
CHAPTER XI

**NOTIFICATION REGARDING APPLICATION OF
THE CARRIAGE BY AIR ACT, 1972, TO CARRIAGE
BY AIR WHICH IS NOT INTERNATIONAL**

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(MARCH 30, 1973)

Ministry of Tourism and Civil Aviation

S.O. 186(E).— In exercise of the powers conferred by sub-section (2) of section 8 of the Carriage by Air Act 1972 (69 of 1972) and in supersession of the notification of the Government of India in the late Ministry of Transport (Civil Aviation Wing), No. G.S.R. 1967, dated the 17th December, 1963, except as respects things done or omitted to be done, the Central Government hereby directs that with effect from the 1st April 1973, section 4, section 5 and section 6 of that Act and the rules contained in the Second Schedule to that Act shall apply to all carriage by air not being international carriage by air as defined in the said Second Schedule, irrespective of the nationality of the aircraft performing the carriage, subject to the following exceptions, adaptations and modifications, namely:—

1. In the said Act, —

in section 4,—

(i) sub-section (1), (2) and (3) shall be omitted;

(ii) in sub-section (4) after the words ‘Second Schedule’ the words “as applicable to carriage by Air, not being international carriage by air’ shall be inserted;

2. in section 5,—

(i) in sub-section (1) for the words ‘on the First Schedule and the Second Schedule’, the words “in the Second Schedule as applicable to carriage by air not being international carriage by air”, shall be substituted;

(ii) in sub-section (5) for the portion beginning with the words ‘of the First Schedule’ and ending with the words ‘passenger in question’, the words “of the Second Schedule as applicable to carriage by air, not being international carriage by air’ shall be substituted;

3. section 6 shall be omitted;

4. in the Second Schedule,

(a) for the brackets, words and figure ‘(See section 4), occurring below the heading ‘Second Schedule’ the brackets and words “(As applicable to carriage by air, not being international carriage)” shall be substituted;

(b) the word “Definitions” forming part of the heading of Chapter I shall be omitted;

(c) in rule 1,—

(i) in sub-rule (1) the word “international” shall be omitted;

(ii) sub-rule (2) shall be omitted;

(iii) for sub-rule (3) the following sub-rule shall be substituted, namely:—

“(3) For the purposes of these rules, ‘carriage by air, not being international carriage’ means any carriage in which according to the agreement of the parties, the place of departure and destination are both situated in India and there is no agreed stopping place outside India.”

(iv) in sub-rule (4), the portion beginning with the words ‘whether it had been agreed’ and ending with words ‘within the territory of the same State’ shall be omitted;

(d) for rule 2, the following rule shall be substituted, namely:—

“2. These rules shall not apply—

- (i) to carriage by air in any aircraft belonging to, or exclusively employed for the purposes of the armed forces of the Union;
- (ii) to carriage by air, performed by the Government, whether Central or State;
- (iii) to carriage of mails;
- (iv) to carriage by air of persons performed for the purpose of training of such persons;
- (v) to carriage by aircraft belonging to or operated by the Civil Aviation Training Centre of the Government of India or a Club, whose main purpose is to impart training in flying or gliding, whether such aircraft is engaged in carrying persons for the purposes of training or otherwise;
- (vi) to carriage of cargo or persons performed for the purpose of dropping goods from an aircraft;

(vii) to carriage of employees of the carrier when they are carried for the purpose of performing any duties assigned to them by the carrier on the aircraft.”

(e) in Chapter II, parts I and II containing rules 3 and 4 shall be omitted.

(f) in rule 5,—

(i) for sub-rule (1), the following sub-rule shall be substituted, namely:—

“(1) Every carrier of cargo has right to require the consignor to make out and hand over to him an air-way-bill”;

(ii) in sub-rule (2), the word “irregularity” and the words ‘subject to provisions of rule 9’ shall be omitted;

(g) rules 6.8 and 9 shall be omitted;

(h) in rule 10,—

(i) in sub-rule (1), after the words ‘Air-way-bill’ the words “if any” shall be inserted;

(ii) in sub-rule (2), the word ‘irregularity’ shall be omitted.

