Abstract—In 1924 to strengthen the credit value of bill of lading and to organize the marine carrier liability, the Brussels’ convention known as the Hague laws was approved. In 1964 the Iranian marine law was approved, which was mainly the translation of the said convention. The objections to the Brussels’ convention especially in the cases of responsibility exemption of the marine carrier liability, the time domain and the lack of the application of rules on some goods caused Hamburg convention to be approved in 1978. One of the most important issues is the investigation of the Marine transportation liability basis and various viewpoints with respect to the ambiguity of the convention’s phrases. In this paper we will conclude that the marine carrier liability is not the fault assumption but it is the responsibility assumption.

Keywords: Brussels’ convention, Hamburg convention, Marine law, liability assumption, fault assumption, Marine carrier liability.

I. INTRODUCTION

The law systems of the countries are generally different on the basis of marine carrier liability. Latin law system assumes the transportation liability as a contractual liability, i.e. the disturbance in commitment and its direct impact on the quality of the result realization is the basis. However in Anglo-Saxon’s law system there has been assumed a difference between public and private marine carrier liability. The public carrier is the one who is committed for any transportation request by wage, without assuming difference between them. The private carrier however is the one who is responsible for the transportation on the basis of special and separate contract without having any commitment in regard to the transportation acceptance. The public carrier liability is on the basis of assumed fault while the private carrier liability is on the basis of the fault that must be proved [1]. Thus the plaintiff may prove the damage occurrence or present an apparent reason for the damage occurrence. In this case with the occurrence of certain damage or assumptive damage, the plaintiff is exempted in regard of proving the other two pillars of responsibility, i.e. the breach of promise and causal relationship between breach of promise and damage. In other words the carrier liability is assumed in this case. In addition to the realization of the loss, the existence of the other two pillars is essential for the realization of contractual responsibility, that are the same as breach of promise and causal relationship which according to the general laws, proving of these two is also the responsibility of the plaintiff [2].

On the same basis, a question arises that in the subject of the discussion, i.e. in the carrier liability of the marine transportation, whether the plaintiff, is required only to prove the loss occurrence and/or presenting an apparent reason for this issue and is exempted from proving the other two pillars of responsibility or the plaintiff must prove all pillars for loss realization?

A. TYPES OF LIABILITY SYSTEMS

In order to prove the lack of commitment implementation, the content and domain of contractual commitments have to be clarified. The most important classification that has been made about the content and domain of commitments is the classification of commitments to (a) commitment to the result and (b) commitment to means. In the commitment to the means, the promiser should do all his efforts to attain the desired result. In this supposition he should behave as a conventional with the associated condition. Therefore the promiser, to prove the lack of agreement implementation should prove that the promiser is not reasonable and has not provided the promised and committed a fault. Of course it should be noted that the degree of the fault that motivates the responsibility of the promiser is not the same in all cases and is quietly depended on the content of the commitment and agreement of the two parties. In the commitment to the result however, in cases that, the possibility to reach to the desired result is abundant, normally the promisor undertakes reaching to the result and preparation of instrument for fulfilling commitment is the introduction to obligation. To prove the breach of this kind of promise, it is enough to attain that the desired result has not been achieved. Of course proving this matter that a sudden and external incident has prevented fulfilling of agreement, does not free the promisor from responsibility. Also it is possible that the
promisor guaranteed reaching to the result which in this case, proving of no incident does not free him from responsibility. (absolute responsibility) [3].

The lawyers and judicial procedures, have presented an analysis and interpretation that upon if the carrier takes the responsibility of passenger and goods safety. In other words, safety commitment has also been placed on the commitment of the carrier. This commitment in regard to objects transportation may be a commitment to the result or a commitment to the means. The responsibility of carrier is actually depended on the way he has accepted a commitment or the law maker in the status of interpreting the will of parties or imperatively has placed on his shoulder. Therefore if we regard safety commitment as a commitment to the result or a commitment to the means, the analysis will be different.

