

## **CARGO CLAIMS IN INDIA: A COMPREHENSIVE GUIDE**

This section delves into the complexities of cargo claims in India, exploring the legal framework, key principles, procedures, and considerations for both shippers and carriers.

### Legal Framework

India primarily governs cargo claims through the following legal instruments:

**Indian Carriage of Goods by Sea Act, 1925 (COGSA):** This act forms the cornerstone of cargo claim disputes arising from carriage of goods by sea from any Indian port. It adopts the Hague Rules, a set of international regulations, with some modifications.

**Multimodal Transportation of Goods Act, 1993 (MTOGA):** This act incorporates the Hague-Visby Rules and the SDR Protocol, aligning Indian law with international standards. It also allows parties to extend the limitation period for filing claims and introduces a higher per-package limitation of liability.

**Admiralty Jurisdiction:** Indian courts with admiralty jurisdiction enforce cargo claims. These courts draw principles from the Admiralty Courts Act (1840 & 1861), the Brussels Convention (1952), and the Geneva Convention (1999). International conventions generally prevail in cases of conflict with domestic law.

### Key Changes Introduced by MTOGA:

**Extended Time Limit:** Parties can agree to extend the standard one-year period for filing cargo claims.

**Increased Limitation of Liability:** The per-package limitation was raised to match international standards, currently set at 666.66 Special Drawing Rights (SDR) per package or 2 SDR per kilogram of cargo weight (whichever is higher).

**Exclusion of Limitation for Reckless Acts:** Carriers cannot benefit from limitation if the damage resulted from their intentional or reckless actions.

**Recognition of Maritime Claims:** The Brussels Convention recognizes "loss of or damage to goods" as a maritime claim, facilitating legal action against the carrier.

#### Key Principles for Cargo Claims against Carriers

The COGSA outlines the core principles for cargo claims against carriers, as detailed in the act's Schedule. Here's a breakdown of some crucial articles:

**Article 3 (Responsibility and Liabilities):** Defines the carrier's responsibility for care, handling, and custody of cargo during transportation. It also outlines situations where the carrier may be exempt from liability (e.g., acts of God, war).

**Article 4 (Rights and Immunities):** Specifies the carrier's rights and immunities, such as exemption from liability for certain events like inherent vice of the goods (self-spoilage) or inherent defect.

**Article 5 (Surrender of Rights and Immunities):** Allows carriers to surrender some rights and immunities through agreements with shippers.

**Article 6 (Special Conditions):** Permits carriers and shippers to enter into agreements enhancing the carrier's liability beyond COGSA limitations.

**Article 7 (Limitation on Application of Rules):** Clarifies situations where COGSA rules may not apply, such as for deck cargo or live animals.

Article 8 (Limitation of Liability): Sets a limit on the carrier's financial liability for loss or damage to cargo. The MTOGA amendment introduced SDRs as the basis for calculating this liability.

Article 9 (Basis of Calculation for Liability): Establishes SDRs as the unit for calculating the carrier's liability (as amended by MTOGA).

It's important to note that COGSA primarily applies to outward cargo, meaning cargo being shipped from India to other locations.

#### Carrier Claims against Shipper for Misdeclaration

The COGSA also provides avenues for carriers to claim compensation from shippers who misdeclare their cargo.

Article 3 (5): Requires the shipper to guarantee the accuracy of information provided about the cargo (marks, number, quantity, weight). In case of inaccuracies, the shipper is liable to indemnify the carrier for any resulting loss or damage.

#### Procedure for filing Cargo Claim

Having explored the relevant legal framework and key principles for cargo claims in India, let's delve into the procedures for filing such claims.

#### Initiating a Cargo Claim

Here's a step-by-step guide for initiating a cargo claim in India:

**Gather Evidence:** The first step involves compiling all relevant documentation to support your claim. This typically includes:

Bill of Lading (evidence of the contract of carriage)

Commercial Invoice (detailing the value of the goods)

Packing List (specifying the contents, quantity, and condition of the cargo)

Survey Report (documenting the extent of damage upon arrival)

Communication Records (any correspondence with the carrier regarding the damage)

Notice of Loss or Damage: Article 3 Rule 6 of the COGSA mandates providing written notice to the carrier or their agent at the port of discharge. This notice should be submitted:

Before or at the time of removal of the goods if the damage is apparent.

