

The Carrier's Liability Exemption in the Contract for the Carriage of Goods by Sea in Accordance with the Rotterdam Convention 2009 and the Bahraini Maritime Code

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Abstract- Since 2008, the maritime shipping in Bahrain has grown by 20%. With such an increasing appetite for seaborne trade, the governing laws need to be studied in detail. This paper attempts at studying the conditions in which a carrier is exempt from any liability to compensate in a contract of carriage of goods by sea, in accordance with the Rotterdam Convention 2009 and the Bahraini Maritime Code. The main purpose of this research is to study the Rotterdam Convention 2009 and the Bahraini Maritime Code, to discuss the liability exemptions provided by these Acts in the contract for the carriage of goods by sea wherein. Qualitative secondary data research is conducted to study the issue of carriage of goods by sea in Bahrain. The secondary data is collected from reputable journal articles, published research papers, and books etc; to study the rules governing the contract for the carriage of goods by sea; namely Carriage of Goods by Sea, Rotterdam Convention 2009, and Bahrain Maritime Code. Moreover, 12 to 15 sources are reviewed to analyse the advancements in Hague Visby Rules, Hamburg Rules, and Rotterdam Rules. Content analysis is done on the collected secondary data to identify the legal restrictions, prescribed in the Rotterdam Convention 2009, and Bahrain Maritime Code, on a carrier in the contract for the carriage of goods by sea, and how with the help of the Rotterdam Convention, that carrier is exempt from any responsibility, in case of damage or loss of cargo. This study is significant as it studies the exemptions available to a carrier in the contract for carriage of goods by sea; and identifies the several conditions or situations in which a carrier gets exemption from the liability to compensate the consignee for any loss or damage to the cargo being shipped.

Keywords: Carrier exemption; goods by sea; Rotterdam convention; Bahraini maritime code; sea act in Bahrain

I. INTRODUCTION

After the World War I and before the World War II, the lawmakers in the United States passed the law of Carriage of Goods by Sea (COGSA), in 1936. The transportation companies and the manufacturers transported people and products from one country to another, via sea. The primary purpose of this law was to determine scope of the rights and responsibilities of the vessel operators and cargo shippers. Owing to economic failure in 2008, seaborne trade declined by 4.5% in 2009. In 2008, a total of 8.2 billion tons of goods were transported via sea, however in the following year it reduced to 7.8 billion tons. Several traders were disappointed by this decline, and were forced to realise that the demand for the seaborne trade had reduced. On the other hand, in 2010, The United Nations Conference on Trade and Development (UNCTAD) published a report claiming that the reduction observed in 2009 should not be taken as a precursor for a similar future (Singh, 2011).

In international trade, the contract of carriage of goods by sea is of foremost importance. Conferring to the opinions of traders, carriage of goods by sea is financially more feasible as compared to the other forms of transportation, such as air, road, and rail. More so, when the seller and buyers are positioned in diverse countries, as well as in case of heavy cargo. Research shows that in international trade, more than 80% of goods sold are transported by using the option of carriage by sea. COGSA was introduced to provide a solution to the ship owners for their problems, and also to safeguard them against damage or loss of cargo. This Act is followed by the six essential members of the Gulf Cooperation Council, i.e. Bahrain, Oman, UAE, Kuwait, Qatar, and Saudi Arabia. In Bahrain, the Hague Rules were established to follow the underlying Act properly (Hinkelman, 2008).

The research aims to study the Carriage of Goods by Sea Act (COGSA) in Bahrain. The current base of knowledge pertaining to the Act is diverse, with conflicting opinions. This paper will attempt at filling the gap in the literature related to the COGSA, by studying the Act in depth and consolidating these diverse opinions in the light of the results. It will attempt at covering the essential topics related to the Act, so as to enhance the awareness of individuals, companies and policy makers. The main purpose of this research is to study the Rotterdam Convention 2009 and the Bahraini Maritime Code, and to discuss the liability exemptions provided by these Acts in the contract for the carriage of goods by sea.

This study is significant as it studies the exemptions available to a carrier in the contract for carriage of goods by sea; and identifies the several conditions or situations in which a carrier gets exemption from the liability to compensate the consignee for any loss or damage of cargo being shipped. The paper is also important as it provides detailed content analysis of the Carriage of Goods by Sea Act, with regardsto Bahrain. It is also significant for other parties to a contract of carriage of goods by sea. It informs the shippers about the conditions in which they willnot be compensated for the damage and loss of goods, if they fail to prove that the container carrying their cargo was not appropriately managed. These conditions are discussed in detail in the following sections.