B. SAFETY COMMITMENT IS A COMMITMENT TO THE MEANS

In this case, the carrier undertakes that he will take conventional precautions for the safety of goods. It means he will provide those means that in the transportation norms is necessary for maintenance and safety of goods and takes all his Competencies in this context. In such a case carrier is responsible only when it is proved that the loss created is the result of his fault. There are two probabilities in tolerance of the burden of proof of this fault. First on the basis of general rules burden of proof is on the claimant that is the incurred a lost person. Second, the law maker for the convenience of the affected work knows the fault of the carrier as assumed and will bound him to defend and reject the reasons of claim proof of the fault [4].

C. SAFETY COMMITMENT IS A COMMITMENT TO THE RESULT

In this supposition the carrier pledges to deliver the goods to the destination safely and once the desirable result that is the delivery of goods safely to destination has not been achieved, the promisor would be responsible for the losses caused by it unless he proves that an external and inevitable incident has prevented obtaining of the result. In other words, the loss on goods could not be related to him. Therefore in this case, proving this point that the carrier has not made any fault will not free him of responsibility. Of course in this supposition, if the carrier has guaranteed the safety of goods or such a commitment has been imposed according to the law, he will be responsible for any loss; however the result be an external incident or an urgent matter [5]. In this supposition the carrier regardless of any fault or precaution that he has made, will be responsible for the losses caused by not obtaining the result. Thus four different systems of responsibility are seen here that are as follows:

1. The system based on the proved fault
2. The system based on fault supposition that is solved with proving of not committing the fault or proving the standard effort and labor from the side of carrier.
3. The system based on the supposition of responsibility, that could be rejected with proving cause of damage or not doing the commitment and its non attributable to the carrier.
4. The system of absolute or mere responsibility [6].

Differences of second and third systems in addition to the defending way of carrier could be seen about the damage caused by unknown reasons too. On the basis of the system based on fault supposition, in the context of damages caused by unknown reasons, the responsible can easily defend and free oneself from the burden of responsibility. In this way it is enough for one to prove not committing of the fault from his side, while on the basis of responsibility supposition system, in this case, the carrier, will be known as responsible and cannot be free from its burden, because for the exemption he should prove the cause of damage and it non attributable to himself, therefore in this supposition such a matter is not possible with the damage cause being unknown [7].

II. AN INTRODUCTION TO THE BRUSSELS AND HAMBURG CONVENTIONS

A. THE HAGUE RULES (BRUSSELS CONVENTION 1924)

European sailor countries that were among the masters of sailing navy ,were concerned about the growth and development of national rules governing on marine transportation and the responsibility caused by damage to goods like Harter law, therefore a request was made based on equal and uniform adjustment of marine transportation to the committee of marine laws of international law association. Marine international committee decided to prepare an international convention watching on marine bill of landing with which it could consider the subject of risk allocation caused by damage to goods between carrier and the sender. the job of this committee was suspended caused by the first world war (1914-1918),after the war with inspiration from Harter rules, some laws were prepared which were approved in the Hague conference of marine committee of international law assembly in the September 1921. Those rules had not mandatory aspect and were applied only with an agreement between the ship owner and the sender. If the ship owner did not compromise in this context there was no option for the sender. Therefore because of the pressure of the goods senders, these rules were approved as mandatory during two other meetings in 1922 and 1923 and finally in the Brussels diplomatic conference in the august 1924 [8].
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Notwithstanding the urgent need which was felt to these rules, until 1931 they did not have executive power. Thus, the Hague rules are considered as the first convention of international marine transportation, these rules have 16 articles and two main aim, among which are strengthening credit value of the bill of landing and organizing of carrier liability. England in the first of January 1925, in relation to transportation agreements which were appeared in the form of bill of landing and the good that were transported outside of Britain approved the Hague rules as marine transportation law in 1924 [9].

