

## A CRITIQUE OF RESPONSIBILITIES OF BAILEE FOR LOST GOODS

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### **Introduction**

Bailment means a kind of relationship in which the personal property of one person momentarily goes into the possession of another. The ownership of the articles or goods is with one person and the possession with another.<sup>264</sup> The conditions in which this happens are numerous in day to day incidents.<sup>265</sup>

In this article, the researcher's main concern is related to the circumstances in which a bailee does not return the goods back to its owner (Bailor) and parted with the possession due to his negligence in taking care of the goods as a reasonable prudent person. The researcher has discussed the responsibilities of bailee for lost goods in context of both Indian Law i.e. Indian Contract Act 1872 and Common Law rules regarding bailment. The limitation of liability is also discussed by the researcher regarding care to be taken by the bailee.<sup>266</sup>

In the last part of the article, researcher has discussed about the actions which can be taken by the bailee against the bailor for his negligence and loss incurred by the bailor. Finally the latest developments in case of responsibilities of bailee for lost goods have been discussed with the help of latest judicial decisions of the Courts of India.

The article has been written in the article form and the objective of this article is to clarify the principles that apply when someone loses the goods of another while left in the formers possession whether he can be held liable as a bailee under Indian Contract Act.

In this article, the researcher has dealt with the responsibilities of Bailee for lost goods in Common law as well as in Indian law. The origin of Indian Contract Act, 1872 [hereinafter "ICA"] is also in Common law. As a result, there is not too much difference between the two.

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<sup>264</sup> T. S. Venkatesh Iyer, TREATISE ON LAW OF CONTRACTS, 330 (6<sup>th</sup> edn. 1995).

<sup>265</sup> Avatar Singh, LAW OF CONTRACTS AND SPECIFIC RELIEF, 660 (10<sup>th</sup> edn. 2008).

<sup>266</sup> Iyer, *Supra* note 1, at 332.

## Bailment

Under the ICA bailment is defined as the delivery of possession of goods from one person to another for some purpose upon a contract. And when the purpose would be completed, the goods would be returned or otherwise disposed of according to the direction of the person who had delivered them.<sup>267</sup>

The first important characteristic of bailment is “**the delivery of possession**” by one person to another. Delivery of possession for this purpose should be differentiated from a mere “custody”. But one who has custody without possession, like a servant, or a guest using his host’s goods is not a bailee. The goods must be handed over to the bailee for whatever is the purpose of bailment. Once this is done, a bailment arises, irrespective of the manner in which this happens.<sup>268</sup>

The second and third important characteristic is that transfer of possession should be for some “**purpose**”, must be “**upon a contract**” that when the purpose is accomplished the goods shall be returned to the bailor.<sup>269</sup> But, what happens when the goods are not returned to the bailor after the accomplishment of purpose?

So, if the purpose of the bailment is accomplished or the time for which the goods were bailed has expired, the bailee should return the goods to the bailor without demand.<sup>270</sup> If he fails to return the goods, he will be liable for the loss or damage to the goods from the date of default.<sup>271</sup> In keeping with the provisions of Sections 151 and 152, a bailee is excused from returning the subject matter of the bailment to the bailor where it has been taken away from him by authority of law exercised through regular and valid proceedings.<sup>272</sup>

In this article, researcher is dealing only with the circumstances of lost goods when they were in the custody of bailee. So, the bailee would be liable if he is unable to return the goods because he might have lost the goods due to negligence. However, he will be excused from his inability to return if the goods are lost without his default.<sup>273</sup>

## Care to be taken by the Bailee

So, the contract of bailment creates certain duties on bailee. The first and most important duty of a bailee is to take care of the goods entrusted to him. The question which has always been debated is that what should be the standard of care expected of a bailee or the degree of negligence which should make him responsible for the lost

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<sup>267</sup> Sec. 148, Indian Contract Act, 1872.

<sup>268</sup> Singh, *Supra* note 2, at 662

<sup>269</sup> Iyer, *Supra* note 1, at 333.

<sup>270</sup> Sec. 161, Indian Contract Act, 1872.