Within three days of removal if the damage is not immediately apparent.

The notice should detail the nature and extent of the loss or damage.

Negotiation with Carrier: It's often recommended to attempt an amicable resolution with the carrier before resorting to legal action. Open communication can help explore possibilities for settlement and potentially avoid a lengthy court process.

Legal Proceedings: If negotiations fail, you can initiate legal proceedings against the carrier. This typically involves filing a lawsuit in the admiralty jurisdiction of the relevant District Court in India. Here are some factors to consider when choosing the court:

Jurisdiction: The court should have jurisdiction over the carrier and the dispute.

Value of Claim: The court's monetary jurisdiction should be appropriate for the value of your claim.

Convenience: The location of the court should be reasonably convenient for both parties.

Additional Considerations:

**Time Limits:** Article 3 Rule 6 of the COGSA sets a one-year limitation period for filing a lawsuit. However, parties can agree to extend this period through a written agreement.

**Legal Representation:** Considering the complexities of maritime law, it's highly advisable to seek legal counsel from an attorney specializing in admiralty and cargo claims. They can guide you through the legal process, ensure adherence to deadlines, and effectively represent your interests in court.

Enforcement of Foreign Judgments

In cases where the carrier is located outside India, the judgment obtained from the Indian court may need to be enforced in the carrier's jurisdiction. This process involves following the specific procedures for recognition and enforcement of foreign judgments in that particular country.

India itself adheres to international conventions like the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which simplifies the enforcement of foreign arbitration awards in India. However, the process for enforcing foreign court judgments can be more complex and may involve additional steps.

Alternative Dispute Resolution (ADR)

Litigation can be time-consuming and expensive. In some cases, parties may opt for alternative dispute resolution (ADR) mechanisms to settle cargo claims. These mechanisms can include:

**Mediation:** A neutral third party facilitates communication and negotiation between the shipper and carrier to reach a mutually agreeable solution.

Arbitration: An independent arbitrator, chosen by both parties, hears the case and issues a binding decision. Arbitration can be a faster and more cost-effective option compared to litigation.

The choice between ADR and litigation depends on the specific circumstances of the case, the willingness of both parties to participate, and the desired outcome.

Cargo claims in India fall under a well-established legal framework primarily governed by national statutes that draw from international maritime conventions. This section delves into the complexities of cargo claims in India, exploring the legal framework, key principles, procedures, and considerations for both shippers and carriers, while incorporating relevant case laws to illustrate the practical application of these principles.

#### Legal Framework

India's legal framework governing cargo claims is primarily based on the following instruments:

Indian Carriage of Goods by Sea Act, 1925 (COGSA): The cornerstone for cargo claims, this Act incorporates the Hague Rules with certain modifications. It applies to all cargo claims arising from the carriage of goods by sea from Indian ports.

Case Law: *East & West Steamship Co. v. S.K. Ramalingam Chettiar* (1960 AIR 1058, 1960 SCR (3) 820) established that COGSA applies where the Bill of Lading is the governing document for cargo transported by sea from India.

Multimodal Transportation of Goods Act, 1993 (MTOGA): This Act introduces the Hague-Visby Rules and the SDR Protocol, bringing Indian law in line with international standards. It governs the multimodal transportation

of goods and allows parties to extend the limitation period for filing claims, with a higher per-package limitation of liability.

#### Key Changes Introduced by MTOGA:

**Extended Time Limit:** MTOGA allows parties to agree to extend the limitation period for filing claims beyond the one-year limit set under COGSA.

**Increased Limitation of Liability:** It introduces a higher limitation of liability, raising it to 666.66 SDR per package or 2 SDR per kilogram.

**Exclusion for Reckless Acts:** Carriers cannot benefit from liability limitation if the damage was caused by their reckless or intentional misconduct.

**Admiralty Jurisdiction:** Indian courts, particularly the High Courts with admiralty jurisdiction, adjudicate cargo claims. The legal principles derive from the Admiralty Courts Act (1840 & 1861) and international conventions such as the Brussels Convention (1952) and Geneva Convention (1999).

**Case Law:** The Rainbow Spring Case (2003 (4) BomCR 242) elucidated the jurisdiction of Indian admiralty courts in matters involving foreign vessels and maritime claims, including cargo-related disputes.

#### Key Principles for Cargo Claims against Carriers

COGSA outlines core principles governing cargo claims, based on the provisions in the Hague Rules.

