

IN THE SUPREME COURT OF TONGA

CIVIL APPEAL JURISDICTION

NUKU'ALOFA REGISTRY

C. APP.1053/99

BETWEEN : 1. VILIAMI LOLOHEA
2. 'ALIPATE TUFUI : Appellants

AND : MOEAKI MOSA'ATI : Respondent

BEFORE HON JUSTICE FINNIGAN

Counsel : Mr 'Etika for appellant, Mr Veikoso for respondent

Date of Hearing : 30 November 1999

Date of Judgment : 30 November 1999

ORAL JUDGMENT OF FINNIGAN, J

This is an appeal against a decision of a Magistrate, awarding damages to the respondent. The claim was a claim for goods damaged during carriage by sea. The appellant submits that the learned Magistrate misapplied s5 and Article IV paragraph 5 of the Carriage of Goods by Sea Act, cap 141.

Briefly, the facts are that the respondent shipped a box without disclosing that it contained valuable items including a television set which he valued at T\$1,500. The television set was damaged in transit and the respondent claimed. The Magistrate referred to the above statutory provisions, found liability was established and allowed the claim in part, awarding T\$200.

T\$200 is the limit of liability imposed by paragraph 5 of Article IV. In making submissions for the respondent Mr Veikoso has conceded the grounds of the appeal at the outset. His only submission was to accept that paragraph 5 of Article IV is subject to s5 of the Act. There it is provided that where the carriage by sea is between two ports within the Kingdom then the limit of liability is T\$20. As Mr Veikoso rightly observed, until the legislative assembly changes the Act, then all his client may recover (unless he declares the nature and value of the valuable items) is T\$20. I commend Mr Veikoso's approach.

I uphold the appeal to the extent of leaving undisturbed the Magistrate's finding of liability, which is accepted by the respondent, and for the quantum of damages awarded I substitute the amount of T\$20.

For clarity and in response to Mr 'Etika's submission, I declare that the purpose of s5 and of paragraph 5 of Article IV is to put a limit on the amount that may be claimed as damages for loss of or injury to goods carried by common carriers at sea. These provisions do not affect liability, and liability is a matter for claim and defence under the full range of contract and tort law.

NUKU'ALOFA, 30 November 1999



Annigan J
JUDGE