<sup>271</sup> Singh, *Supra* note 2, at 670.

<sup>272</sup> *Chitty on Contracts*, Vol. 1,189 (H.G. Beale ed., 29<sup>th</sup> edn. 2004).

<sup>273</sup> *Id*, at 193.

goods. There are three types of diligence defined under Common Law as high degree of diligence, ordinary and slight diligence.<sup>274</sup>

Common or ordinary diligence is defined as the degree of diligence which men in general, exercise in their own concern. Sir William Jones defined it as, “*the care which a person of common prudence and capable of governing family, takes of his own concerns.*”<sup>275</sup>

High or great diligence is defined as extraordinary diligence or that which very prudent persons take of their own concerns and slight diligence is that which persons of less than common prudence take in their own concerns.<sup>276</sup>

Under Indian Contract Act the care which has to be taken by the bailee is defined under Section 151, which provides that the bailee is bound to take as much care of the goods as a man of ordinary prudence would take care of his own goods under similar situation. The degree of care is same for all types of bailment, but the measure of care depend upon the facts of each case.<sup>277</sup>

This section abolishes the difference in the amount of care required of various kinds of bailees under the English Law. Under English Law, in *Coggs v. Bernard*<sup>278</sup>, a distinction was made between a mandate and a deposit where mandate was defined as the duty to use reasonable care and deposit was defined as no liability except for gross negligence. However, later English judicial opinion went into the favour of the view that the duty of every bailee is to take reasonable care. Therefore, the standard of care required is the standard demanded by the situations of each particular case.

So where silver was entrusted to a goldsmith for making jewels and the silver was lost in spite of taking all the care for its safety. As silver was locked in almirah and a watchman was employed for the security during night, it was held that the goldsmith took all the precautions which can be taken by a prudent person and he was not negligent in keeping safety of silver. So, goldsmith was absolved of his liability.<sup>279</sup>

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<sup>274</sup>B. Sanyal, *Loss, Destruction or Damage of Goods in the Custody of a Bailee related Issues and Concepts*, 28(1) INSURANCE TIMES 21, 21 (2008).

<sup>275</sup> Iyer, *Supra* note 1, at 334.

<sup>276</sup> Sanyal, *Supra* note 11, at 22.

<sup>277</sup> Sec.151, Indian Contract Act, 1872.

<sup>278</sup> *Coggs v. Bernard*, (1703) 2 Ld Raym 909.

<sup>279</sup> *Sitla Baksha Singh v. Baij Nath*, AIR 1936 Oudh 264.

Even a gratuitous bailee must use such skill as he possesses, or by his profession or condition, he may be reasonably expected to possess. Omission to exercise that skill may be regarded as negligence on his part. It has been said that a man undertakes to show off a horse is presumed to be a competent rider.<sup>280</sup>

In *Gibaud v. Great Eastern Railway*<sup>281</sup>, a railway company contracts with plaintiff to keep his goods in cloakroom but kept it elsewhere in the station and as result it is stolen. Court held that as the contract was to keep the goods in cloakroom so the reliance was placed on the clause and hence defendant was held liable.

An interesting case is that of *Morris v. C W Martin and Sons Ltd.*<sup>282</sup>, where the plaintiff sent her mink stole to a furrier to be cleaned. The furrier told her that he himself would not clean but he could arrange defendant to do this. The furrier accordingly, acting as principal and not agent, made a contract with defendants to clean the plaintiff's fur. When the fur was in the possession of the defendants, the fur was stolen by the servant. The plaintiff sued the defendants.

The court of appeal held the defendants liable. The three members of the court make the verdict on the basis of two principles that (1) when the defendants received the fur in order to clean it they became bailees for the reward, (2) as they were considered as bailees, they owed a common law duty to the plaintiff.

Whereas in *Bachraj Dugar v. Lalchand Todi*<sup>283</sup>, the Assam High Court held that a *sapurddar*, a custodian was considered as bailee and his possession was held to be regulated by Contract act. And he has the duty to return the goods failing which he has to pay the price.