**Article 3: Responsibilities and Liabilities of the Carrier** The carrier is responsible for ensuring that cargo is properly cared for, handled, and stowed during transportation. Exceptions to this rule include acts of God, war, or inherent vice in the goods.

Case Law: In *M/S Madanlal Khanna v. Shipping Corporation of India Ltd.* (AIR 1987 Cal 151), the court held that the carrier could not escape liability for damage to cargo under Article 3, Rule 1, where it was proven that negligence in stowage led to the damage.

Article 4: Rights and Immunities of the Carrier Carriers are entitled to specific rights and immunities, such as exemption from liability for events beyond their control. These include acts of public enemies, riots, or the inherent vice of goods.

Case Law: In *M/S National Insurance Co. Ltd. v. S.S. Prestige Bengal* (1997 SCC OnLine Cal 183), the court applied Article 4 to exempt the carrier from liability due to damage caused by the inherent vice of the goods during transport.

Article 8: Limitation of Liability COGSA imposes a limit on the carrier's financial liability, calculated on the basis of SDRs per package or weight. This limit may be exceeded if the carrier engages in reckless conduct.

Case Law: In *Chandris v. Isbrandtsen-Moller Co. Inc.* (1951 AC 27), the court considered the limitation on liability for goods shipped by sea, affirming that carriers cannot limit liability if they acted recklessly or with intent to cause harm.

#### Carrier Claims against Shippers for Misdeclaration

COGSA also allows carriers to pursue claims against shippers for misdeclaration of cargo under Article 3(5).

Case Law: In *The Bunga Melati Dua* (2001 1 Lloyd's Rep. 89), the court found the shipper liable for misdeclaring the nature of the cargo, which had caused damage to the vessel, entitling the carrier to compensation under Article 3(5).



## Procedure for Filing Cargo Claims

### Initiating a Cargo Claim

The procedure for filing a cargo claim involves several steps:

**Gathering Evidence:** This includes obtaining documents such as the Bill of Lading, commercial invoice, packing list, survey report, and communication records.

**Case Law:** *Indian Oil Corporation Ltd. v. M/S Coastal Containers Ltd.* (1995 Supp (4) SCC 54) highlights the importance of documentary evidence in establishing liability for damage or loss to cargo.

**Notice of Loss or Damage:** Under Article 3(6) of COGSA, written notice must be given to the carrier or their agent at the port of discharge. If damage is apparent, the notice should be issued at the time of removal of the goods; otherwise, it should be filed within three days.

**Case Law:** *East and West Steamship Co. v. Hossain Bros.* (AIR 1960 SC 1058) emphasized that failure to provide notice within the stipulated time could bar a cargo claim.

**Legal Proceedings:** If negotiations fail, a lawsuit can be filed in the admiralty jurisdiction of the appropriate court. Factors to consider include the court's monetary jurisdiction and the location of the parties.

**Case Law:** In *The Owners and Parties Interested in the Vessel M.V. Manzanillo II v. Union of India* (2004 (1) BomCR 852), the court dealt with cargo claims and the jurisdiction of admiralty courts in India.

### Alternative Dispute Resolution (ADR)

Litigation can be expensive and time-consuming. As an alternative, parties may opt for ADR mechanisms like arbitration or mediation.

Case Law: In *Scomi Engineering Bhd v. Ministry of Urban Development & Ors.* (2019 SCC OnLine Del 7518), the Delhi High Court encouraged the use of ADR in resolving shipping disputes to avoid protracted litigation.

#### Enforcement of Foreign Judgments and Awards

Enforcing foreign judgments in India requires adherence to international conventions like the New York Convention or, in the case of foreign court judgments, following Section 44A of the Code of Civil Procedure (CPC).

Case Law: In *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.* (2001 (6) SCC 356), the Supreme Court laid down the principles for enforcement of foreign arbitration awards in India.

Cargo claims in India involve navigating complex legal frameworks, with both domestic and international dimensions. The recognition and enforcement of rights in cargo claims depend heavily on adhering to the procedural requirements outlined by COGSA, MTOGA, and other maritime statutes. Given the complexities, both shippers and carriers are advised to seek expert legal counsel to ensure compliance with procedural and substantive legal standards, as exemplified by the numerous case laws governing the field of maritime claims.