II. LITERATURE REVIEW

2.1 The carriage of goods by sea act

The Carriage of Goods by Sea Act (COGSA), introduced in 1930s, is a law that focuses on the responsibilities and rights of cargo owners and the individuals who charge a fee for the cargo transportation. COGSA is an integral part of the Maritime law, as it is applicable in the United States and other ports; however, it is essential that the other bill of lading should be issued. Individuals in Bahrain also use COGSA for the domestic shipping contracts, since the provisions and terms of the Act are favourable to the parties. COGSA imposes liability restrictions in terms of per package, i.e. \$500 per package. According to COGSA, if the materials/goods in the package are destroyed or lost due to any reason, then the carrier has a right to claim a compensation of \$500. Since, it is a significant amount, it is crucial that the carrier provides a notice to the shipper before claiming the compensation. Whereas, it is the responsibility of the carrier to reduce the fixed limit per package and report the higher of the value Hurst(2013).

2.2 The Rotterdam Convention 2009

In 2009, a new convention was signed that included the carriage of goods by sea, either wholly or partially. This convention is known as Rotterdam Rules, after the city of Rotterdam of the Netherlands, where it was signed. The convention came into ratified by representatives of twenty countries. Economically powerful countries and groups, such as the European Union, Japan, China, and the United States, were among the signatories of this convention. The main purpose of the agreement was to initiate changes in the carriage of goods by the sea, that impacted carriers, shippers, exporters, and importers (Bakerdonelson.com, 2009).

Due to the international carriage of goods by sea, several damages or loss arise; Rotterdam Rules offer essential standards for such losses or damages. The Rotterdam Rules convention was the advanced version of Hague Rules 1924, Hague Visby Rules 1968, and Hamburg Rules 1978. These rules also provide guidance on the commercial and technological development ensuing the maritime transport. The agreement affords awareness to the carriers and shippers, so that they can quickly offer support to all the operations of a maritime contract.

According to Law(2009), the Rotterdam Convention is applicable for such contracts of carriage of goods by sea, wherein delivery place and receipt place exist in different states. Additionally, it is required that the discharge and loading of the same sea carriage take place in different states. The agreement does not provide any stipulations with regard to the nationality of the consignee, the shipper, the performing parties, the carrier, and the vessel. There are specific conditions wherein the Rotterdam Convention 2009 does not apply, i.e. it is not applicable in liner transportation; such as Charter Parties, and other contracts for the use of the ship. The convention is also not applicable in non-liner transportation except when the document of transport is issued.

2.3 The Bahraini Maritime Code

The primary purpose of Bahraini Maritime Code is to resolve international, regional, and national maritime issues. The code involves three important maritime laws, i.e. The Maritime Commercial Law, The Port Act, and the Merchant Shipping Act. The merchant fleet in Bahrain is small as compared to the rest of GCC. Since 2008, the maritime shipping in Bahrain has grown by 20%. In 2009, a new port in Bahrain became operational with the name of Mina Khalifa Bin Salman Port, which is 13km from the Bahrain International Airport. This new port also provides passenger facilities and general cargo operations. In 2012, the Ports and Maritime Affairs (PMA) in Bahrain was changed to General Organization of Sea Ports (IBP Incorporation, 2016).

The maritime sector follows the Bahrain Maritime Code 1982 (Law no. 23), and Law no. 20 which focuses on safety requirement and small vessel registration. The PMA follows new Maritime code, that is aimed at resolving problems related to international maritime protocols and conventions. Moreover, the Bahraini Maritime Code regulates the functions and responsibilities of PMA. The government of Bahrain is also cognizant of all the developments in the International Maritime law. PMA is responsible for the registration and licensing of port and ships. It is mandatory for all the companies to get approval from PMA, in case they plan to offer the passenger and shipping transport services.

2.4. Environmental Damage Caused by Shipping

2.4.1 Water pollution

Due to the general activities of any port, the quality of water is also affected. The oil spills and discharge in water create water pollution and also affect the lives of the inhabitant. These oil spills, whether illegal or accidental, are common. In 2008, total of 193 oil spill incidents were recorded, whereas the ratio was increased in 1993.

2.4.2 Noise Pollution

Port's activities also result in noise pollution, which negatively impacts the living standards of the inhabitants. Diverse sources such as cargo handling, maintenance, hinterland transport, and shipping, generate random sounds which join together to create a discomforting clamour. Ports in Bahrain are surrounded by residential areas, which is why; experts are raising the issue of noise pollution (Braathen, 2011).