B. HAMBURG RULES:

In the decades after the second world war, the developing countries aimed to prepare an appropriate economic base for their development, before the war, international trade was controlled by few sailing powers but the war limited the European powers and not only decreased their marine power but also reduced their ability to direct international trade. In addition, the anti-colonial movement was started forcefully with political autonomy of colonial countries, the economic power of this group was increased. These countries saw existing trade systems in their front, because they were based on principles that before it were shaped from economic and political changes. On the other side, shipping also played an important role in economic development of these countries since exports to the industrial countries constitute a high percentage of their national production. The Hague rules are also because they are the laws governing on the responsibility of the carrier in the median of porting and disembarking, were effective factor in this procedure. Therefore they demanded legislating of new rules. The developing countries for this matter looked hopefully at the UN and its agencies because they knew this organization as one which had ability and competence in solving and settling international issues and this move was seen suspiciously by the traditional marine powers but finally this issue was referred to the UN [10]. In the first UNCITRAL session in 1968, Chile delegation meanwhile outlining the shortcomings and disadvantages of the Hague rules demanded legislating of fair rules. In the same year the UN conference of trade and development (UNCITRAL) demanded for the establishment of a workgroup for examining marine international rules. This workgroup was constituted for studying of reforms for the Hague rules. The issue of legislation of marine international rules was in the agenda of the second session of UNCITRAL in 1969 and a work group was formed in this direction. The general assembly also endorsed and encouraged the work of UNCITRAL in the resolution of 2935 in 12 November 1970. The mission which was relegated to this workgroup consists of examining the Hague rules and Brussels reforming protocol (wisbi rules) and if needed preparation of a draft of international convention in this respect. this workgroup which was constituted from 21 countries delegations with different law systems was approved in its 8th session in 1976. the general assembly in its resolution of 31/100 in 15 December 1976 decided to hold a diplomatic conference for acceptance of this convention and invited all countries. Finally on the invitation of democratic republic of Germany, the UN conference about transportation of goods through sea was held in Hamburg in March 31, 1978. 78 countries participated in this conference and accepted the UN convention about the transportation of goods through sea that is known as Hamburg rules along with a general compromise about the convention.

This convention got executive power from the November 1, 1992 a year after the 20th country joined it. among the characteristics of this convention is the membership of small and third world countries with consideration of limited number of t carrier and large number of commission agents involved in transportation.

The aim of this convention is to close the marine transportation rules to the rules of transportation through air, railway and roads. For this purpose, the rules of convention try to determine the changes associated to the carrier liabilities [11], the liabilities which in the section of general compromise states that:

"General compromise and presumption is that the carrier liability under this convention is based on the fault and neglect assumption. This means that basically the burden of proof is on the carrier but with respect to some cases, the convention terms changes this rule".

C. MARINE CARRIER LIABILITY NATURE

With regard to the article of 54 and 55 of Iranian marine law which are the same articles of 3 and 4 of The Hague laws (Brussels 1924) and it is emprised in English style, the basis of responsibility is stated somehow ambiguous. Therefore in this case that the supposition is on the responsibility of marine carrier or there is difference on the supposition of his fault. Some of the scholars have stated the responsibility of marine carrier liability based on fault. Some other researchers know the responsibility of marine carrier based on real circumstantial evidence of responsibility, since merely the proof of not committing the fault by the carrier does not free him of his liability. So he is responsible for damages that their cause is not known [12].

In French laws there is no consensus in this respect among law scholars. according to the opinion of professor Remond Gouilloud "the marine carrier is responsible for the lack and damage to goods until he prove that the mentioned lack and damage is related to an exceptional cases (the article 3 and 4 of the Hague rules that are the same articles of 54 and 55 marine law), therefore, marine carrier is having circumstantial evidence of responsibility, he will not be free from responsibility until one of the exceptional cases is proved.

In addition, according to judicial procedure governing in French and British laws, it is necessary for the carrier to prove the observing of necessary precaution [13]. Since
according to the Hague laws (and also marine laws) proving the observance of necessary precautions is firstly on the carrier, it seems that in the Hague treaty, the fault based system is accepted, while it is not the case, because the carrier would not be free from responsibility by proving the observance of necessary precautions, but it is required that one of the exceptional cases be proved. By proving each of exceptional cases the owner can prove the carrier fault or his/her agents in the caused loss. [14]. In other words, in all cases, presenting adverse reason from the owner side is accepted except one case and that is the case where sailing mistake is being raised, because proving this condition will definitely free the carrier from responsibility. It should be noted that in the Hague treaty (and in the marine law) there is no statement which mentions clearly the presentation of adverse reason, but the doctrine and the judicial procedures of foreign countries prescribe it. According to Prof. Rodiere on account of the instances of A to P of paragraph 2 of the article 4 of the Hague laws(article 55 of Iranian marine law) the carrier is exempted from responsibility ,in case he with determining the reason prove that the cause is one of the exceptional cases, in other words, there is the Circumstantial evidence of responsibility, but with respect to the paragraph G of the clause 2 of the article 4 of the Hague laws, it is enough that he prove that he has not committed fault and the damage is not due to his fault too [15]. When the carrier is not able to prove that the cause of damage is one of the exceptional cases, he should prove all conditions of the event and shows that there is no possibility of his fault interference or of his agents. thus, we reach to a solution that does not include in the Circumstantial evidence of fault or the responsibility alone, because it coincides in half of the way on one and in other half on another, so it creates this possibility that it can be noted that the carrier is responsible for the damages with unknown cause or exempts from it. It is noticed that there is no harmony in the comments about the nature of the responsibility of the marine carrier. Nevertheless, the dominant view is on the Circumstantial evidence of responsibility for the marine carrier.

