China Airlines Ltd v Philips Hong Kong Ltd
[2002] SGCA 29

Case Number : CA 600119/2001

Decision Date : 25 June 2002

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ

Counsel Name(s) : Lok Vi Ming, Ng Hwee Chong and Foong Chi Yuen Joanna (Rodyk & Davidson) for the appellants; Yap Yin Soon and Kok Tsung-Hao (Allen & Gledhill) for the respondents

Parties : China Airlines Ltd — Philips Hong Kong Ltd

Carriage of Goods by Air and Land – Carriage of goods by air – International treaties and conventions – Packing of cargo consisting of nine cartons as one package or pallet – Limitation of carrier's liability when part of cargo went missing – Whether to consider cargo as one package or several sub-packages for computation of compensation – arts 7, 11(2) & 22(2)(b) Warsaw Convention as amended by the Hague Protocol

Words and Phrases – 'Package' – art 22(2)(b) Warsaw Convention as amended by the Hague Protocol

Cur Adv Vult

(delivering the judgment of the court): This appeal raises the question as to the proper construction of art 22 of the Warsaw Convention Concerning International Carriage by Air (`the original Convention`), as amended by the Hague Protocol (`the amended Convention`). Specifically, the question is in relation to how the limit of liability is to be computed, pursuant to art 22(2)(b) of the amended Convention, where a sub-package within a package is damaged or lost in the course of carriage.

Facts

The facts giving rise to the issue are straightforward. The respondents, Philips Hong Kong Ltd, shipped 1,000 cellular digital spark transceivers as cargo from Singapore to Hong Kong by China Airlines Ltd, the appellants. The transceivers were put in nine cartons, and these were, in turn, packed as one single package or pallet, with a total weight of 154kg. A single air waybill was made out by the respondents where against the item `No of Pieces RCP` the figure `1` was inserted and the gross weight was stated to be 154kg. No mention was made that the 1,000 transceivers were packed in nine cartons.

When the package arrived in Hong Kong, it was found to have been tampered with. Four cartons containing 440 transceivers, and weighing 60kg, were missing. The total value of the missing transceivers is US$74,360.

Applicable provision

It is common ground that the carriage was subject to the amended Convention and art 22(2) thereof reads as follows:

> *(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.*

The dispute between the parties is as to how the limit of liability under art 22(2)(b) is to be computed in the fact situation here. The appellants argued that the cartons within the pallet should be the basis upon which the limit of liability would be computed and this would give a figure of $2,974.80. On the other hand, the respondents contended that the correct basis is the pallet and not the sub-package (ie the cartons) and on this basis the amount which the respondents would have to be compensated would be $7,635.32. In the court below, Kan Ting Chiu J ruled in favour of the respondents (see [2002] 1 SLR 57).

Article 22(2) of the original Convention did not have sub-art (2)(b), which was inserted by the Hague Protocol. Sub-article (2)(b) was introduced to answer one of the problems inherent in art 22 of the original Convention as to how the limit of liability was to be computed where only part of the registered baggage or cargo was damaged or lost. The sub-article clarifies the position by providing that the total weight of the `package or packages concerned` is to be taken in computing the limit of liability. The author (Rex C Tester) of the publication, ***Air Cargo Claims*** , explains the application of this provision with this illustration (at p 83):

> *Sub-article 2(b) provides that the weight to be taken into account in determining the limitation is the total weight of the package or packages concerned. Thus, under the unamended Convention, if 1 kilo were missing from a 10 kilo package, liability would arise on 1 kilo; under Warsaw/Hague, if 1 kilo were missing from a 10 kilo package, then liability would arise on 10 kilos. Clearly, this is of considerable importance, as it represents an improvement for claimants.*

While sub-art (2)(b) is of tremendous help in resolving many of the problems relating to the computation of limit of liability, it does not appear to have done so completely, or so it seems from the contentions of the appellants. We would have thought that sub-art (2)(b) is clear enough, and that the basis for computation is, in every instance, the package. This must necessarily refer to the package which is for all to see and would have been so recorded in the air waybill. The appellants` contention would require us to look into the package to see whether there is any sub-packaging, and

if so, then the weight of the latter should be used as the basis for the computation of the limit of liability, in so far as goods within that sub-package are concerned.

