The stevedores' legal liability in Tunisia

1- Liability:

Under Tunisian Law a maritime carrier is deemed to be responsible for the conduct of stevedores, even where the stevedores have been appointed by the charterers or the receivers. On the basis of article 146 of the code of maritime commerce which stipulates that any damage of the merchandise is supposed to have taken place between possession and delivery so long as the carrier does not provide evidence otherwise.

2- Stevedores and sea carrier liability :

The stevedore's liability is based on article 169 of the Code of maritime commerce (CMC). The stevedore operates for the account of the person who has instructed it, and hence its responsibility is engaged only towards its principal. Article 212-2 of the CMC provides that the carrier is under the obligation to load, handle, lash and discharge the cargo with due care. The carrier generally entrusts these tasks to the stevedore, and in this case, the discharging operations were entrusted to the stevedore. We must therefore bring evidence to the court that during the discharging operations, the damage were caused by the stevedore's fault or that of his employees. The stevedore's liability shall be based on article 83 of the Code of obligations and contracts, which provides as follows:

One is responsible for moral or physical loss caused by one's action or fault.

Any contrary provision shall be null and void.

The fault consists in an omission or action without any intention of causing damage.

To act against stevedore's in Tunisia the two following conditions must be fulfilled :

(i) No action has been commenced against the carrier .

(ii) (ii) The stevedore's fault must be proven.

3- Sea carrier liability in Tunisia

Having left with a tripartite contract, the responsibility for maritime transport can be required by his two contracting with knowing the charger and the recipient for all losses, damages or for all damage [5] undergone by the transported goods [6], carried out during execution of the contract of carriage

The Carrier is any person by whom or in the name of which a contract of goods transport per sea is concluded with a charger .
Its responsibility is considered within the framework of the contract of carriage of goods under bill of lading.
This contract is defined by the article206 CCM as being “the convention, by which a maritime transport commits himself dealing with goods that a charger with promise gives to him to deliver it with destination”.
It follows from there that maritime transport commits himself achieving the operation of transport, i.e. the displacement of the good or the goods .
Once the responsibility for the carrier is engaged, it must compensate the recipient or the charger.
Admittedly, “the responsibility for maritime transport is in the middle of the questions that the contract of goods transport per sea poses”, in particular after the adhesion of the Tunisian legislator to international conventions as regards maritime transport what calls with a need for harmonization of the applicable texts.
One quotes initially, International convention for the unification of certain rules as regards bill of lading of August 25th, 1924 called “Convention of Brussels”.
This convention is not ratified by Tunisia but rather ratified by the European countries considered as countries of carriers . On the other hand, Tunisia, one of the countries of chargers, ratified the convention of the United Nations (hereafter NAKED) on goods transport by sea by the law n° 80.-33 of May 28th, 1980, signed on March 31st, 1978 and coming into effect on November 1st, 1992. This convention is known under the name “Convention of Hamburg” or “the rules of Hamburg” .
The third convention recently has been just added: in fact the rules of Rotterdam also ratified by Tunisia but are not put yet into force.
In Tunisian right, it is with the promulgation of the CCM by the law of April 24th, 1962 that the carrier could profit from a well established mode of the maritime contract of carriage of goods.
But adhesion with the convention of Hamburg, from now on being part of the Tunisian substantive law and being constraining [16], did nothing but pose divergences with the CCM as for the base of the responsibility but the two texts meet more or less as for the

limitation of the amount of repair [18] since both devote the principle of limitation of the responsibility for maritime transport. This principle means that in maritime law, the compensation for damage is reached a maximum: it cannot exceed a ceiling required by the law, and that the contractors cannot decrease this ceiling but they can increase it. One speaks about the principle of the levelling off of repair.

Professor Chauveau defines this principle as follows: “when the responsibility is incurred, a maximum is fixed at this responsibility which can be exceeded only in the event of declaration of value”

The limitation of responsibility characterizes the maritime law and derogates from the common right which recognizes as principle the integral repair of all the damage implying that “the author of the damage is held only with one integral repair of the damage so that there can be for the victim neither loss nor profit”.

According to article 278 subparagraph 1st Code of the obligations and contracts (COC), “the damage is the effective loss that the creditor tested and the profit of which it was deprived and who are the direct consequence of the inexecution of the obligation”.

The principle of limitation of responsibility is not new. The current mode of the limitation of the responsibility is the fruit of a long evolution. The legislator governed for the first time the maritime transport in articles 888 to 953 of the COC in which it founded the mode of integral repair [21].

It is only with the decree beylical 6/16/1942 that the limitation of responsibility was allowed. One thus passed from an integral repair of the damage in the code, with a maximum repair of 8 frank miles per parcel or unit of lost or damaged goods.

The limitation was isolated only in the event of fraud of the carrier or declaration of the nature and the value of the goods before loading . With independence, the legislator promulgated the CCM by the law of 1962 currently into force and in which it kept the principle of the limitation of the responsibility.

Today, the principle of limitation of responsibility for the carrier is an universal principle, recognized almost by all the countries of the world .

The national laws and international conventions with knowing Convention of Hamburg and the Convention of Brussels limit the

responsibility for the carrier and even for the ship-owner.
That can be explained by the importance of this principle since it appears the most advantageous principle for maritime transport: this last is sometimes unable to repair damage whose value of the damaged goods exceeds its means and it cannot cope with the mode of integral repair. If one keeps an integral responsibility in the maritime transport, the development of this economic sector, being vital for several nations, will be degraded . It is thus necessary to limit repair to an amount which can be insurable on the market.
The limitation of the responsibility for the carrier seems to be a privilege granted to the carriers because of the increasing risks at sea which the ship during its forwarding incurs, which like each privilege, should be framed by imperative rules, of public order, so that it can achieve the goal for which it was conceived.
Obviously, the carrier is the recipient of the limitation of responsibility.
This principle answers not only the advantages of the carrier but also of the charger, who is the weak part of the contract since the legislator granted to him the right of an integral repair in certain cases.
All this reflection enables us to deduce that the interest of the limitation is to found a certain balance between the advantages of maritime transports and those of the chargers
What will enable us to question ourselves up to what point is the limit of the responsibility reached a maximum? and up to what point does the legislator ensure this balance in the CCM like in the convention of Hamburg?

For more

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