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LIABILITY OF THE MULTIMODAL TRANSPORT OPERATOR IN THE CONVENTION ON INTERNATIONAL MULTIMODAL TRANSPORT OF GOODS AND ITS COMPARISON WITH THE CODE OF IRAN

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ABSTRACT

International multimodal transport which is by far the most common type of transportation in the international arena is a type of carriage of goods by at least two different modes of transport without any interruption in the delivery, from one country by the multimodal transport operator to a different country with different legal systems. The purpose of the research was to explain "the liability of the multimodal transport operator in the convention on international multimodal transport of goods and its comparison with the code of Iran. In this research, the various dimensions of the rights and responsibilities of multimodal transport operator in international conventions, in particular the International Convention on multimodal transport of goods "Geneva (1980)", were compared with Code of Iran. The present study was conducted using a descriptive-analytical method with a library approach and a note-taking of documents and sources. The result of the study showed that the international multimodal transport operator is liable for the loss attributable to act or omission of act on the part of agents and servants; in addition, the basis of this responsibility lies with the fault of the agents and servants, violating the operator's contract obligations. Accordingly, a person who has incurred a loss shall refer to the transport operator who is one party of the contract instead of referring to the agent who has caused the loss claiming damages from him; therefore, awareness of the obligation of the operator concerning the law of commerce and his failure in fulfillment of the obligations in carriage of goods resulting in the loss of goods during the course of obligations under the contract, the nullity of the contract and the implementation of the exchange guarantee, prevent the operator from being vindicated, receiving payment of compensation specified in the contract.

Keywords: International Multimodal Transport, Geneva Convention (1980), Iranian Law

INTRODUCTION

Multimodal transport means that goods have reached the final destination by combining maritime, road and land transport operations. Given the prevalence of this method of delivery, the International multimodal convention was ratified on May 24, 1980, and received the accession of the countries given to the Secretary-General of the United Nations in order to overcome the legal challenges of this mode of carriage. In the process of drafting the Geneva Convention of May 24, 1980, there was a controversy about the legal basis for the responsibility of the multimodal transport operator among less developed countries and European countries, which eventually it was decided to accept the recent theory (Muhammad Zadeh Wadaghani, 1993: 127).

Prior to the ratification of this convention, some international trade associations, such as the International Chamber of Commerce, had drafted provisions for the use of multimodal

transportation, such as the uniform rules a combined transport (Journal 273 of International Chamber of Commerce, 1973). It has already been amended twice in 1975 and 1991 and, if noted in the transport documents or contracts, it replaces the supplementary regulations governing the carriage contracts. However, these rules are not considered as national or international laws, but they have only an optional nature (Katouzian, 1984: 28). They are in the form of recommendations provided to the transport parties, being executed only when the parties of the transport contract have accepted them (Jafari Langroudi, 1984, p .1: 82). Whereas the provisions of the Convention, in the event of the accession of any country, are considered as the law of that country. In the multimodal transport convention, the multimodal transport operator shall be liable for loss resulting from loss the goods, without the need to prove the faults in this regard, unless the multimodal transport operator proves the loss is not attributable thereto (Schelin, 2004). If a lawsuit is brought over the liability of the transport operator in international transport before the Iranian court, the court must, in accordance with the international conventions of which our country is a party, deal with the dispute and decide. However, in the case of domestic transport, the conventions are no longer applicable, and domestic laws must apply; the basis for the liability of the transport operator is regardless of the provisions of the conventions of which Iran is a member, being legally binding in the country as in the law (M 10, Gh, m) (Mozdourani, 2010: 103). The basis for liability is based on the two bases of fault or risk; in this research, we are looking to answer this question, what is the responsibility of the transport operator in the multimodal transport convention and the Iranian General Law? In other words, what is the basis of liability of the transport operator in the International multimodal transport convention of Goods of Geneva 1980?



THE LITERATURE REVIEW

1. Multimodal transport

Multimodal transport means the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place in one country at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery situated in a different country. Multimodal transport operator is a person who himself or his representative accepts the responsibility of a multimodal carriage contract for carriage through the whole way. The multimodal transport operator is responsible for the compensation in the event of any damage, loss or delay. The relationship between the transport rings is very important (Najafi, 2015). In accordance with paragraph 2 of article 1 of the multimodal transport convention, transport operator means any person who on his own behalf or through another person acting on his behalf concludes a multimodal transport contract (Lurrasa, 1996: 40). This definition is similar to the definition derived from the combination of Articles 377 and 388 of the Commercial Code and Article 516 of the Civil Code of Iran.