2.4.3 Greenhouse Gas Emissions

All the activities of the port depend upon energy, as it is crucial for every process and helps in the inflow and outflow of goods in ports. Energy is also used for the handling of cargo, and all the industrial processes. All of these activities need fossil fuels, create the issue of greenhouse gas emissions.

2.5. Carrier's Liability Exemption in Accordance with the Rotterdam Convention 2009 and the Bahraini Maritime Code

Jasenko (n.d.), suggested that the Rotterdam Convention and the Bahraini Maritime Code help to determine the conditions in which a person is liable for any damage or loss in the Carrier of Goods by Sea Act. The Rotterdam rules also help establish the liability principle of a carrier. The burden of proof stipulated by the Rotterdam convention is different from the Hamburg rules, Hague Visby, and Hague rules. When the claimant creates a case to the carrier for loss or damage, the carrier has a right to declare the dangerous conditions responsible for the damage or loss to deny the claim. The claimant has a right to provide evidence that the damage or loss was caused due to the negligence of the carrier or its employee. If the carrier proves careful conduct, it can save itself from the liability of loss or damage.

In case of fire, the Rotterdam agreement affords an exemption to the carrier in the contract of carriage of goods by sea, since fire cannot be controlled by a carrier or its employees. The convention follows the rule of burden of proof. When the owner of a cargo proves the loss or damage, when the cargo was in the custody of a carrier, that carrier will be liable to compensate all the loss or damages. In all cases where the loss or damage occurs due to the negligence of a carrier, the Rotterdam convention imposes the burden of damage on the carrier, as discussed earlier. According to the Rotterdam Convention, it is necessary for a carrier to provide proof of its innocence other than the damage by fire. If the carrier is successful in providing evidence of its innocence, the convention will exempt the carrier from all the losses or damages (Rosaeg, 2014).

According to the Bahraini Maritime Code, if a sender delivers dangerous goods to the carrier, the carrier has a right to reject such goods without providing any reason to that sender. The carrier will not be responsible for the loss or goods, if it knows that the goods are dangerous. According to the rule of saving property and life, the responsibility of the carrier will be eliminated, if the sender delivers the carrier unsafe goods. When a cargo delivery is made to the carrier without providing the information that the cargo has dangerous goods, the sender will be held liable for all the damages. Moreover, under such circumstances, the Bahraini Maritime Code will offer liability exemption to the carrier from loss or damage. Therefore, it is required that senders provide information to the carrier related to the safety measures (Eftesol-Wilhelmsson, n.d.). Lastly, as stated before destruction of goods due to the negligence of the carrier makes it liable to pay the damages, however, if the goods are not damaged, but due to the prevailing market conditions, the carrier is unable to send them, then it will be exempt from all the liabilities.

III. RESEARCH METHODOLOGY

This research examines the impact carrier's liability exemption in the contract for the carriage of goods by sea. Moreover, 12 to 15 sources are reviewed to analyse the advancements in Hague Visby Rules, Hamburg Rules, and Rotterdam Rules.

Content analysis is done on the collected secondary data to identify the legal restrictions, prescribed in the Rotterdam Convention 2009, and Bahrain Maritime Code, on a carrier in the contract for the carriage of goods by sea, and how with the help of the Rotterdam Convention, that carrier is exempt from many responsibility, in case of damage or loss of cargo. Since, the rules of Bahrain are different from the other countries; the aims of this paper to attempt at offering an enhanced awareness about the applicable laws in Bahrain.

IV. RESULTS

According to Hague Visby Rules, a carrier is responsible for the cargo, from the loading of the goods until those goods are released from its ship. The liability of a carrier starts when the goods are come in to its custody, until the carrier discharges these goods to the respective port. The rules are different for each port, and it is crucial for carriers to follow the rule of the port. Due to non-application of Hague Visby rules, uncertainty can arise. The main benefit of the Hamburg Rules is that it eliminates this uncertainty. Hamburg Rules define the period of responsibility, in which the goods will be under the custody of a carrier; thereafter the carrier will not be held liable for any loss or damage to the cargo.

Under Rotterdam Rules, the carrier will be liable when the goods are handed over to it, and its responsibility will end once the goods are delivered to another person. There is no stipulation mandating that the goods reach the warehouses or are handed over to an authority. Accordingly, in the contract of carriage of goods by sea, the carrier will be exempt from the conditions imposing mandating that the goods must be delivered to the authority.