Cases under the Hague-Visby Rules

We would at this juncture deal with an argument based on the approach taken by the courts in carriage of goods by sea governed by the Hague Rules and the Hague-Visby Rules. A parallel was sought to be drawn. A good illustration of the point is the case **The River Gurara** [1997] 1 Lloyd`s Rep 225 which concerned the application of the Hague Rules where in art 10 r 5, the material part of which provided that `neither the carrier nor the ship shall in any event be or become liable for any loss ... to ... goods in an amount exceeding o100 per package or unit ...`.

The cargo in question was containerised. But the bill of lading (`B/L`) did specify the number of `bales` or `parcels` or `bags` or `carton` or `pallets` in each container. At first instance, Colman J held in favour of the cargo-owners to the effect that it was the number of items described on the B/L as being within the container, rather than the number of the containers themselves, that was the basis for calculating the limit in respect of the cargo loss. While the Court of Appeal upheld this decision, it did not do so on the same ground.

Phillips LJ noted that a huge metal container stuffed with goods which would normally be made up of individual packages was not naturally described as a package. He then went on a review of the US cases on the issue. In some jurisdictions the `functional economics test` was adopted, namely, whether the contents of the container could have feasibly been shipped in the individual packages or cartons in which they were packed by the shipper (see **The Kulmerland** [1973] 2 Lloyd`s Rep 428). But this test was not accepted in other jurisdictions. In **Hayes Leger Associates Inc v M/V Oriental Knight** (Unreported) the court held that where the B/L disclosed the number of packages in a container, the limit of liability applied to each of those packages. But where the B/L only listed the number of containers and not the number of packages within each container, then the liability limitation applied only to the containers.

This latter approach was apparently also adopted by the courts in Canada, Holland, France and Sweden. While noting the desirability of uniformity in the interpretation of an international convention, Phillips LJ was unable to accept the approach advanced in ***Hayes Leger Associates*** . His reasons were (supra at p 233):

> *The Hague Rules limitation provisions were designed to prevent shipowners imposing on shippers unrealistically low limits of liability. If the parties are permitted to agree their own definition of `packages`, shipowners will, by applying that definition to containers, succeed in evading the minimum limit of liability that the Hague Rules aimed to secure.*

While Mummery LJ agreed with the approach of Phillips LJ, the third member of the quorum, Hirst LJ, like Colman J below, took the American and Canadian approach.

In contrast, and reflecting the US-European approach, is **Standard Electrica SA v Hamburg Sudamerikanische Dampfschiffahrts-Gesellschaft** [1967] 2 Lloyd`s Rep 193, a decision of the US Court of Appeals (Second Circuit). There, seven pallets were lost, and each contained six cartons.

The issue there was whether the pallets or the cartons constituted `packages` for the purpose of limitation. All relevant documents, including the B/L, regarded each pallet as a package. The court held that the pallets constituted packages for limitation purposes. Chief Judge Lumbard said (at p 195):

> *... we think such characterisations are entitled to considerable weight in that the parties each had the same understanding as to what constitutes a `package` and reflect the meaning given that term by the custom and usage of the trade.*

Be that as it may, we note that there are two features which differentiate the regime under the Hague and Hague-Visby Rules and that under the Warsaw Convention, original or amended. In the former the limitation is expressed as a particular amount per package while under the latter it is expressed as a specified amount per kilogram per package. Under the former, it is in the interest of the carrier/shipowner to limit the number of packages being carried. So the larger the package the more beneficial it would be for the carrier/shipowner. But under the latter, the situation is in the reverse, the smaller the size of the package, the better it would be for the air-carrier, as that would mean that if an object in a package is damaged or lost, the applicable limit of liability would be lower.

Second, in the Hague-Visby Rules, there is a specific deeming provision (art IV r 5(c)) touching on containerisation to consolidate goods (absent in the amended Convention):

> *Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.*

This deeming provision, if applicable in ***The River Gurara*** (supra), would have provided the answer for that case.