D. THE BASIS OF RESPONSIBILITY IN THE BRUSSELS CONVENTION (THE HAGUE LAWS)

Determining the basis of responsibility in the Brussels convention is a complex matter because there could be observed some instances of fault supposition and responsibility supposition.

The first paragraph of the article 3 of these rules, bounds the carrier to do the necessary cares:

1- The carrier is bound to do necessary cares and precautions before and in the beginning of each journey that are as follows:

a- Prepare the ship for sailing.

b- Prepare and provide the staff, equipments and munitions appropriately.

c- Manage the warehouses, refrigerators and other parts of the ship in which commodities are shipped and prepare them for receiving, shipping and keeping of commodities.

This is a matter which directs the basis of responsibility to the direction of fault supposition and the article 4 strengthen this matter:

Neither the ship nor the carrier are responsible for any lack or damage caused by inability of sailing, unless they did not try and labor enough in the preparation of the ship for receiving and securing its necessities from the point of enough staff and, equipments, and munitions and other sections of the ship in which the commodities are shipped also care and shipment according to the first paragraph of the article 3 in case the incurring damage and lack is as result of inability of sailing, the carrier or other persons that according to this article claim exemption from responsibility are bound to prove that they have done their efforts and care therefore some believe that the basis of responsibility in this convention is the fault supposition [16].

But the article 4 of this convention during its first paragraph, in second paragraph enumerates 17 instances that with proving each of them, the carrier will be exempted from responsibility. In other words the instances of carrier exemption are enumerated in this paragraph which this point is not so compatible with the supposition of fault and close it to supposition of responsibility. some of the mentioned instances in the Brussels convention are unattributable instances to the carrier which are outlined as the general title of compulsive power that have descriptions of being outsider, unpredictable and unavoidable. But Iran marine rules and the Hague (Brussels) rules which are emprised in English style, have mentioned the instances .these instances consist of dangers and dangerous events or sea accidents and sailable waters, natural disasters, operations of society’s enemies, war and its consequences, capturing or stopping a ship caused by compulsive actions or because of a matter or actions of the governors or people or judicial authorities, quarantine limitations, strike or shut down of the workhouse or avoiding and preventing of work in generally or partially caused by any reason and riot or turbulence.

Another type of responsibility exemption of the carrier is the reason related to the sender or the goods itself that are as follows: deficit and shortage of weight and volume of goods and any other type of damage that is caused by hidden defects, nature and inherent defects of goods. Defects related to packaging of goods and defects of brands and specifications. the other type of damages are caused by exploiting the ship as an instrument of shipment which are as follows: damages caused by inability of sailing, damages
caused by fault in sailing or administering affair of the ship, firing and justified deviation.

In addition, hence, this convention has more conformation with Anglo-Saxon law system and with regard to judicial procedures of these counties, for the carrier to be free from the burden of responsibility, they believe that in addition to prove one of the seventeen cases, carrier should prove one of the sailing ability of the ship, so we can say that on the basis of these rules, by the system of supposed fault, they have intensified the system of responsibility supposition. However, that in the written law system, especially of France, the system based on responsibility supposition has so firmness that there is no need to strengthen and complete it with the fault supposition [17].

In the case of Ralston Purina Co. V.U.S.A., the judge assessed that “if the cause of damage to goods which has been damaged in oceangoing ship is not clear and explicit, basically, we should assume the damage as result of sailing inability of the ship and caused by carrier’s fault in preparing it and committing carelessness in making the ship sailable”. More intensive from this condition is that the carrier proves the reason of exemption, but again he is assigned as responsible because he has played the introducing role in occurrence of that exemption reason and committed a fault that has been the introduction for the occurrence of the exemption reason.