(i) in rule 11,—

(i) in sub-rule (2), after the word ‘air-way-bill’ the words “if any” shall be inserted;

(ii) for sub-rule (2), the following sub-rule shall be substituted, namely:—

“(2) Any statements in the air-way-bill relating to the weight, dimensions and packing of the cargo or relating to number of packages, are prima facie evidence of the facts stated; any such statements 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-way-bill to have been checked by him in the presence of the consignor, or relate to the apparent condition of the cargo”;

(j) in rule 12,—

(i) in sub-rule (1) for the words ‘consignee named in the air-way-bill’ the words “original consignee” shall be substituted;

(ii) sub-rule (3) shall be omitted;

(iii) in sub-rule (4), for the words, “the waybill” the words, “air-way-bill, if any” shall be inserted;

(k) in rule 13 in sub-rule (1) for the words ‘to hand over to him in the air-way-bill and to deliver the cargo to him, on payment of the charges due and on complying with the conditions of carriage set out in the air-way-bill’, the words “to deliver the cargo to him, on payment of the charges and on complying with the conditions of the contract of carriage”, shall be substituted;

(l) in rule 15,—

(i) for sub-rule (2) the following sub-rule shall be substituted, namely :—

“The provisions of rules 12, 13 and 14 can only be varied by express provisions in the air-way-bill or by written agreement between the parties to that effect.”

(ii) in sub-rule (3) after the words ‘negotiable air-way-bill’ the words “if any” shall be inserted.

(m) in rule 16, in sub-rule (1) for the words

‘attach to the air-way-bill such documents as are necessary to meet the formalities of customs’, the words “documents as are necessary to meet the formalities of customs, excise” shall be substituted;

(n) for rule 19, the following rule shall be substituted, namely :—

“19. In the absence of a contract to the contrary the carrier is not to be liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.”

(o) for rule 20, the following rule shall be constituted, namely :—

“20. In the carriage of baggage and cargo the carrier is not liable if he proves that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.”

(p) in rule 22,—

(i) for sub-rule (1) the following sub-rules shall be substituted, namely :—

*“(1) In the event of death of a passenger, or any bodily injury or wound suffered by a passenger which results in a permanent disablement incapacitating him from engaging in or being occupied with his usual duties or business or occupation, the liability of the carrier for each passenger shall be Rs.7,50,000, if the passenger is 12 or more years of age, and Rs.3,75,000, if the passenger is below 12

years of age on the date of the accident. Provided that by special contract, the carrier and the passenger may agree to a higher limit of liability.

(1A) In the event of wounding of a passenger or any bodily injury suffered by the passenger which results in a temporary disablement entirely preventing an injured passenger from attending to his usual duties or business or occupation, the liability of the carrier for each passenger shall be limited to a sum calculated at the rate of Rs.750 per day, the period during which the continues to be so disabled or a sum of Rs.1,50,000, whichever is less.”

* (S.O. 659 (E) dated 22nd August, 1989)

(ii) in clause (a) of sub-rule (2) for the figures and words “250 francs” the words “rupees four hundred fifty be substituted;

(iii) in sub-rule (3) for the figures and words “5,000 francs”, the words “rupees four thousand” shall be substituted;

(iv) sub-rule (5) shall be omitted;

(q) in rule 23, in sub-rule (1) for the words “any provision in a contract of carriage” shall be substituted;

(r) in rule 27,—

(i) in sub-rule (1) for the word “document”, the word “contract” shall be substituted;

(ii) in sub-rule (3), for the words “in writing upon the document of carriage or by separate” the word

“by” shall be substituted;

(s) rule 29 shall be omitted;

(t) in rule 32, in sub-rule (2) for the words “inserting in the document of air carriage”, the words “agreeing to special” shall be substituted;

(u) for rule 33 the following rule shall be substituted, namely :—

“33. Any clause contained in the contract and any special agreement entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Schedule, shall be null and void. Nevertheless, for the carriage of cargo, arbitration clauses are allowed subject to these rules.

(v) in rule 34 for the word ‘regulations’ the word “stipulations” shall be substituted;

(w) rule 35 is omitted.

Note - The provisions of sections 4,5 and 6 and the rules contained in the Second Schedule as so excepted, adapted and modified are for the convenience of reference set out in the Annexure to this notification.

ANNEXURE

(Sections 4, 5 and 6 Schedule II as excepted, adapted and modified)

4. (1) Omitted.

4. (2) Omitted.

4. (3) Omitted.

4. (4) Any reference in the Second Schedule, as applicale to carriage by air not being international carriage by air, to agents of the carrier shall be construed as including a reference to servants of the carrier.

5. (1) Notwithstanding anything contained in the Indian Fatal Accidents Act, 1855, or any other enactment or rule of law in force in any part of India, the rules contained in the Second Schedule as applicable to the carriage by air, not being international carriage by air, shall, in all cases to which those rules apply, determine the liability of a carrier in respect of the death of a passenger.

(2) The liability shall be enforceable for the benefit of such of the member of the passengers' family as sustained damage by reason of his death.

Explanation.— In this sub-section the expression 'member of a family' means wife or husband, parent, step-parent, grand-parent, brother, sister, half-brother, half-sister, child, step-child and grand child :

Provided that in deducing any such relationship as aforesaid any illegitimate person and any adopted person shall be treated as being, or as having been, the legitimate child of his mother and reputed father or, as the case may be, of his adopters.

