SHIPPING & TRANSPORT - DENMARK

Court examines whether liability for damage to cargo can be limited to $500 per package

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Facts

A Danish exporter (A) sold 29 pieces of machinery weighing 12,400 kilograms to a buyer (B) in Hudson, Illinois in the United States. A loaded and stowed the cargo in a container and in December 2014 booked the consignment's transport with a Danish carrier (T) via its online booking system.

When the transport was booked, A received a PDF file that included a bill of lading for the transport, which stipulated that the transport was to be performed from Copenhagen to Hudson via Rotterdam and New York. The reverse side of the bill of lading included a network liability clause pursuant to which liability for transport damage was limited to $500 per package when:

- damage or loss occurring during sea carriage; and
- the place where damage had occurred could not be localised.

Liability for damage or loss occurring during transport by land in the United States was limited to $50 per pound in accordance with the network liability clause as follows:

> *"7.1 Unless otherwise mandated by compulsorily applicable law, Carrier's liability for compensation for loss of or damage to gods shall in no case exceed the amount of US$500 per package or per customary freight unit.*
>
> *7.4 On shipments involving carriage by land in the United States, loss of or damage to goods shall be limited to US$50 per pound of goods lost or damaged."*

At the time of the container's delivery in Illinois, it was ascertained that it had been damaged and the cargo had become a total loss. A survey was conducted and its report concluded that the damage had most likely been caused during transport by land in the United States.

A's cargo insurers paid compensation for the loss, brought proceedings in Denmark against T and submitted a claim for an unlimited compensation with reference to the fact that "it had not been proven at which stage during the transport the damages had occurred" and that this impossibility of establishing the place of damage was the result of decisions made by T.

The court assumed that the insurers' submissions should be understood to mean that it had pleaded that the damage had occurred during the land transport. T rejected liability and submitted that its liability could, in any event, be limited to $500 per package with reference to the fact that the place of damage could not be localised to the effect that the limitation amount of $500 per package was applicable under the network liability clause agreed.

Decision

The Maritime and Commercial Court found that:

- "the container had been very roughly handled whilst it was in the care and custody of the carrier"; and
- in this context, T should be deemed liable for the damage.(1)

With regard to the question of limitation, the court stated the following:

> "*With respect to the question as to when the damages occurred it is stipulated in the survey-report that the damages must have been caused after the discharge in New York or at the rail head in Chicago [...] The courts expert judges agrees in the findings of the surveyor and add to this that remarks/notes would most likely have been inserted into the transport documents by main line container company or third party container terminal had the container been damaged when unloaded from the vessel.*"

As a result, the court found that the damages should be deemed to have been caused during the land transport leg in the United States and that T's liability could not be limited to $500 per package, but rather to $50 per pound.

Comment

The Maritime and Commercial Court case concerned a contract for the multimodal carriage of a container from Denmark to the United States. The transport was to be performed by sea from Rotterdam, the Netherlands to the United States.

It stemmed from the bill of lading's network liability clause that liability could not be limited, as it should be assumed based on the hearing of the evidence that the damage occurred during the land leg of the transport. The judgment did not decide on the widely debated question under Danish law of whether damage arising under a contract for multimodal transport to be performed by a seagoing vessel and other means is governed by and subject to the Merchant Shipping Act (which transposes the Hague-Visby Rules into Danish law and thus limits liability to two special drawing rights per kilogram for damaged goods) if the damages actually occur during the sea leg or whether such contract is not subject to any mandatory legislation.

For further information on this topic please contact Jesper Windahl or Rósing Rasmussen at WSCO Advokatpartnerselskab by telephone (+45 3525 3800) or email (jw@wsco.dk or rr@wsco.dk). The WSCO Advokatpartnerselskab website can be accessed at www.wsco.dk.

Endnotes

(1) Maritime and Commercial Court judgment of January 12 2018.