Also if the bailee has wrongfully parted with the goods or lost it by negligence, it is no defence for him to show that he is unable to return it, but if the accidental loss is without any default on the part of the bailee then he can be for his failure to return.<sup>284</sup>

The fact that the standard of care differs from case to case and hence one standard cannot be set. Due to this bailee can't say that many others (bailees) have acted in the same way. In *Gour Chandra Mukherjee v. Andrew Yules Co-op Credit Society Ltd.*<sup>285</sup>, where the director of cooperative society entrusted with the society's cash, he locked it and kept according to the usual practice. But the cash was stolen and his contention was that he followed the

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<sup>280</sup> Graham S. McBain, Modernising and Codifying the Law of Bailment, Issue 1 JOURNAL OF BUSINESS LAW 1, 10 (2008).

<sup>281</sup> *Gibaud v. Great Eastern Railway*, [1921] 2 KB 426.

<sup>282</sup> *Morris v. C W Martin and Sons Ltd.*, [1966] 1 QB 716.

<sup>283</sup> *Bachraj Dugar v. Lalchand Todi*, AIR 1962 Assam 23.

<sup>284</sup> *Bachraj Dugar*, AIR 1962 Assam 23.

<sup>285</sup> *Gour Chandra Mukherjee v. Andrew Yules Co-op Credit Society Ltd.*, AIR 1977 Cal 336.

usual standard of practice. In final verdict, court held him liable for his negligence and rejected his contention because the practice was considered as insecure and risky.

There is one more situation when bailee loses his own goods along with those of bailor's and then taking a defence that he was taking proper care of goods of bailor same as he was taking care of his own goods. But it would not be considered as deciding factor. The negligent behaviour by bailee towards his own good is no justification for his negligence towards bailor's goods unless the bailor was aware of his habits and knew what to expect from him. But a minimum reasonable standard of care is required everywhere.<sup>286</sup>

It was established in various cases that the extent of duty of care taken by a bailee does not end at reasonable precaution to mitigate the risk but also extends to him taking all proper measures to prevent any kind of harm to good. There is one exception to this principle that when goods are lost or stolen during a riot by riotous mob or the act of god, then the bailee is not held liable for the loss.<sup>287</sup> In *Shanti Lal v. Tara Chand Madan Gopal*<sup>288</sup>, the bailee of grain was not held liable for the loss of sacks of grain. Because, they all were taken away by the flood and he could not able to protect them.

Similarly in, *Gopal Singh v. Punjab National Bank*<sup>289</sup>, goods were pledged with a bank as security for loan. Due to partition of the country, the bank employees being mostly Hindus left their duty and got back to India like many other Hindus.<sup>290</sup> The pledged property was also left behind uncared for. It was held that in the circumstances the bank would not be held liable under Section 151 for the loss of the pledged goods or their value. Court also said that that the bank had acted as prudent person in regard to one's own property in the extraordinary situation that had arisen in Pakistan after the partition of India.<sup>291</sup>

Section 152 indicates that a bailee may make a special contract increasing his responsibility. He may by making a special agreement, increase his liability. But it does not mean that you can decrease the minimum degree of care required under Section 151 by special contract. But in some cases, it has been held that it is open to a bailee to reduce his liability below the standard fixed by Section 151.<sup>292</sup>

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<sup>286</sup> *Trietal on Law of Contracts*, 681 (Edwin Peal ed., 12<sup>th</sup> edn. 2007).

<sup>287</sup> *Id.*, at 682.

<sup>288</sup> *Shanti Lal v. Tara Chand Madan Gopal*, AIR 1933 All 158.

<sup>289</sup> *Gopal Singh v. Punjab National Bank*, AIR 1976 Delhi 115.

<sup>290</sup> Sec. 152, Indian Contract Act, 1872.

<sup>291</sup> *Gopal Singh*, AIR 1976 Delhi 115

<sup>292</sup> *Pollock and Mulla: Indian Contracts and Specific Relief Acts*, Vol. 2, 1982 (R.G. Padia ed., 13<sup>th</sup> edn. 2006).