Like the judge below, we do not think it is necessary to rely on the construction given by the courts to the Hague and/or Hague-Visby Rules to construe the provision in the Warsaw Convention, original or amended. The approach taken by the majority in ***The River Gurara*** (supra), would appear to assist the appellants and that by the US-European cases, the respondents. The one feature common to both regimes is that they use the simple English word `package`.

Purposive interpretation

The appellants aver that in arriving at his conclusion the judge below did not have sufficient regard to the objects of art 22 and the Convention. Reliance is placed on the decision of this court in **Yusen Air & Sea Service (S) v Changi International Airport Services** [1999] 4 SLR 135 to argue that a purposive interpretation should be given to art 22. In ***Yusen Air*** , the issue was whether the term `carrier` in art 22 of the original Convention should be interpreted to cover the carrier`s servant and agents when they acted in furtherance of the contract of carriage so that the servant and agents

would also enjoy the limit of liability prescribed therein. This court ruled that it did and, having reviewed the authorities, including those from foreign jurisdictions, said at [para]55:

> *We find a common feature in these cases: it is a recognition of the commercial reality that, if a plaintiff is permitted to sue the carrier`s agents or servants to recover the full extent of his loss, the carrier would indirectly have to be responsible for such losses through the provision of indemnities to its agents or servants acting in furtherance of the contract of air carriage. This would be contrary to one of the main objects of the Warsaw Convention, that is, to protect air carriers from claims beyond the prescribed limits.*

We concur that the amended Convention should, like the original Convention, also be given a purposive interpretation. But taking that approach alone does not necessarily lead one to the result contended by the appellants. The object of art 22 is to set a limit as to the liability of the carrier and it prescribes a formula as to how the limit is to be arrived at. While we stated in ***Yusen Air*** (supra) and **Singapore Airlines v Fujitsu Microelectronics (Malaysia)** [2001] 1 SLR 241 that the Convention, both original and the amended, seeks to protect the carrier, by setting limits as to its liability, we do not think that that means that any conceivable manner of construction which would reduce the limit of the carrier`s liability should be adopted. That is not what the amended Convention provides. Neither is that the case under the original Convention. The Convention seeks to strike a balance between the interest of the carrier and those of the passengers/consignors.

The literal meaning of `package` includes a wrapper, case, bag, envelope and anything that holds things together. It can be large or small. It could include a `container` or a `pallet`. There is really no technical meaning to it. Clearly, the word `package` must be construed in the light of the provisions of the amended Convention as a whole. There is nothing in art 22(2)(b) to indicate that `size` is a factor in relation to a package. In our opinion, the construction which a court gives to the word `package` must be reasonable and fair, and it must also promote certainty.

Counsel for the parties have informed us that though they have carried out an extensive search, including foreign jurisdictions, there is a dearth of authorities on the issue. In **Data Card Corp v Air Express International Corp** [1983] 2 All ER 639[1983] 2 Lloyd`s Rep 81, a single air waybill was issued in respect of a consignment which was described as comprising eight packages with a gross weight of 3,132.5kg, consisting of calendering/embossing machines. One of the packages was dropped while being off-loaded at Heathrow Airport and the machine therein was damaged. ***This case concerned the interpretation of art 22 of the original Convention*** . The argument there was whether the calculation of limit of damage should be based on the weight of that one package or on the weight of the total consignment and the court ruled that it was the former. It must also be borne in mind that ***the air waybill did refer to eight packages*** . Thus the case is really of no assistance.

Containerisation

The problem involving several shipments assembled in a container by a freight forwarder and covered by just one air waybill, identified by several writers, including the author RH Mankiewicz in `The Liability Regime of the International Air Carrier`, Deventer 1981 No 152, do not arise here.