(3) An action to enforce the liability may be brought by the personal representative of the passenger or by any person for whose benefit the liability is under sub-section (2) enforceable, but only one action shall be brought in India in respect of the death of any one passenger, and every such action by whomsoever brought shall be for the benefit of all such persons so entitled as aforesaid as either are domiciled in India or not being domiciled there express a desire to take the benefit of the action.

(4) Subject to the provisions of sub-section (5), the amount recovered in any such action,

after deducting any costs not recovered from the defendant, shall be divided between the persons entitled in such proportion as the Court may direct.

(5) The Court before which any such action is brought may, at any stage of the proceedings, make any such order as appears to the Court to be just and equitable in view of the provisions of the Second Schedule, as applicable to carriage by air, not being international carriage by air, limiting the liability of a carrier.

THE SECOND SCHEDULE

(As applicable to carriage by air not being international carriage)

RULES

CHAPTER I

SCOPE

1. (1) These rules apply to all carriage of persons, baggage or cargo performed by aircraft for reward. They apply also to such carriage when performed gratuitously by an air transport undertaking.

(2) Omitted.

(3) For the purposes of these rules, 'carriage by air not being international carriage', means any carriage in which according to the intention of the parties, the place of departure and the place of destination are both situated in India and there is no agreed stopping place outside India.

(4) Carriage to be performed by several successive air carriers is deemed, for the purposes of these rules, to be one undivided carriage, if it has been regarded by the parties as a single operation.

2. These rules do not apply—

- (i) to carriage by air in any aircraft belonging to, or exclusively employed for the purposes of the armed forces of the Union :
- (ii) to carriage by air, performed by the Government, whether Central or State;
- (iii) to carriage of mails;
- (iv) to carriage by air of persons performed for the purpose of training of such persons;
- (v) to carriage by aircraft belonging to or operated by the Civil Aviation Training Centre of the Government of India or a Club, whose main purpose is to impart training in flying or gliding, whether such aircraft is engaged in carrying persons for the purposes of training or otherwise;
- (vi) to carriage of cargo of persons performed for the purpose of dropping goods from an aircraft;
- (vii) to carriage of employees of the carrier when they are carried for the purpose of performing any duties assigned to them by the carrier on the aircraft.

CHAPTER II

DOCUMENTS OF CARRIAGE

Parts I and II containing rules 3 and 4 omitted.

Part III—Air-way-bill

(5) (1) Every carrier of cargo has a right to require the consignor to make out and hand over to him an air-way-bill.

(2) The absence or loss of this document does not affect the existence or the validity of

the contract of carriage which shall be nonetheless governed by these rules.

6. Omitted.

7. The carrier of cargo has the right to require the consignor to make out separate air-way-bill when there is more than one package.

8. Omitted.

9. Omitted.

10. (1) The consignor is responsible for the correctness of the particulars an statement relating to the Cargo which he inserts inn the air-way-bill, if any.

(2) The consignor shall indemnify the carrier against all damage suffered by him, or by any other person to whom the carrier is liable by reason of incorrectness or incompleteness of the particulars and statements furnished by the consignor.

11. (1) The air-way-bill, if any, is prima facie evidence of the conclusion of the contract of the receipt of the cargo and the conditions of carriage.

(2) Any statements in the air-way-bill relating to the weight, dimension and packing of the cargo or relating to a number of packages, are prima facie evidence of the facts stated; any such statements 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-way-bill to have been checked by him in the presence of the consignor, or relate to the apparent condition of the cargo.

12. (1) Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the aerodrome of

departure or destination, or by stopping it in the course of the journey on any landing or by calling for it to be delivered at the place of destination or in the course of journey to a person other than the original consignee or by requiring it to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice to the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

(2) If it is impossible to carry out the orders of the consignor, the carrier must so inform him forthwith.

(3) Omitted.

(4) The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with rule 13. Nevertheless, if the consignee declines to accept the air-way-bill, if any, or the cargo, or if it cannot be communicated with, the consignor resumes his right of disposition.

13. (1) Except in the circumstances set out in the preceding rule, the consignee is entitled on arrival of the cargo at the place of destination to require the carrier to deliver the cargo to him, on payment of the charges due and on complying with the conditions of the contract of carriage.

(2) Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.

(3) If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

14. The consignor and the consignee can respectively enforce all the rights given to them by rules 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract.

15. (1) Rules 12, 13 and 14 do not affect either the relations of the consignor or the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

(2) The provisions of rules 12, 13 and 14 can only be varied by express provisions in the air-way-bill or by written agreement between the parties to that effect.

