. Ltd. -v- Elder Dempster (1976) Vol. 1 N.S.C. 277 held as follows:

“The present action arose from the carriage of goods by sea in a ship carrying goods from Madras, India to Apapa, Lagos. This, in my view is outside the contemplation of Section 2 Cap. 29 Laws of the Federation.”

This view was also followed in Kano Oil Millers Ltd. -v- Bank Lighterage (Nig) Ltd (1994) Vol. 2 NSC 198 where the court stated that *“from the facts of the case, the consignment of rice is by a ship from Singapore to a Nigerian Port and so in my view the Carriage of Goods by Sea Act (Cap. 29), Laws of the Federation of Nigeria would not apply.”*

However, where the parties have by their express contract chosen Nigerian Law, then the courts have been favourably disposed towards applying Nigerian Law. Thus, in Leventis Technical Ltd. -v- Petrojessica, the court permitted the application of the Nigerian COGSA where the Bill of Lading provided (by implication) that Nigerian Law should apply.

Conclusion

From the foregoing, it is clear that the law with relation to per package limitation under the Hague Rules is yet unsettled in Nigeria. It requires a clear determination by the Supreme Court of Nigeria (our uppermost tier of appeal). It is hoped that this opportunity will come soon.

- **Kingsley Ohiri** -