Similarly, the shipper is responsible for the loading and unloading of the goods. Before the application of Rotterdam Rules, the carrier was held liable for the loading and unloading of cargo. With the implementation of Rotterdam Rules, the carrier is exempt from any liability if the damage or loss occurs during loading or unloading. Carriers will be liable for the loss or damage of the goods only if the goods are under their custody. As per the Rotterdam Rules, carriers can save themselves by providing the evidence that the loss or damage to the goods did not occur due to their fault.

According to the Bahraini Maritime Code and Rotterdam Convention 2009, a carrier will not be liable for any loss or damage to the cargo, if the carrier proves that it is not responsible for that loss. In case of fire, the carrier will not be responsible for the damage of goods, as it does not have any control over fire. Wherein, a carrier shows due diligence and responsibility, even so the goods get damaged, the carrier will not be held liable for that loss or damage, if it provides evidence that the cargo was handled with care. To get an exemption, it is necessary for a carrier to due diligence in marking the ship seaworthy. If there any relationship between the failure of responsibility and damage is found, the carrier will be held liable for the whole loss, i.e. if the goods are damaged due to the negligence of a carrier, then that carrier will compensate for the whole loss.

V. DISCUSSION

According to the Bahraini Maritime Code and Rotterdam Convention 2009, the carrier will be exempt from liability for all the losses or damages, if it provides the proof of its guilt. It is crucial that the default in the duties of a carrier or its employee and the damage must not have any connection with each other. In case of a connection, the carrier will be liable to compensate the damages or loss occurred due to its negligence. If the loss occurs without the negligence of a carrier, then that carrier will be exempt from all such losses or damages. The Rotterdam Convention 2009 mandates that there exist a logical reason for any such damage or loss (Rosaeg, 2014). Out of the total loss or damage, if a part of it occurred due to the negligence of a carrier, while the rest occurred due to some other reason, it is necessary for that carrier to provide evidence for the loss which occurred without its negligence. If the carrier fails to do so, it will be held liable for the full damage or loss.

There are some amendments made to the Rotterdam Convention 2009. Different errors in navigation have been removed from the rules; such as the default, neglect, and acts of the pilot, mariner or master. The convention helps in controlling the liability of a carrier in case of a loss, damage, or delay. The liability is similar to the other cargo damage claims. According to the article 19 of Rotterdam Rules, all the parties that perform their service in maritime, are accountable for the same liabilities and responsibilities as the carrier. They are responsible for the time until the goods are in their custody, such that their liabilities become similar to the liabilities of a carrier. They will also be held liable for the loss or damage occurred due to their negligence. Under Hamburg Rules and Hague Visby rules, the carrier was to be held responsible for all the losses or damages occurred due to its negligence, but in the Rotterdam Convention, all the other parties involved in the contract of carriage of goods by sea will be responsible for the loss (Jasenko, n.d.).

According to the Rotterdam Convention 2009 and Bahraini Maritime Code, if a carrier delays the delivery of the goods, it will be liable for all the losses or damages that arises due to the late delivery of goods; if the claimant proves that the loss or destruction of goods occurred in the period of custody of that carrier. The carrier can save itself by providing the evidence that the loss or damages did not occur due to its negligence or it can also offer the evidence that the loss or damages occurred due to fault of others. There are also some conditions in which, a carrier is not liable for any loss or damage to the goods, because such conditions cannot be controlled by a carrier (BERLINGIERI, 2009). These conditions are an act of God, accidents of the sea, terrorism, war, and quarantine. Also, in case of fire, the party of goods cannot pressurise the carrier to compensate him for the damage or loss of goods, because, in that situation, the carrier will be exempted from its liability.

Bahrain Maritime Law and Rotterdam Convention 2009 are applied in each contract for the carriage of goods by sea. As per conditions of Rotterdam Convention, the port of discharge and the port of loading must be in a different state. If both of them exist in the same state, in that case the Rotterdam Convention will not apply. It is also crucial that one of the port or both ports must be available in the contracting state. Rotterdam rules are only applied for the carriage of goods by sea, and these rules are not applicable in other modes; such as carriage of goods by road and air. It is the responsibility of a carrier to load, carry, handle, care, keep, and unload the goods. There is a time specified for delivery, and every carrier should deliver the goods on time. A carrier should deliver the goods to the shipper in the same condition as handed over by the consignee. The shipper has to provide proper instructions to the carrier, related to the goods, and also pack the goods properly. If goods get destroyed due to the packing fault, the carrier will not be liable for that loss (Idais, 2013).