Similarly in *Rampal Ramchand Aggarwal v. Gourishankar Hanuman Prasad*<sup>293</sup>, where the plaintiff has taken some loan from defendant and pledged his goods with the defendant. While the goods were in custody of pledge, they were stolen. Plaintiff argued that as pledgee as has lost the goods now there is no need to pay anything to anything to him. But court came with an interesting observation that as pledgee has taken ordinary care to protect the goods he would not be held liable as bailee and he may recover his debt and the loss of the goods falls on the owner.

In Common Law the position is somewhat different where the bailee's duty does not come to an end, when the goods are lost or stolen. A bailee for reward ought to take such steps which can be considered as reasonable and usual with a view to recovering the goods. If he fails to do so, the burden of proof is on him to show that the reasonable efforts would not have been successful.<sup>294</sup>

In *Canara Bank, Mannarkkad v. Bhavani Oil Company, Chemmannur*<sup>295</sup>, there was an exclusion clause in a contract of bailment that the goods will be kept in the bank's godown at risk and responsibility of the borrower. It was held that this did not cover the negligence on the part of the bank, and the clause only covered ordinary care which was required to be taken under Section 151. The bank could not avoid its liability on account of its negligence resulting in loss of goods which were in its possession.

As in every other contract, in English Law, a bailee may by special agreement oral or written can expand or limit his liability for the loss of goods. Hence his liability depends upon the terms of contract. So, if the bailee expresses to take care of goods to keep it safe, he enlarges the measure of his responsibility and he might be considered as the insurer of goods.<sup>296</sup>

### **Common Carriers**

A common carrier is one who carries or transports for hire as a business and not as a casual occupation. He should hold himself out as ready to carry goods for any person or to carry any passenger, no matter who they may be. If a right of selection is given to him for whom to carry and what to carry then he cannot be considered as common carrier. Common carriers may be by land and inland navigation or they may be common carriers by sea.<sup>297</sup>

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<sup>293</sup> *Rampal Ramchand Aggarwal v. Gourishankar Hanuman Prasad*, AIR 1952 Nag 8. Facts: Bailee kept the bailor's ornaments locked in a safe and kept the key in a cash box in the same room. The room was situated on the ground floor and it was easily accessible to burglars by removing the latch because it was locked from outside. The ornaments were stolen and bailee was held liable.

<sup>294</sup> *Coldman v. Hill*, [1918-19] All ER Rep 434.

<sup>295</sup> *Canara Bank, Mannarkkad v. Bhavani Oil Company, Chemmannur*, AIR 2004 Ker 273.

<sup>296</sup> Padia, *Supra* note 29, at 1984.

<sup>297</sup> *Cheshire, Fifoot and Furmston's Law of Contract*, 220 (M. P. Furmston ed., 15<sup>th</sup> edn. 2007).

The provision of Section 151 and 152 of the contract act does not apply to common carriers. There was a dispute for the long time that whether common carriers should be considered as bailee. It was due to the Common Law rule that carriers are recognised as insurers of goods which means that they were responsible for every injury to the goods occasioned by any means whatever, except the act of God and the King's enemies.<sup>298</sup>

This question came in Bombay High court in 1878 in case of *Kuverji Tulsidas v. Great Indian Peninsular Railway Company*<sup>299</sup>, it was held that the definition of bailment in section 148 was large enough to include bailment for carriage. But later Privy Council held that the duties and liabilities of common carriers in India should be governed by the principles of English Common law in conjunction with the provisions of Carriers Act 1865, because if they would be considered as Bailee then Carriers Act would be rendered nugatory.

Other carriers such as Carriage by Air both domestic and international, sea carriage and railway carriage were considered as bailees. These are discussed in detail by the researcher as:

### **Carriage by Air**

Carriage of goods by air for domestic flights is governed by the Carriage of Goods by Air Act, 1974, a legislation which is based on the provisions Warsaw convention of 1929 and Hague Protocol of 1955 (amended provision of Warsaw convention 1929). According to these legislations bailee would be held liable for the lost good provided he proves that he and his servants or agents have taken all necessary measures to avoid the loss of good or that it was impossible for them to take such measures.<sup>300</sup>

In *Fothergill v. Monarch Airlines Ltd.*<sup>301</sup>, the plaintiff travelled by air and his baggage was damaged. The carriage was governed internationally by the Warsaw and Hague Conventions, the defendant admitted the liability for the damage to the suitcase but rejected the claim for the articles lost. As the plaintiff had only made a complaint about damage to his suitcase in time and not of the loss of articles, the airline was not held responsible for the loss of articles.