2. The basis and the nature of the operator's commitment on transport contracts

According to Article 377 of the Commercial Law, transport operator is a person who, in return for a fee, undertakes the transport of goods and, accordingly, is required to deliver the property to the consignee to the best of his/her ability, and in case of violation of duty and commitment, the operator will be liable in accordance with the rules and regulations set forth in the Commercial Code. The obligations of transport operators, whether by land, sea or air, regarding the protection and preservation of the goods, are the same as those imposed on the

trustees. Therefore, in case of violation or a loss, the operator will be liable for the loss or damage of the goods given to him for the purpose of carriage, and this liability will remain by him from the date of delivery of goods by consignor to the operator.

The responsibility laid down in the Commercial Code for the transport operator is that the operator's commitment depends on the result and he is responsible for obtaining the desired result and he is liable if he fails to fulfill the desired result (Katouzian, 2008, 4: 173).

3. Accretion or reduction of the responsibility of the transport operator

According to the Article 16 of the 1980 United Nations Convention on the International multimodal transport, the transport operator is liable for loss resulting from loss of or damage to the goods unless the multimodal transport operator proves that he, his servants or agents or any other person took all measures that could reasonably be required to avoid the occurrence and its consequences. Therefore, it can be said that the basis of the liability of the transport operator from the point of view of this article is pure liability, in other words, he must prove his innocence in the event of damage to the goods (Tafreshi and Kamyar, 2001). According to Article 448 of the Civil Code, "It is possible to forfeit all the options as a condition inserted into the deed of sale". In fact, if the parties to the deal insert a condition on the forfeit of options, the have deprived their liabilities in this regard. On the other hand, under Article 221 of the Civil Code, "If any party undertakes to perform or to abstain from any act, he is responsible to pay compensation to the other party in the event of his not carrying out his undertaking provided the compensation for such losses is specified in the contract or is understood in the contract according to customary law or provided such compensation is by law regarded as guaranteed". Article 386 of the Commercial Code does not accept the lack of general responsibility of the transport operator, but the following is stipulated in the article: By agreement, parties can fix the amount of damage at a higher or lower figure than the actual value of the goods.

In accordance with Article 55 of this Maritime Law, the transport operator is responsible for the damage caused to the goods, if he has not tried to prepare the ship for the purpose of sailing and supplying it.

4. The nature of the liability of the transport operator in multimodal transport contract of goods

Article 16 of the 1980 Convention of the United Nations stipulates that "the multimodal transport operator shall be liable for loss to the goods, unless the he proves that he, his servants or agents or any other representatives took all measures that could reasonably be required to avoid the occurrence and its consequences.

The external cause is: obligee's fault, third party's fault, force majeure, unexpected incident (fconomic Commission, 1998, p.2.Parag.4). While proof of the effort required to fulfill the obligation means that, although the external cause does not result in damage, the transport operator has carried out the necessary efforts, and he is exempted from responsibility (Diana Faber.1996, p .505).

It is noted that in the multimodal transport Convention, the multimodal transport operator is liable for loss resulting from damage to the goods, if the occurrence which caused the damage took place while the goods were in his charge (UNCTAD, 2001, FDTETIB-2, PP.5.10) unless he proves his innocence (UNCTAD, 1991, p. 172).

According to article 16 of the convention, the multimodal transport operator shall be liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the



occurrence which caused the loss, damage or delay in delivery took place while the goods were in his charge, unless the multimodal transport operator proves that he, his servants or agents or any other person took all measures that could reasonably be required to avoid the occurrence and its consequences. So the responsibility of the agent is based on inverting the burden of substantiation of claim. In other words, the basis for the liability of the agent is a presumptive fault and is realized by the agent when the loss is occurred during the period the goods are protected by him and if the causality relationship exists between his fault or the damage; it shall always be proved that the damage or loss is the result of the act of the agent and not the result of an external factor (Mozdourani, 2010: 128; Mohammadzadeh Vadghani, 2000: 67).