The authors, ***Giemulla and Schmid on Warsaw Convention (Supp 13)*** , made the following

observations:

> *In the meantime this regulation has gained immense practical importance, owing to the common practice of transporting goods in containers. As regards the determination of damages, the problem is to determine, whether the package concerned is to be viewed as a separate shipment in itself or just as a single part of a shipment. Against the background of Articles 18 and 22 which have been created to provide compensation on the basis of actual loss, the following will have to be taken into consideration if the carrier had to pay damages for the value of the entire shipment, he might possibly be held responsible for damage which in actual fact did not occur. There would be no justification for determining damages on the basis of the total weight of a container where only part of its contents was in fact affected. The purpose of packing single packages into containers is to facilitate transport, for example, by ensuring the single parts of so called* ***collective consignments*** *are forwarded, and to provide better protection of the individual package. The fact that single packages are collected in a container does not give additional value to the consignment, which would be lost in the event of damage to the whole package.*
>
> *Although a distinction between `total package` and `single package` was inserted for the first time by the Hague Protocol, this regulation is used by US courts in interpreting the Convention. Furthermore, in their opinion the single package is decisive in the determination of damages, where a separate air waybill has been prepared in respect of it. In a case in which part of a shipment of hard disk drives was damaged, by contrast, the US District Court determined damages on the basis of the weight of the entire shipment. The court pointed out that the consignee had had to examine all parts of the shipment in order to sell them at normal market prices. This also applies if only one single package of a total consignment (here, computers) was damaged.*
>
> *US jurisprudence also supports this view by drawing an analogy with Article 2 of `The Hague-Visby Rules` (Maritime Transport Law) which contains regulations to the same effect.*

Similarly, the authors of ***Shawcross and Beaumont on Air Law*** (4th Ed) Vol 1 at para viii (p 604) also made these remarks (relied upon by the appellants):

> *In the case of a container carried under a single air waybill but comprising a consolidated consignment made up of goods belonging to several different persons, the effect of these rules is that the relevant weight is that of the damaged items only, subject to the possibility that the value of other items in the container may also be affected in which case the weight of those items may also be taken into consideration. Nothing seems to turn, for this purpose, on the extent of the particulars as to the container`s contents included in the air waybill; it seems incorrect to hold, as a Dutch court has done, that the `packages concerned` will be those damaged insofar as they are separately identified in the air waybill (the implication being that if no details are given the goods carried under an air waybill are to be treated as a single whole).*

It seems to us that the comments of ***Giemulla and Schmid*** that `there would be no justification for determining damages on the basis of the total weight of a container, where only part of its contents was in fact affected` were made in the context where goods of several consignors were stuffed in a

single container by a freight forwarder, and in respect of which one air waybill was issued denoting only one item. The authors could not have intended the comments to apply where all the goods in a container belonged to one consignor, irrespective of whether those goods were placed in smaller packages. It is understandable why the point was taken that an owner of goods, which formed a part of the cargo in a container, should not be allowed to enjoy the benefit of consolidated freight in so far as determining the limit of liability is concerned.

The Dutch District Court case ***World Airlines v Nieuw Rotterdam*** referred to by ***Shawcross and Beaumont*** (only as described by TM Kolle in an article published in ***Air Law*** Vol VIII (1983) as a copy of the report of the case was not obtainable by counsel) involved a carrier receiving from a freight forwarder, a ***consolidated*** freight consignment, a container weighing 1,382kg, consisting of 64 crates of which ten belonged to a consignor, Edax. The ten crates weighed 359kg. Only one joint air waybill was issued to the forwarder on which was stated `consolidated freight ... consisting of 64 cartons`. On arrival in Amsterdam, between 4 to 6 crates of Edax were damaged. The point in issue was whether it was the container as a whole or just the damaged crates which should be regarded as the `package concerned` for the purpose of calculating the maximum liability of the carrier. The carriage was governed by the amended Convention. The court ruled that as the air waybill specified the number of cartons, and what was in the container was consolidated freight, the relevant weights to be taken into account for reckoning the limit of liability were those of the damaged cartons and not the weight of the entire container. In coming to its conclusion the court applied the rationale in the Hague-Visby Rules relating to the limit of liability for sea carriage in containers.

In any case, we are not here dealing with a situation where goods of several consignors were stuffed by a freight forwarder in one container and declared by the forwarder to be simply one item. Here, no containerisation was involved. The goods in question belonged entirely to the respondents and they were placed in cartons for a more secured carriage.

We will, therefore, not explore any further as to the difficulties that consolidated freight, carried in a container, may pose. Whether there is a need for the international community to enact something similar to art IV r 5(c) of the Hague-Visby Rules is a matter for the appropriate international organisation to pursue.