### **Carriage by Sea**

There is a conflict of the decisions as to the liability of such carriers being governed by the Common Law of England or the provisions of Section 151 and 152 of Contract Act. The High Court of Calcutta in *MacKillican v.*

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<sup>298</sup> *Id*, at 225.

<sup>299</sup> *Kuverji Tulsidas v. Great Indian Peninsular Railway Company*, (1878-1880) ILR 3-4 Bom 73.

<sup>300</sup> *Padia*, *Supra* note 29, at 1968.

<sup>301</sup> *Fothergill v. Monarch Airlines Ltd.*, [1980] 2 All ER 696.

*Compagnie Des Messageries Maritimes De France*<sup>302</sup>, has held that foreign companies is not a common carrier but later in *Hajee Ismail Sait v. Compagnie Des Messageries Maritimes of France*<sup>303</sup>, Madras High Court held that they were common carriers because they were foreign company, and that the liability of the company was governed by the Common Law of England<sup>304</sup>, and not by the provisions of Contract Act (Section 151 and 152).<sup>305</sup>

## **Railways**

When goods are entrusted to the railways for carriage, its liability is that of a bailee, and not of a common carrier. Section 99<sup>306</sup> of the Railway Act provides that the railway administration shall be responsible as bailee under Section 151, 152 and 161 for the loss of any consignment, and therefore it must take as much care of the goods as a man of ordinary prudence. If the goods are carried at the owner's risk rate (If goods are moved from one place to another at the owner's risk, the owner must insure the goods while they are being moved), railway is not responsible for loss except on proof of negligence or misconduct on the part of the administration or any of its servants.<sup>307</sup>

The National Rail Conditions of Carriage, published in 2000, no longer indicate when transport begins and ends. There was a condition that states in case of passenger luggage a train company will not be held liable for the loss of property that has been left behind on a train company's premises or one of its trains. It is the responsibility of Train Company to redeliver the goods to the person producing ticket on a reasonable request and within the reasonable time. If they permit an unauthorised person to take away the goods from their custody it would be fundamental breach of contract of bailment and they have to pay the damages to the real owner.

The obligation to return or deliver back the goods is implied in the contract of carriage. Railway is not liable for the loss etc. of any consignment where a false description of the consignment is given to the railway, or where a fraud has been committed by the consigner (bailor).

In *Union of India v. Udho Ram and Sons*<sup>308</sup>, it was found that precautions taken by Police Protection Force were inadequate and inefficient because Protection Force moved out of the guard's van to keep an eye on the wagons

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<sup>302</sup> MacKillican v. Compagnie Des Messageries Maritimes De France, (1881) ILR 6-7 Cal 148.

<sup>303</sup> Hajee Ismail Sait v. Compagnie Des Messageries Maritimes of France, (1905) ILR 28 Mad 400.

<sup>304</sup> Mogy Liner Ltd. v. Manipal Printers and Publishers Ltd., AIR 1991 Ker 1991.

<sup>305</sup> Vivek Kumar Jha, *Carriage of Goods by Sea: A study of Carriers Liability under Hague and Hamburg Rules*, Issue 7 (July) ALL INDIA REPORTER 126, 128 (2005).

<sup>306</sup> Sec. 99, Railways Act, 1989.

<sup>307</sup> McBain, *Supra* note 17, at 15.

<sup>308</sup> Union of India v. Udho Ram and Sons, [1963] 2 SCR 702.

when the train stopped at railway station and in the mean time goods were lost and hence railway was held liable for their negligence.

In *Union of India v. Lakshminarain Harnarain*<sup>309</sup>, the goods were delivered to a wrong person on producing a forged railway receipt. It was considered as mistake of railway and hence it was said by the court that the law does not require bailor to follow or trace and recover the goods. It is the duty and responsibility of the railway as they were the bailee. However, a railway administration can't be held liable in case of clever counterfeit, a forgery which could not be detected by the use of reasonable diligence.