(3) Nothing in these rules prevents the issue of a negotiable air-way-bill, if any.

16. The consignor must furnish such information and documents as are necessary to meet the formalities of customs, excise, octroi or police before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to fault of the carrier or his servants or agents.

(2) The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

CHAPTER III

LIABILITY OF THE CARRIER

17. The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the

damage so sustained took place on board the air-craft or in the course of any of the operations of embarking or disembarking.

18. (1) The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered baggage or any cargo, if the occurrence which caused the damage so sustained took place during the carriage by air.

(2) The carrier by air within the meaning of the preceding sub-rule comprises the period during which the baggage or cargo is in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.

(3) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

19. In the absence of a contract to the contrary, the carrier is not to be liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.

20. In the carriage of baggage and cargo the carrier is not liable if he prove that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

21. If the carrier proves that the damage was caused by or contributed to by the negligence

of the injured person, the Court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

22. (1a) In the event of death of a passenger, or any bodily injury or wound suffered by a passenger which results in a permanent disablement incapacitating him from engaging in or being occupied with his usual duties or business or occupation, the liability of the carrier for each passenger shall be Rs.5,00,000 if the passenger is 12 or more years of age and Rs.50,000 if the passenger is below 12 years of age on the date of accident;

(1b) Provided that by special contract, the carrier and the passenger may agree to a higher limit of liability.

(1c) In the event of wounding of a passenger or any bodily injury suffered by the passenger which results in a temporary disablement entirely preventing an injured passenger from attending to his usual business or occupation or duties, the liability of the carrier for each passenger shall be limited to a sum calculated at the rate of Rs.500 per day, for every day during which he continues to be so disabled or a sum of Rs.1,00,000 whichever is less.

(2) (a) In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of rupees two hundred 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 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.

(2)(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-way-bill the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to rupees two thousand five hundred per passenger.

(4) The limits prescribed in this rule shall not prevent the Court from awarding, in accordance with its own law, in addition, the whole or part of the Court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damage awarded, excluding Court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is latter.

(5) Omitted.

23. (1) Any provision in a contract of carriage tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in these rules shall be null void, but the nullity of

any such provision does not involve the nullity of the whole contract which shall remain subject to the provisions of these rules.

(2) Sub-rule (1) of this rule shall not apply to provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

24. (1) In the cases covered by rules 18 and 19 any action for damages, however, founded, can only be brought subject to the conditions and limits set out in these rules.

(2) In the cases covered by rule 17 the provisions of the preceding sub-rule also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

25. The limits of liability specified in rule 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment.

26. (1) If action is brought against a servant or agent of the carrier arising out of damage to which these rules relate, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under rule 22.

(2) The aggregate of the amounts recoverable from the carrier, his servants and agents in that case shall not exceed the said limits.

(3) The provision of sub-rules (1) and (2) of this rule shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

27. (1) Receipt by the person entitled to delivery of baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the contract of carriage.

(2) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and at the latest within seven days from the date of receipt in the case of baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within twenty one days from the date on which the baggage or cargo have been placed at his disposal.

(3) Every complaint be made by notice in writing despatched within the times aforesaid.

(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

28. In the case of the death of the person liable an action for damages lies in accordance with the terms of these rules against those legally representing his estate.

29. Omitted.

30. (1) The right to damages shall be extinguished if an action is not brought within

two years, reckoned from the date of arrival at the destination, or from the date on which the air-craft ought to have arrived, or from, the date of which the carriage stopped.

(2) The method of calculating the period of limitation shall be determined by the law of the count seized of the case.

31. (1) In the case of carriage to be performed by various successive carriers and falling within the definition set out in sub-rule (3) of rule 1, each carrier who accepts passengers, baggage or cargo is subjected to the rules set out in this Schedule, and is deemed to be one of the contracting parties to the contract of the carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.

(2) In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

(3) As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the first carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

CHAPTER IV**PROVISIONS RELATING TO
COMBINED CARRIAGE**

32. (1) In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Schedule apply only to the carriage by air, provided that the carriage by air, falls within the terms of rule 1.

(2) Nothing in this Schedule shall prevent the parties in the case of combined carriage from agreeing to special conditions relating to other modes of carriage, provided that the provisions of the Schedule are observed as regards the carriage by air.

CHAPTER V**GENERAL AND FINAL
PROVISIONS**

33. Any clause contained in the contract and any special agreement entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Schedule shall be null and void. Nevertheless, for the carriage of cargo, arbitration clauses are allowed subject to these rules.

34. Nothing contained in this Schedule shall prevent the carrier either from refusing to enter into any contract of carriage, or from making stipulations which do not conflict with the provisions of this Schedule.

35. Omitted.

36. The expression “days” when used in these rules means current days, not working days.