In the case of American Mail Live V. Tokyo Mail insurance, caused by fire, there destroyed some of the shipment which was woods. The cause of fire was negligence of the admiral of ship and the owner had no role in creation of incident. Therefore he should be free from responsibility, but because the carrier (owner of the ship) could not prove that” before and in the beginning of journey” has done necessary care for “making the ship sailable” (equipping the ship with necessary instruments for prevention and confronting of the fire), the court bound him to pay for the damage.

The point that may be considered here is the way of interpretation of the clause “q” of second paragraph of the article 4 of this convention and in other word the seventeen instances of the exemption instances of carrier:

“any other cause that is not due to interference or fault of carrier liability or due to negligence and fault of the carrier’s staff, but the burden of proof is on the part of someone who is wishing to refer to this exception and should prove that negligence and interference of carrier or negligence and fault of carrier’s staff had no impact in the incurring loss or lack of commodities”

With regard to the figure of this clause it may be said that, the rules of Brussels convention do not consider the supposition of fault, because on the basis of this clause if the carrier proves that his fault or his staff fault had no impact in the incurring loss, he will be exempted from responsibility and this is the same point that is discussed in the system based on the supposition of fault. None of the 17 clauses of this paragraph has not been studied and researched by the writers like this one. Prof. Rodiere, in criticism of this clause states that: “the clause q” is an unusual and exotic judicial beast which frustrates and agitates our Latin morale [18].

However to determine the basis of carrier liability with respect to this clause it is better first to examine the subject of damage caused by unknown reasons and see whether with reference to this clause, can the carrier free himself from the burden of responsibility or not? What is certain is that for reference to this clause, the carrier is required to clear all conditions and situations which has resulted to occurrence of loss, so he could prove that his fault or interference or of his staff had no influence in occurrence of loss. In other words, if he could not explain the situations and conditions which have resulted to occurrence of loss or the causes of loss occurrence, he cannot prove that this cause is not due to interference of his fault or his staff’s fault. On this basis it should be said, if the cause of loss occurrence is not known the responsibility of the carrier is definite and the carrier cannot be exempted from it [19].

Thus this clause of the second paragraph of the article 4 cannot be interpreted on the basis of fault supposition system. Therefore it can be that the basis of carrier’s responsibility is the same supposition of responsibility.

E. THE RESPONSIBILITY BASIS IN HAMBURG CONVENTION 1978

The Hamburg treaty compared to Iran marine law (the Hague laws) has this privilege that the rule of responsibility is stated in a simple format and interpretable and the seventeen exceptional instances are also removed, of course we should not get into hallucination, because some of the mentioned instances are maintained in Hamburg laws, one of these instances is marine assistance. (the clause 6 of the article 5), other instances includes dangers caused by shipping, living animals that means inherent defect (clause 5 of the article 5) and also fire (clause 4 of article 5).

The makers of the Hamburg conventions, with respect to existing defects in paragraph 2 of article 4 of the Brussels convention determined the exemptions of carrier in such way that is free from these mentioned issues. On this basis, the carrier is exempted from responsibility when prove the loss has occurred in spite of all reasonable and necessary steps that he has done to prevent occurring of loss and its consequences.

The first paragraph of the article 5 of the Hamburg convention outlines that:

“the carrier is responsible for the loss due to waste, incurring damage to goods and also delay in delivering it, if the incident resulted to waste, loss or delay has happened during the period which on the basis of article 4, the goods has been under protection of the carrier, unless the carrier proves that he or his officers or agents have done all the steps in a rational manner for prevention of incident and its consequences. it is evident from the guise of this article that it does not aim anything more than the supposition of fault, because it does not bound the carrier to prove for his exemption, no relation of loss to him which is required for
proving the cause of loss occurrence but it is only enough for him to prove applying of necessary cares and that also should be a rational care not intensive and unusual one.