A misdelivery is a loss and the railway is liable when the clerk makes the delivery without comparing the entries in the railway receipt and delivery books. The responsibility is on the railways to prove that no loss, destruction or deterioration or damage had taken place. They have to show it not only during the transit but also within seven days subsequent to the termination of transit and if they fail to do so, they would be held liable.<sup>310</sup>

### **Innkeepers**

An innkeeper has at common law a general lien for the unpaid amount of his bill, on all the articles which the guest takes in his capacity as guest into the premises of innkeeper. The lien exists to cover the price of the guest's personal food and lodging while he is a guest but it does not cover money lent to the guest by the innkeeper or the money spent by the innkeeper on behalf of guest.<sup>311</sup>

The liability of an innkeeper should be governed by the provisions of Section 151 and 152, and supported by a decision of Allahabad High Court in *Jan and Sons v. A Cameron*<sup>312</sup>, it was established that the case of an innkeeper is different from that of a common carrier. There was nothing to show that the Common Law rule as to the liability of an innkeeper has been recognised throughout India as in the case of innkeepers. Also there was no Indian enactment related to innkeepers similar to the Carriers Act so provisions of section 151 and 152 will be applied to regulate the innkeepers. This decision was approved by the thirteenth report of Law Commission of India.

### **Hospitals**

In this category anyone can be added where the transfer of possession happens. In *Martin v. London County Council*<sup>313</sup>, plaintiff sued the defendant, Hospital, for their negligence in taking care of plaintiff's belongings

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<sup>309</sup> *Union of India v. Lakshminarain Harnarain*, AIR 1963 Raj. 162.

<sup>310</sup> *Anson's Law of Contracts*, 189 (J. Beatson ed., 29<sup>th</sup> edn. 2010).

<sup>311</sup> *Id.*, at 190.

<sup>312</sup> *Jan and Sons v. A Cameron*, AIR 1922 All 471.

<sup>313</sup> *Martin v. London County Council*, [1947] 1 All ER 783.

because the jewellery of plaintiff has been stolen from the custody of Hospital authority. Hence it was established that when a hospital authority takes possession of the patient's belongings upon his admission to the hospital, they would be considered as bailee and would be held liable for any negligence under Section 151 and 152 of Indian Contract act.

### **Remedies for the Bailor**

The Contract Act does not specify the extent of the bailor's remedies if the goods are not forthcoming. He can have an action for damages against the bailee, in contract as well as in tort. The bailor has further equitable rights. If a bailee has unlawfully or negligently loses or parts with possession, he will have to pay the damages for the value of lost goods.<sup>314</sup>

When the bailee has failed to return the goods, he is bound to make good their market value as on the date of the liability. The liability under Section 161 arises only when the goods are not duly returned by the bailee due to his default. Under the Contract Act, bailor may maintain an action by filing a suit against wrongdoer.<sup>315</sup>

A bailor claiming damages for failure to take care by a person to whom section 151 may applies may discharge his responsibility in two ways, first by showing that bailee has failed to produce before the court all the materials available to him under Section 106 Evidence Act<sup>316</sup> and can ask the court to presume that if produced such materials as have gone against the bailee and second, by showing evidences against the bailee that he was negligent in taking care of goods as a prudent person.<sup>317</sup>

In *Trustee Madras Port Trust v. Home Insurance Co. Ltd.*<sup>318</sup>, a principle of law was settled that in a case governed by Sections 151 and 152 the loss of goods entrusted to the bailee is *prima facie* evidence of his negligence. The burden of proof is therefore on the bailee to disprove negligence when loss is established.

### **Recent Developments**

In *Indian Airlines Ltd. v. Prakrithi Shetty*<sup>319</sup>, she was travelling from Bangalore to Bombay. On her arrival at Bombay airport she found that her two bags were not received. After giving a complaint to concerned authority, they found and handed over to her. She found that so many articles in her bag were missing. The contention of

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<sup>314</sup> Peal, *Supra* note 23, at 682.