In determining the cause of damage, it is sufficient for the obligee to prove his innocence and the other intermediary agents, and show that they and have used all reasonable measures to avoid loss and damage (Mohammadzadeh Vadghani, 2000: 67-68). According to Article 516 of the Civil Code, the possessions of the transport operator are based on trusteeship and his obligations are twofold: first, he shall protect the property, and the other he shall deliver the property to the owner or an authorized agent at the destination. According to Article 620 of the Civil Code, If the goods are found to be defective, incomplete or lost at the time they are due to be delivered to the owner, the invasion of rights or dissipation of the transport operant in terms of loss, damage or defect shall be proved for the compensation.

Article 386 of the Iranian Commercial Code stipulates that: "If the goods have perished or are lost, the carrier is responsible for their value, unless he can establish that the loss or destruction resulted either from inherent defect in the goods, or from a fault of the consignor or consignee, or from instructions given by one of them, or related to events that no cautious operator could prevent. As stated in this article, if the owner of the goods proves that his goods have been damaged, then the transport operator shall be presumed liable.

5. Exemption of the operator in the international multimodal transport convention

The maritime transport operator is responsible for the loss and damage to the goods, unless it is proved that the loss and damage is caused by one of the exceptional cases (Articles 3 and 4 of The Hague Rules, which are the same as Articles 54 and 55 of the Maritime Law). Therefore, the maritime transport operator is responsible and he is not exempted from the liability unless one of the exceptions is true. In addition, in accordance with the judiciary of the French and German law, it is necessary for the operator to prove the necessary precautions (Remond, 1988, p. 330). According to the commercial rules of Iran, the transport operator's obligation is based on the result; therefore, the carrier is only exempted from liability if he can prove that an external and irreconcilable cause is created. The decree is also mentioned in Articles 227 and 229 of the Civil Code. The two articles, which generally apply to all obligations, state that the offender is liable to pay compensation if he cannot prove that the violation has been due to an external cause, that is, an occurrence that is committed beyond the scope of his authority.

Furthermore, in the internal regulations of Iran (Civil Code and Commercial Code), the transport operator's commitment is not sufficient to prove his exemption from liability or that he has made the necessary efforts to accomplish the outcome (the safety delivery of the goods); he must deliver the goods safely (Fulfillment of the obligation) or prove that the external and irreparable incident caused the failure to fulfill the obligation. It is not enough to be exempted from liability, even if the transport operator proves that he has used all reasonable efforts, but



he shall prove the occurrence of the external cause has resulted in the damage (Hosseini Nezhad, 1992: p .52 53).

6. The liability of the multimodal transport operator for his servants, agents and other persons

Article 15 of the multimodal transport Convention stipulates in this regard that: " Subject to article 21, the multimodal transport operator shall be liable for the acts and omissions of his servants or agents, when any such servant or agent is acting within the scope of his employment, or of any other person of whose services he makes use for the performance of the multimodal transport contract, when such person is acting in the performance of the contract, as if such acts and omissions were his own (Katoozian, 1983: 30).

In accordance with Article 16 of the 1980 Geneva Conventions: the multimodal transport operator shall be liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the occurrence which caused the loss, damage or delay in delivery took place while the goods were in his charge as defined in article 14, unless the multimodal transport operator proves that he, his servants or agents or any other person referred to in article 15 took all measures that could reasonably be required to avoid the occurrence and its consequences.

Article 388 of the Iranian Commercial Code also provides a similar rule, in accordance with this article "The carrier is liable for all loss or damage during carriage whether incurred by him personally or another carrier employed by him". Thus, according to article 388 of the commercial code, the reliability of the transport operator in terms of his actions or his workers and agents is clear and straightforward; in cases that he has entrusted another operator with the carriage of the goods, the article stipulates a responsibility on the transport operator that is due to another one's act (Tafreshi and Kamyar, 2001; Mohammadzadeh Vadghani, 1993: 118).

7. The liability of the transport operator in loss and damage of goods

The transport operator is responsible for the loss and damage of the goods unless he proves there was an external and irresponsible reasons. This reason shall be resulted from a compulsory incident (Katoozian, 1993).