But if it is so, it will be stupendous, because the primary aim of the draftsmen of this convention was indeed preparation of rules that on the contrary of the Brussels rules, provides more support for the goods senders against the carriers. While in conclusion they have reached from one supposition of responsibility that has been the basis of responsibility in the Brussels convention 1923, to a simple supposition of fault and as so the position of senders has weakened against the carriers. However according to several reasons it can be said that the carrier’s responsibility in this rules is based on the supposition of fault:

First – the rules of this convention has adopted the same formula that was utilized in the warsaw convention 1929 in respect to air transportation.

The article 20 of this convention outlines that: “The carriers can be free from the burden of the assumption which is against them, provided that they prove that they have done all necessary precautions for prevention of loss entrance and the same by their employees or it has been impossible for them”. With respect to this article from theoretical point of view, the commitment of carrier is depended to do precaution and effort in prevention of loss entrance, or in other words, it is the same supposition of fault. [20]. But in the judicial procedures, an incomplete interpretation of this article has been made in such a way that the carrier for proving lack of fault should only prove an external cause.

Second – generally in a simple system of fault supposition we cannot introduce some instances as the instances of exemption, or as is mentioned in the Brussels rules 1924 in 17 instances, France rules 1966 in 9 instances and as so the other rules and rules related to transportation. because in such condition, the carrier for his exemption ,must specifies the cause of loss occurrence, till in case this cause is among the mentioned instances under the title of exemption instances, be freed from responsibility, and this point that means proving the cause of loss occurrence is not proportionate with a system of fault supposition because in such a system, the carrier basically has no duty to prove the cause of loss occurrence and it is only enough for him to prove that he has applied all his efforts and labor and in other words, has not committed any fault. Now with regard to this point that in the Hamburg rules there can be observed two of the seventeen instances of exemption written in the Hague rules, that are ,the fire and effort and endeavor to save life or properties in the sea, it cannot be said that the basis of responsibility in these rules is the supposition of fault.

Third – as we said already, the difference between the system based on fault supposition and the system based on responsibility supposition is that in the responsibility supposition the carrier in no way can free him from the burden of damage responsibility caused by unknown causes and thus in the system based on fault supposition this point is easily possible because in this system it is only enough for the carrier to prove that any fault not been committed.

With respect to the first paragraph of the article 5 of Hamburg rules, the carrier can be freed from responsibility only in case, that proves he or his agents have done all the necessary steps and actions in a rational manner to prevent the occurrence of loss and its consequences, therefore the carrier, in the first place should prove that what has been the cause of loss, in order to prove lately on its basis that he has done rational actions for preventing it, since otherwise proving this matter is not possible. In other words we must say that, if the carrier be unable from proving the cause of loss occurrence cannot free him from responsibility and this matter is assumed about the damage caused by unknown reasons.

Now, with respect to the Hamburg rules that the carrier is responsible for the damages caused by unknown reasons and exempts in no way, therefore it can be concluded that the basis of responsibility in this rules is the same supposition of responsibility [21].

Forth- as the forth reasoning, about the basis of responsibility in the Hamburg rules, we can state the differences of various law systems: with regard to this point that, many countries with different law systems have attended in preparation and approval of the rules of this convention, agreement on the basis of responsibility seemed impossible without any objection towards it or completely be compatible with all law systems. For example, in the Anglo-American law systems there is an accepted rule «Res ispa loquitur»that means juridical condition itself is clear [22]. Therefore when juridical condition is clear and presents carelessness and fault of the defendant, it is not necessary for the plaintiff to prove the defendant fault. In other words, the burden of proof of the lack of fault is transferred to the defendant. It is on the basis of this rule that in these systems when the defendant is the carrier, producer of drinking or other foodstuff, the burden of proof of lack of fault is transferred to the carrier.

Thus, on the basis of the interpretation that lawyers of these law systems present on the basis of the mentioned principle, from the article 5 of the Hamburg rules, the carrier should prove by proving the cause of incident occurrence, it’s no relation of it to him, and that is the same thing which is called supposition of responsibility.

Another example of this difference in principle of reasoning is observed in the negotiations that were made in the preparation of Hamburg rules draft:

In the day of the preparation of convention’s draft, the developing countries that were wishing primarily a compilation of some kind of absolute responsibility for the carrier, proposed that the first and second paragraphs of the forth article of the Hague rules be amended as follows: (Neither the ship owner nor the carrier would be responsible for waste or damages that is not due to the fault or interference of them or their agent). In the second paragraph the burden of proof was placed on the carrier to prove that (carrier's fault or interference or the agent or officer’s fault
and interference have not been the cause of waste or creation of damage and has simplified it too.

