

Liability of the Carrier under Turkish Law

Introduction

The carriage of goods by sea is a cheaper way for transportation of commodities. Therefore, the share of sea transport is significantly high all over the world. Carriers are the main actors of seaborne trade industry and they are responsible for transportation of the goods in a safe way. However, carriage of goods by sea has its own risks because of the perils of the seas.

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Liability of the carrier is one of the hot topics of the shipping law as many claims are brought before courts for the damage to or loss of goods during the transportation. Articles 1178 to 1192 of the Turkish Commercial Code (TCC) regulates the liability of the carrier. Whilst provisions concerning liability of the carrier under TCC are mainly based on the Hauge/Visby Rules, some provisions of the Hamburg Rules are also reflected in TCC.

Liability of the Carrier

Article 1141 of TCC reflects Article 3/1 of the Hague/Visby Rules: The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to make the ship seaworthy and cargoworthy.

Carrier is also under the obligation of exercising due diligence in loading, stowing, handling, carrying, keeping, caring and unloading the goods in performance of the contract of affreightment (Article 1178 of TCC).

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The main rule for the basis of liability of the carrier is found in Article 1178/2 of TCC: Carrier is liable for the loss of or damage to goods or delay in delivery of the goods if the loss of or damage to goods or delay in delivery occurs while the carrier is in charge of the goods.

The period of responsibility of the carrier is regulated in Article 1178/3 of TCC.

Notice of Loss, Damage and Delay

Notice of loss or damage indicating the general nature of such loss or damage should be given to the carrier in writing before or at the time of delivery (Article 1185 of TCC). If the loss or damage is not apparent, notice should be given within three days upon the delivery. There is no need for notice if the state of the goods is inspected by a court or competent authorities.

Without such notice, there will be a prima facie evidence with respect to the condition of the goods, assuming that they are delivered in condition as described in the document of transport. In case of a damage to or loss of goods, there will be a prima facie evidence which assumes that the cause of the damage or loss is not attributable to the carrier.

A notice in writing should be given to the carrier within 60 consecutive days after the goods are delivered to the consignee, otherwise no claim for compensation can be paid by the carrier for loss resulting from delay in delivery.

Relieving from Liability

List of acts exempting the carrier from liability for the loss or damage is available in TCC and it reflects the list provided under Article 4/2 of the Hague/Visby Rules.

TCC follows the nautical fault exemption of Hague/Visby Rules. The carrier is not liable for any loss or damage arising out or resulting from fire or any act, neglect or default of the master or its servants in the navigation or management of the ship under Article 1180 of TCC.

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Furthermore, carrier is not liable for loss or damage arising or resulting from:

- Perils, dangers and accidents of the sea or other navigable waters,
- Act of war, riots and civil commotions, act of public enemies, arrest or restraint of rulers or people or quarantine restrictions,
- Seizure under legal process,
- Strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general,
- Act or omission of the shipper or owner of the goods, his agent or representative,
- Measures to save life or property at sea,
- Wastage in bulk of weight or any other loss or damage arising from inherent defect, quality or vice of the goods or latent defects not discoverable by due diligence
- Insufficiency of packing or insufficiency or inadequacy of marks.

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However, carrier will be liable if it is proved that the above-mentioned circumstances have arisen due to the fault of the carrier.

There might be cases where fault or neglect of the carrier, his servants or agents combines with another cause that result in loss, damage or delay in delivery. In such cases, the carrier will be liable only to the extent that the loss, damage or delay in delivery is attributable to such fault or neglect. There is no provision found in Hague/Visby Rules with regard to the combination of causes. Hence, Article 5/7 of the Hamburg Rules is adopted in TCC.

Limits of Liability

Carriers are entitled to limit their liability under all the international conventions on carriage of goods by sea. As TCC is primarily based on Hague/Visby Rules, Article 1186/1 of TCC regulates the limits of liability of the carrier in the same manner. Accordingly, carrier shall not be liable for any loss or damage to goods in an amount exceeding the equivalent of 666.67 Special Drawing Right (SDR) per

package or unit or 2 SDR per kilo of gross weight of the goods unless the nature and value of the goods are declared by the shipper before shipment and inserted into the bills of lading.

Hague/Visby Rules contains no provision with regards to limitation of liability in case of a delay in delivery of goods. For this reason, Article 1186/6 of TCC is based on Article 6 of the Hamburg Rules: The liability of the carrier for delay is limited to an amount equivalent to two and a half times of the freight payable for the goods delayed. However, this amount cannot exceed the total freight payable under the contract.

The defences and limits of liability apply in any action against the carrier for the loss or damage to goods regardless of whether the action is based in contract or in tort.

Loss of Right to Limit Liability

A common provision which is found almost in all the international conventions on transportation is also found in Article 1187 of TCC. Pursuant thereto, neither the carrier nor a servant or agent of the carrier is entitled to limit their liability if it is proved that the damage resulted from an act or omission of the carrier has been done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

Actual Carrier

In some cases, the carrier entrusts the performance of all or part of the carriage to a third party. This third party is called the actual carrier.

Article 1191/2 of TCC regulates the liability of the actual carrier which is adopted from Article 10/2 of the Hamburg Rules. Accordingly, the provisions governing the liability of the carrier under TCC also apply to the liability of the actual carrier for the carriage performed by him. On the other hand, carrier remains responsible for the entire carriage even if the performance of all or part of the carriage is entrusted to an actual carrier.

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Time for Suit

Compensation claims against the carrier should be brought within a year. One-year period commences at the time of delivery of the goods or if the goods are not delivered at the date on which the goods should have been delivered.

GURULKAN ÇAKIR AVUKATLIK ORTAKLIĞI

Polat İş Merkezi, Offices 28-29
Mecidiyeköy 34387
Istanbul, TURKEY

T +90 212 215 30 00
M info@gurulkan.com
W www.gurulkan.com



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