Was there an error?

The appellants next rely on art 11(2) of the amended Convention to argue that what is stated on a B/L is not conclusive:

> *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.*

Thus the statement as to the number of packages on an air waybill is only prima facie evidence of the same. That must be so. Obviously, if there is a clear error as to the number of packages that is

written on an air waybill, the carrier must be allowed to adduce evidence to show what was the true number of packages which were consigned to the carrier. Otherwise, it would mean that even if the carrier were able to demonstrate that what was written was clearly in error (be it due to a clerical mistake or other causes) the carrier would nevertheless have to indemnify the consignor for a package or packages that were never consigned for carriage. Similarly, the carrier should be allowed to prove an error as to what was recorded as the weight of a package.

But it is altogether another matter to say that there is an error in the description of a package just because the goods in that package were packed in nine smaller packages. The carrier and/or its agent would have seen that there was this one big package, measuring 120 x 100 x 68cm. That was the basis upon which the contract of carriage was entered into. Where is the error? One need not have a highly imaginative mind to appreciate that the approach contended for by the appellant carrier would give rise to uncertainty and/or unnecessary controversies. What then would have been the position if the articles (every one of which was placed in a box) were just stacked therein without being held together in some kind of smaller packages like boxes or cartons? Are we therefore to say that where an article therein is damaged, the computation of the limit of liability is to be based on the weight of that box containing the article and nothing else? If that is to be the approach, then it would be clearly inconsistent with the express terms of art 22(2)(b) which provide that where an object in a package is damaged, the weight to be taken into consideration to reckon the limit of liability is the total weight of the package. Why should it make a difference whether or not the transceivers were placed in cartons or boxes for better protection during carriage?

There can also be controversy as to what would constitute a package in the sense contended by the appellants. Say, if the boxes containing the transceivers were not placed in cartons but tied together extensively, would that constitute packages? What if some were placed in cartons but some were not? Article 22(2)(b) also applies to a check-in baggage of a passenger. Suppose a passenger checks in a big bag and he puts in the bag an article which he bought in a foreign land with its original packaging and that article was found missing on arrival. Is it to be said that the limit of liability is to be reckoned only from the weight of the box containing the article and not the entire bag, which would include his clothing and other personal belongings which were never boxed?

While we recognise that controversies can never be eliminated, whichever approach is adopted, we are of the view that the approach taken by the court below and which we endorse, reasonably promotes certainty and is also in line with the object of the amended Convention. To allow opening up of a package to see what is the packaging inside is certainly more likely to encourage disputes. After all, upon receipt of a `package` for carriage, whether it be a check-in bag of a passenger or cargo, the carrier knew the extent of its maximum liability in respect of that package. In the words of the authors ***Giemulla and Schmid*** , the purpose of the Convention, in establishing liability limits, is to `enable the carrier to calculate his risk`. This object will not be undermined by our decision.

Article 22(2)(b) refers to a package or packages and not to sub-package. We should not be concerned with sub-packaging which does not appear to the eye and never formed the basis for the contract of carriage. While an air waybill is made out by the consignor, the carrier or its agent has the right to accept or reject the consignment. Every air waybill is made out in three original parts. The first part is for the carrier and it must be signed by the consignor. The second part is for the consignee and it must be signed by the consignor and the carrier. The third part is for the consignor and it must be signed by the carrier after the goods have been accepted (see art 6 of the amended Convention). As far as carriage of cargo is concerned, the contract is concluded at the time the consignment is accepted.

Under art 7 the carrier has the right to require the consignor to make out separate air waybills when

there is more than one package. Furthermore, there can be no doubt that a carrier has the right to set the weight limit for each package if it were concerned about the question of limit of liability. It is a matter which lies within its discretion. In this way the carrier could set the maximum extent of its liability for loss or damage of a package. In its case, the appellants seem to be suggesting that there could be difficulties in effecting control in this manner. There is no evidence of that. One should not equate commercial consideration or expedience with impracticality or impossibility.