It is the responsibility of a shipper to load, handle, and unload the goods from the ship. In case of any damage during the loading, handling, and unloading of the goods, the carrier is not liable to compensate. If a carrier takes the responsibility of handling, unloading, and loading, then it will be entirely liable for all the losses and damages to the goods during all of these processes. If the goods have some hidden defects, and at the time of shipment, the carrier is not aware of all those defects, the party cannot claim compensation for those defects. Due to the fact that at the time of handing over the shipment to the carrier, the party did not reveal those defects to the carrier. The carrier is liable for the loss or damage of goods, if the claimant provides the evidence that the loss is caused due to the negligence of the carrier. If the carrier delays the delivery of the goods and does not provide any evidence for non-delay, it will be liable to compensate the claimant for the loss or damage occurred due to the delay in the delivery (BERLINGIERI, 2009).

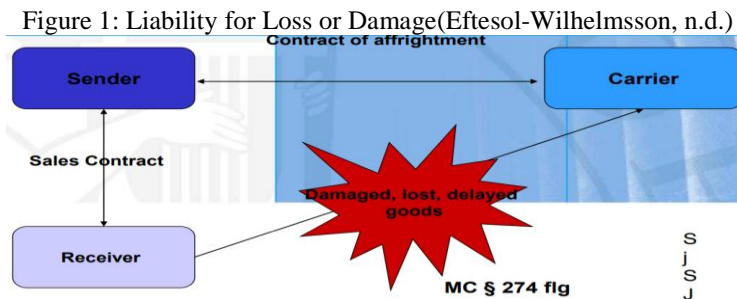


Figure 1 reveals the condition of a contract for the carriage of goods by sea. According to the contract, sender and receiver are the contracting parties. Under this contract, the sender agrees to send the goods to the receiver with the help of carriage by sea. Carrier is the party who signs a contract with the sender to deliver the goods to the receiver. There is a time agreed in the contract, and if the carrier fails to deliver the goods by that time, it will be liable to compensate those damages caused by the delay in the delivery of goods.

VI. CONCLUSION

The international agreements for the contract for the carriage of goods by sea, air, and road are different in each country, and it is the responsibility of every carrier to follow those agreements. In case of damage to the goods, if these goods were in the custody of a carrier at the time of damage, then that carrier will be liable to compensate for those damages. The carrier is free to provide the evidence of its innocence. If the evidence reveals that the carrier is not responsible for loss, the owner of the goods will bear all the losses for the damages of these goods. The Bahraini Maritime Law and Rotterdam Convention, provide several exemptions to the carrier, but it is necessary that the carrier is proven innocent. When the owner of goods provides evidence about the negligence of a carrier, then that carrier is liable to pay all the amount of damages of goods.

There are several conditions in which the carrier will not be held liable to pay for the damages or loss: such as, an act of God, a terrorist activity, or a disaster in the sea. If due to some issues, the goods are lost or destroyed, then the carrier must provide evidence proving that it is not responsible for such damages or loss of goods. If the carrier fails to provide the evidence, it has to pay for the loss or damages. In case of fire, the carrier will be free from the liability to pay, because the condition of fire is not under the control of the carrier. On time delivery of goods is also necessary; in case of any delay in delivery of goods, a consignee can face losses. Therefore, it is required that a carrier compensate the consignee for all the damages due to the delay in the delivery of goods, caused by its negligence.

VII. RECOMMENDATIONS

There are several conditions in which the carrier is held liable for the loss or damage of goods. It is the responsibility of a carrier to thoroughly check the goods before sending it to the consignee. Since, if there are any defects in the goods, and the carrier remains unaware about them, then the carrier has to provide the evidence that it remained unaware of the defects in the goods even after due diligence was done. Shipper has to load, place and unload the goods. Due to the damage or loss of goods in the process of loading and unloading, the shipper will be held liable to compensate the consignee. If a carrier acts as a shipper, it will pay all the damages during the loading and unloading of the goods. The Rotterdam Convention 2009 and Bahraini Maritime Code, provide several exemptions to the carriers in a contract of carriage by sea. However, it is also necessary for every carrier to use all the safety measures and provide strong evidence to the consignee for all of the issues. Moreover, if the goods are damaged by fire, the carrier is not liable to compensate for the damage or loss.

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