

Colombo Commercial HC Makes landmark judgement

by Sarath Malalasekera

The Colombo Commercial High Court recently made a land mark judgement against a bank and ordered the bank to pay a sum of Rs.3,022,250 as damages together with interest to plaintiff, Barvil Meridien Navigation Limited, Colombo.

Barvil Meridien Navigation Limited, The Medridien, Duplication Road, Colombo cited ANZ Grindlays Bank as defendant claiming Rs. 7 million with interest.

In a lengthy judgement Justice L.K. Wimalachandra (former Commercial High Court Judge) citing several English authorities stated that Privy Council in 1985 in the case of Tai Hing Cotton Mills Limited, stated that a customer was not under a duty to check the Bank statements unless there had been an arrangement to that effect.

The judgement also stated the statement that 'customers are not bound to examine their pass book' as stated by Lord Eshar which approved in the case of Keppitigalla Rubber Estates Limited vs National Bank of India. In any event, the defendant had not established that any employees of the plaintiff committed a fraud, which resulted in the loss committed by the plaintiff, the judgement stated.

The plaintiff in his plaint stated a total sum of Rs.3,042,250.50 of the plaintiff was not credited to the plaintiff's bank account and accordingly the plaintiff claimed the monies with damages.

The plaintiff also stated that the bank

statements issued by the defendant showed that a lesser amount has been deposited than the amounts stated in the cash deposit slips issued to the plaintiff by the bank.

The bank in their answer stated that it had deposited all the monies it had received from the plaintiff to the credit of plaintiff's account.

The defendant bank also stated in their answer that the receipt in the hand of the plaintiff was a carbon copy and thus the bank never checked the carbon copy with the original. The original cash deposit slips of the plaintiff in the possession of the defendant bank had one amount while the duplicate copy of the cash deposit slips which are in the possession of the plaintiff contained a large amount and thus the position of the defendant was that the difference has been fraudulently misappropriated by the plaintiff's own employees in the course of their employment.

The bank also stated that the plaintiff was under an obligation to check its bank statements.

In the circumstances, Court held that there is no legal obligation in the part of the customer to read bank statements and the bank cannot escape liability merely because the customer did not check the bank statements received by him periodically.

President's Counsel Romesh de Silva with Hiran de Alwis instructed by Manjula Sirimanne of Messrs. D.L. and F. De Saram appeared for the plaintiff.