Against this group, French delegation proposed that the article be compiled in such way that according to it, the carrier be recognized as responsible with respect to all damages that is incurred from the moment the goods is received to the moment it is delivered, but does not have responsibility against all damages caused by unpredictable and inevitable causes that means the same supposed responsibility.

What is comprehended from negotiations and views of delegations is that the Hamburg rules in relation to the Hague rules, in the context of the basis of responsibility, not only has showed indifference but some deal has more stringency and in relation to the Hague regulation secures more the benefit of senders or the owners of goods, however, on the basis of some law systems the opposite may be understood from the guise of articles but these articles like the rules of Warsaw convention should also be interpreted in such a way that have been considered by the compilers.

In a segment of the supplement 2 of the Hamburg convention under the title of general understanding, it is mentioned:

(Under the rules of this convention the principle is on the supposition and possibility of fault and carelessness of the carrier).

But the point that is necessary to explain here is the problem of shipping living animals. The Hamburg conventions did not exclude shipment of living animals from the inclusion of goods definition. In other words, these rules are also governing on the shipment of living animals but has legislated special rules in this context.

The fifth paragraph of the article 5 of the convention provides:

In regard to shipment of living animals, the transporter will not be responsible for the waste, loss or delay in delivering which is caused by special dangers related to this kind of transportation, provided that the transporter prove that he has done according to the instructions of the sender that has been given to him.

With respect to this article it is clear that the commitment of carrier is summarized in this point that he has observed all instructions that has been given to him by the sender for the safety of animals and this is a commitment to the means but the question here is, why the carrier has become bound to prove his faultlessness? Does the supposition of fault is its reason?

The answer is that the supposition of fault is not discussed here. because however the carrier commitment is a commitment to means, but is a commitment of doing work type and that is also a specific and given work according to the instructions of the sender, but according to public rules we should say that the claim of promisor based on doing all instructions, is a word contrary to the inexistence principle and it is on this basis that principally the transportation carrier is considered claimant and it is on the part of the claimant to prove doing of all instructions.

On the other hand it has been stated that the Hamburg convention has changed this principle in some cases and placed the burden of proof of carrier liability on the owner. As an example we can note the irresponsibility of the carrier in relation to the loss caused by fire as a result of the fault and carelessness of employees.

The carrier is responsible in the following cases:

1-In the case of waste or lose to goods caused by fire, provided that, the demander proves that the fire has been occurred caused by the fault and carelessness of the carrier or his employees.
2-In case of waste, loss or delay in delivering of goods, provided that, the demander proves that the loss caused by the fault or carelessness of the carrier, his agents and employees has been in applying all actions that rationally has been necessary in extinguishing of fire or minimizing its impacts.

Also regarding to shipment of living animals, that on the basis of the definition of convention about shipping goods is subordinated to the rules of the Hague convention, the carrier has no responsibility, if proves that he has observed all instructions of the sender regarding to animals. In such cases contrary to other cases, the carrier is not required to prove that he has done all rational and necessary steps for prevention of danger, but it is enough for him to prove that he has observed the sender’s instructions fully. It is the goods owner who should prove that the mentioned loss has been occurred caused by the fault or carelessness of the carrier or his agents.

III. CONCLUSION

1-There are differences of views in regard to the nature of marine carrier. Some have tendency to the theory of fault. In case we accept the theory of fault, the carrier would be free of responsibility by proving observation of necessary precautions. While we concluded with examining the articles of Brussels and Hamburg conventions that the responsibility of marine carrier is based on the supposition of responsibility. He will be free from responsibility only in case he proves the cause of loss occurrence and that he has not any role in it.

2-In the Brussels convention which is written in English style, seventeen instances are stated that proving each of them, the carrier is exempted from responsibility, but in the Hamburg convention, the exceptional seventeen instances written in the Brussels convention are removed and mentioned in general phrases. He is exempted from responsibility provided he proves that the loss has been occurred despite all rational and necessary steps that he has
done for the prevention of loss occurrence and its consequences.

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