Article 388 of the Iranian Commercial Code stipulates in this regard that, "The carrier is liable for all loss or damage during carriage whether incurred by him personally or another carrier employed by him". Even in the laws of some states, in order to further secure the rights of the consignee, the broker is also liable, including Article 99 of the Commercial Law of France (1937), which is also useful in this regard (Rene. Dalloz 1981.P.334).

In accordance with Article 19 of the Geneva Convention: When the loss of or damage to the goods occurred during one particular stage of the multimodal transport, in respect of which an applicable international convention or mandatory national law provides a higher limit of liability than the limit that would follow from application of paragraphs 1 to 3 of article 18, then the limit of the multimodal transport operator's liability for such loss or damage shall be determined by reference to the provisions of such convention or mandatory national law (Muhammad Zadeh Wadaghani, 1992: 71)

8. Non-contractual liability of the operator in multimodal transport convention

Reasonable measures to prevent damage: in accordance with Article 20 of the transport convention:



- 1) The transport operator is liable for damages to the goods if he cannot prove that he, his agents or his servants, or any other person who uses his services to perform a multimodal transport contract have taken all reasonable measures to avoid the incident and its consequences in respect of loss resulting from loss of or damage to the goods, as well as from delay in delivery, whether the action be founded in contract, in tort or otherwise. Proving the innocence of the agent, servants or workers as well as other persons whose services are used in the implementation of the multimodal transport contract are also not sufficient to cover the liability; but, in addition, he must prove that he has taken all necessary precautions to avoid the damage to the goods. In other words, the observance of a set of rules being expected from a reasonable person is expected from the operator and his agents (Tafreshi and Kamyar, 2001: 31-so: 67).
- 2) Occurrence of loss out of the scope of the liability: in accordance with Paragraph A of Article 19 of the Convention, the transport carrier shall be liable for the damages to rightful people if the damage or loss is caused during the period through which the goods were delivered to him consequently he delivered to the consignee. He shall not be liable for any loss incurred outside this time period unless it is agreed otherwise by the parties (Muhammad Zadeh Wadaghani, 1992: 70).

9. Non liability of the transport operator in Iranian law

A. civil code: according to the article 516 of the civil code of Iran "Contracts for carriage whether by land or sea or air, involve the same engagements in regard to the protection and the care of the things entrusted to the carrier as those laid down for contracts of bailment; therefore if excessive usage or abuse takes place, (that person) shall be responsible for the destruction or the damage to the thing who received the thing for transporting; and this responsibility shall attach to him from the date of delivery of the things". In this article, the non-reliability of the transport operator is obvious and the assumption is established unless there is proved to be a violation and prohibition. According to the civil law, in the lawsuit between the owner of the goods and the transport operator: the owner must prove the fault of the transport operator, so that he can receive compensation from him (Katoozian, 2005: 416-Shahidi, 1985).

B. commercial law: according to the Article 386 of the commercial law of Iran" If the goods have perished or are lost, the carrier is responsible for their value, unless he can establish that the loss or destruction resulted either from inherent defect in the goods, or from a fault of the consignor or consignee, or from instructions given by one of them, or from an act that no cautious operator could prevent".

CONCLUSION

The findings of the study showed that the 1980 United Nations Convention on International Multimodal Transport has imposed a liability on the transport operator; in addition, if the owner of the goods proves the occurrence of a loss, the carrier's fault is realized and he is considered to be responsible in this respect.

According to the paragraph 4 of Article 28 of the convention the multimodal transport operator must, in addition, pay compensation for costs incurred by the claimant for the purpose of exercising his right, provided that costs incurred in the action where the foregoing



provision is invoked are to be determined in accordance with the law of the State where proceedings are instituted.

As stated above, in accordance with the provisions of the International Multimodal Transport Convention, the carrier is exempted from liability, if he proves that he and his servants and agents have made all reasonable efforts to prevent the occurrence of an incident or the loss of or damage to the goods. Therefore, the multimodal transport operator, in accordance with the provisions of the Convention, does not need to prove the existence of an external cause to be exempted from the liability; however, in the general rules of Iranian law, the transport operator is not liable if he proves that an external and irrelevant cause has resulted in damage to and loss of the goods. It is realized that the multimodal transport operator's commitment in the International Multimodal Transport Convention is a commitment to goods (preservation obligation), and in Iran's law, the transport operator's commitment is to the safety of the goods i.e., the commitment to the outcome (commitment to the end).