At this juncture, we must refer to a pertinent recent case which was cited to us by the respondents. But we should point out that it was a decision of an English County Court: ***Electronics Discount Centre v Emirates Skycargo*** (judgment of 8 April 2002). There the plaintiff consigned four cartons of 600 mobile telephones, with a total weight of 301kg. During carriage 110 mobile telephones went missing from three of the four cartons. The total weight of the missing mobile telephones was only 55kg. But the total weight of the three cartons was 213.5kg. The court there took judicial notice of the fact that each of the mobile telephone would have been packed in a smaller box, which would also have contained a manual, guarantee card and possibly a battery charger. The carrier argued that for the purpose of art 22(2)(b), there were in fact 600 packages instead of four packages and that the correct weight of the cargo for the purposes of determining limitation under that article was 55kg, namely, the total weight of the 110 missing mobile telephones.

The deputy district judge ruled that the relevant moment to consider the number of package or packages was at the time the parties entered into the contract of carriage. As the contract provided that there were `4 pieces`, he found that the `package or package concerned` in art 22(2)(b) were the four cartons. The carrier did not even know that there were 600 mobile telephones in the four cartons, only that they contained `electronic equipment`. He was not impressed with the carrier`s argument that this approach would lead to some surprising results in that, for example, the value paid per mobile telephone lost would depend on the number of telephones lost from each of the four cartons.

Like the deputy district judge in ***Electronics Discount Centre*** (supra), we agree that such an anomaly is inevitable as the amended Convention by providing for a fixed sum of compensation (based on weight) does not take into account the real value of the goods, subject, of course, to the proviso that a consignor cannot claim for more than the losses he actually suffers.

Judgment

In our judgment, whether it is the literal interpretation or the purposive interpretation which we should apply to art 22(2)(b), the answer, on the facts of this case, remains the same: the computation of the limit of liability should be based on the package as a whole. The answer could have been different if the consignor had indicated that in that one big package there were, say, some nine sub-packages. However, we express no definite opinion on this as it does not arise here. What we would say is that we do not think the approach we indorse herein will give rise to any real mischief and if there should be any, the remedy lies entirely in the hands of the carrier.

It is true, as the appellants contend, that art 22 is a compensation provision. They also argue that this article is not intended to unjustly benefit the consignor and that where only a part of the cargo is lost, the carrier is entitled to bring evidence to show the weight of the lost cargo. But we are unable to see how there could be any unjust benefit or unjust enrichment. We would reiterate that a consignor can never recover more than his actual loss. As the learned author, ***Tester*** , states in his

work (see [para]6 above), the amended Convention improves the position of the consignor. It merely provides for a higher cap on the compensation due to the consignor and nothing more. Of course, if this cap is more than his actual loss, the consignor is only entitled to be compensated up to the actual loss. Here we would quote from the grounds of judgment of the court below:

> *18 This argument arises from a fallacy. Article 22(2) sets the limit to the compensation payable. It says that for lost, damaged or delayed cargo, the compensation shall not exceed 250 francs per kilogramme of the package or packages concerned. It does not fix the compensation at 250 francs per kilogramme of the package or packages lost, damaged or delayed.*
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> *19 Article 22 does not enable a consignee to recover more than its loss. If a consignee suffered a loss of 1,000 francs as a result of the loss, damage or delay of its goods in a consignment of 50 kilogrammes, it cannot recover 12,500 francs. The most it can recover is 1,000 francs, and less if the compensation is reduced by limitation. This is evident in the present case. The value of the lost transceivers is US$74,360. The plaintiff limits its claim to $7,635.32, while the defendant contends that it should be limited to $2,974.80. The defendant may argue that the plaintiff`s claim is subject to a lower limitation (if the number of packages is taken as nine), but it is overstating the case to complain that the claim would result in an unjust benefit to the plaintiff.*

With respect, we think the arguments of the appellants in the circumstances of this case, if accepted, would bring us right back to the position before the amendments were made to art 22(2) by the Hague Protocol: compensate based on the weight of what is missing/damaged and nothing more.

In the premises, we agree with the opinion of the court below. The appeal is dismissed with costs. The security for costs, with any accrued interest, should be released to the respondents` solicitors to account of the respondents` costs.

Outcome:

Appeal dismissed.