<sup>315</sup> Sec. 180, Indian Contract Act, 1872.

<sup>316</sup> Sec. 106, Indian Evidence Act, 1872.

<sup>317</sup> Padia, *Supra* note 29, at 1988.

<sup>318</sup> *Trustee Madras Port Trust v. Home Insurance Co. Ltd.*, AIR 1980 Mad 48.

<sup>319</sup> *Indian Airlines Ltd. v. Prakrithi Shetty*, IV (2007) CPJ 154 NC.

Airlines was that as the weight of baggage in Bangalore airport was 20kg and in Bombay, it was 25kg hence nothing has lost.

The most important development in this case was that plaintiff filed the case in District Forum under COPRA 1986 instead of civil court under Indian Contract Act 1872. Later District forum found that there was negligence on the part of airlines and plaintiff was awarded Rs. 50,000 for the loss of her jewellery and other items in baggage. But airlines didn't accept it and appealed in State Commission and it is still pending. It was established by this case that aggrieved bailor can also file a complaint under Consumer Protection Act.

Later in *Surya Pharmaceutical Limited v Air India Limited*<sup>320</sup>, The appellant, M/s Surya Pharmaceuticals Limited, had sued for recovery of Rs.4, 96, 188/- along with pendent lite and future interest from the respondent, Air India Limited, for the loss of 7 drums out of the total consignment of 40 drums of Amoxicillin Compacted BP 98. This consignment was air lifted by the respondent, Air India, for transportation from Delhi to Hong Kong. But the contention of Air India was that their liability is limited under Section 152 of Indian Contract Act by \$20 for the loss of 1kg.

Court came with different observation and held that any separate contract for limiting the liability of a carrier, which does not conform to the provisions of Carriage by Air Act, 1972 would be void being a contract opposed to public policy. And hence the appeal of plaintiff allowed and damages were provided.

Then in *Board of Trustees of the Port of Bombay v Union of India and Others*<sup>321</sup>, the major issue was that "is the Port Trust liable to pay duty on goods pilfered while in their possession?" The court said that as Port Trust is bailee and its negligence is dealt with Section 151 and 152 of Contract act, they would be liable if anything is lost while in their custody.

## Conclusion

In the course of this article, the researcher has looked into several important aspects regarding the bailee when parted with the possession of the goods his responsibilities in both Indian and Common law is mostly same because the origin of ICA is also Common Law. Researcher has found that a bailee will always be held liable if the goods will be lost while in his custody. The bailee must have to take a minimum standard of care which is expected from a prudent person.

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<sup>320</sup> *Surya Pharmaceutical Limited v Air India Limited*, 2008 Indlaw DEL 825.

<sup>321</sup> *Board of Trustees of the Port of Bombay v Union of India and Others*, 2009 Indlaw MUM 837.

If it is found that bailee is failed to take care of the goods due to his negligent behaviour, he would be held liable under both Indian Contract Act and Common Law principles regarding bailment. It was also found that bailee can decrease the liability for his negligence by having contract with bailor under Section 152 of ICA. But in this case also, bailee can't contract for limiting the liability below what is expected from a prudent person because that would be against the public policy.

Also the bailee should be given the choice to select the articles for which the contract of bailment is done because otherwise he would be considered as common carrier and he would not be held liable for his negligent behaviour as bailee.

As researcher has discussed certain important categories of bailees, he found out that a minimum standard of care is expected from each type of the bailee and was held liable if the evidences of his negligence have been found. The burden of proof will always lie on the bailee because he has to prove that he had taken a minimum standard of care as expected from a prudent person. The bailor can bring an action against the bailee by suing him under Section 180 of ICA.

Finally researcher will conclude with an important aspect that has come into picture through recent developments in the area of topic of article that bailee can also bring the action against bailor under COPRA. The benefit of this is that at the same time bailor can file a case against bailee under COPRA and ICA where under COPRA he can demand for the monetary damages and under ICA in civil courts he can plea for the imprisonment, cancellation of licence and so many other civil remedies.

The LAW BRIGADE