It was also found in the domestic regulations that the liability of the transport manager is based on his fault. As, according to Article 386 of commercial law, the transport operator is liable for the transportation of the goods from the date of delivery of goods from consignor to operator and from operator to the consignee. He undertakes to deliver the goods, as agreed upon, to the destination.

In accordance with Article 388 of the commercial code, the reliability of the transport operator in terms of his actions or his workers and agents is clear and straightforward; in cases that he has entrusted another operator with the carriage of the goods, the article stipulates a responsibility on the transport operator that is due to another one's act. Furthermore, the research findings showed that the transport operator is liable for the damages caused by failure or lack of care and inattentiveness in the tasks he has been undertaken, except for those who are proved. The transport operator is obliged to observe the necessary care and attention during the prescribed period in respect of the carriage of the goods as a good father taking care of his family. In case of the failure to prove the innocence of the transport operator, the named person is still liable for the damage caused by the failure in fulfillment of his obligation. Regarding the cost of transporting, the transport operator has the right to imprison and sell the property. The transport operator decide the appropriate means of transportation according to his own discretion. He chooses the route and determines the vehicle according to his own will. In other words, he has independence in this respect.

In the field of multimodal transport, the carrier is responsible for the damage caused by the workers and his servants. Article 15 of the Multimodal Transport Convention has been so prescribed " Subject to article 21, the multimodal transport operator shall be liable for the acts and omissions of his servants or agents, when any such servant or agent is acting within the scope of his employment, or of any other person of whose services he makes use for the performance of the multimodal transport contract, when such person is acting in the performance of the contract, as if such acts and omissions were his own".

Article 388 of the Iranian Commercial Code also provides a similar rule, in accordance with this article "The carrier is liable for all loss or damage during carriage whether incurred by him personally or another carrier employed by him". However, according to Article 15 of the Multimodal Transport Convention, the carrier is liable for the actions of his workers and servants only when they act in the scope of their employment duties or contracts they signed



with the carrier. In this way, the carrier has the right to prove that the worker or his servant has contravened the contract damaging to the goods and therefore he has no liability for the act or omission of his worker's act, and only has the right to demand his loss or damage from the person causing the damage.

Article 16 of the Multimodal Transport Convention is based on the presumed fault, according to this article the operator is liable for loss of goods during the time the goods are delivered to him by the consignor; the causality relationship exists between his fault or the damage and it shall be proved that always the loss is the result of the action, and not the result of an external cause. However, the necessity of proving an unavoidable external event causing damage makes the basis of liability close to the assumption of liability and makes it a presumed liability.

Regarding the limits of liability in the Multimodal Convention, it was said that, in the event of loss and damage to goods, where the place of entry of damage is clear, the operator will be responsive based on the limit fixed in the *ad hoc* law of transport contract or the national peremptory law limit fixed in the Geneva Conventions, depending on the fact that which limit is higher. If the place of entry of damages is not clear, the limits stipulated in the Geneva Convention will prevail; in the general rules of Iranian law the liability of the transport operator will be based on his fault and if the owner of the goods proves the occurrence of the loss, the fault of the transport operator is assumed being liable for the loss. Therefore, in the International Multimodal Transport Convention as well as the General rules of Iran's Law, after proving the damage, the responsibility of the transport operator is presumed, and the lawsuit is reversed and the litigant, that is the transport operator shall prove his non liability. In addition, in the International Multimodal Transport Convention and the laws of Iran, transport operator is liable for the loss attributable to act or omission of act on the part of agents and servants; in addition, the basis of this responsibility lies with the fault of the agents and servants, violating the operator's contract obligations. Accordingly, a person who has incurred a loss shall refer to the transport operator who is one party of the contract instead of referring to the agent who has caused the loss claiming damages from him. If the transport operator, in accordance with the provisions of the International Multimodal Transportation Convention, proves that he, his workers and servants have made reasonable efforts, but damages have incurred, or if he proves that his worker or servants have exceeded the limits of their duties causing the damage or loss, he can be exempted from the liability.

In the internal law of Iran, the transport operator is liable for the loss and damage of the goods caused by the act of his workers or servants unless he proves there was an external and irresponsible reasons.

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