

Research Article

Study on Article 55 of the Maritime Law to the Carrier's Compensation Liability of Cargo Loss

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Abstract

The Article 55 of Maritime Law is often applied for to calculate the carrier's compensation for the loss or damage of goods when disputes arising from a maritime cargo transport contract. In recent years, some judges held the points that costs of rendering the damaged goods harmless should not be covered under the carrier's liability of compensating scope according to the Article 55, the loss to the goods should only be limited to the stipulated scopes under the said article, which has attracted widespread attention in the shipping community and sparked a debate on whether any conflict to the compensating principles between Article 55 of the Maritime Law and Article 584 of the Civil Law which established the principle of full compensation. Whether the Maritime Law as a special law could exclude the application of other common law when a same concern rose, especially when there is no a clearer article stipulated by the special law. This article will make a study on the comprehending of the article 55 based on some cases, combining the revised draft of Maritime Law of the People's Republic of China that discussed and principally approved on conference of executive meeting of the State Council on August 30, 2024.

Keywords

Maritime Cargo Transport, Maritime Law, Article 55, Principle of Full Compensation, Limitation of Liability, Civil Law

1. Introduction

A final judgment, Hu Min Zhong [1] No.1040, on a maritime cargo transportation contract dispute between Beierqi International Freight Forwarding (Shanghai) Co., Ltd. (hereinafter referred to as "Beierqi Company") and Shanghai Haihua Shipping Co., Ltd. (hereinafter referred to as "Haihua Company") that made by the Shanghai High People's Court in June 2023 has attracted widespread attention in the shipping community. In this case, Beierqi Company entrusted Haihua Company to deliver a container of chemical goods requiring full electrical connection to maintain a constant temperature of 43 °C throughout the entire process.

When booking, Beierqi Company had noticed to Haihua Company that the container needed to be plugged in to maintain a constant temperature. However, the container was staying at station yard without plug in for nearly ten days before its waiting for loading period. After loading onboard, the container was fully plugged in with the temperature keeping in normal during the shipment. Upon arrival at the destination port, the consignee discovered the goods suffered complete damage becoming useless. Finally the goods were destroyed with harmless treatment required by the authority due to its toxic characteristic. Then Beierqi Company imme-

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diately applied for a loss claim to the carrier Haihua Company including the loss of goods and costs of harmless treatment they had compensated to consignee.

After the final judgment, the damage cause of the goods were confirmed that it was the carrier Haihua Company's failure to fulfill its obligation of managing the goods as agreed, and therefore they should bear responsibility. The focus of the dispute between the two parties was whether the carrier should bear the cost of harmless treatment of the goods. Shanghai High People's Court opinioned that since Article 55 of the Maritime Law had clearly stipulated the compensation scopes for damaged sea-going goods, the civil law should not be applied for to increase the carrier's liability beside this provision. Therefore, Beierqi Company's appeal of asking for the costs of harmless treatment was not supported by the high court.

In addition to the Shanghai High Court, the Qingdao Maritime Court also made a same conclusion in the judgment Lu 72Min Chu [2] No.1110, holding that the Article 55 of the Maritime Law has excluded the carrier's liability for compensation other than loss of cargo damage, the carrier should no more burden the costs of harmless treatment.

However, in the judgment Min 72 Min Chu [3] No.1589, the Xiamen Maritime Court judged in a completely opposite way comparing to Shanghai High Court, holding that the carrier should bear the cost of harmless treatment of damaged goods. In this case, a 40RF container with frozen cuttlefish was entrusted by the plaintiff to the carrier who was the defendant. Unfortunately the goods were suffered total damage due the abnormal of the refrigeration system during the shipment, causing high costs of harmless treatment to the plaintiff. The defendant alleged that the carrier's liability under the Article 55 had been subjected to the loss of goods, should not burden the costs of harmless treatment any more. So they held their no responsibility to the harmless costs. But the court turned down their alleging in favor of the plaintiff, opinioned that the defendant as a carrier still should bear the damage compensation for breach of contract subject to Article 584 of Civil Law besides the responsibility of goods loss.

Through the above cases, we could find that different courts have great differences in the understanding of Article 55 in practice. The Shanghai High Court holds that after compensating for the loss of goods in accordance with the Article 55 of Maritime Law, the carrier should not bear any other compensation liability under the provisions of Civil Law. However, Xiamen Maritime Court interpreted as Article 55 is a provision on the calculation method of the amount of cargo damage does not restrict the carrier to bear the liability for compensation for damages other than cargo loss. In light of wide application of the Article 55 in practice and the great impact on the shipping community caused by the limitation of the scope of carrier's liability, it is necessary to clarify whether the Article 55 has the effect of restricting carrier's liability.

2. Understanding to Legislative Intent of the Article 55

According to the provisions of the Article 55:

"The compensation for loss of goods shall be calculated based on the actual value of the goods; the compensation for damage to goods shall be calculated based on the difference in actual value before and after the damage or the cost of repairing the goods."

The actual value of the goods shall be calculated based on the value of the goods at the time of shipment plus insurance and freight."

The actual value of the goods specified in the preceding paragraph shall be compensated by deducting the relevant fees that were underpaid or waived due to the loss or damage of the goods."

From the perspective of textual interpretation, the Article 55 originally stated "the compensation amount for the loss (damage) of goods" rather than "the entire compensation amount for the loss (damage) of goods" or "the entire compensation liability for the loss (damage) of goods". Based on the understanding of the provisions of the law itself, it could not obtained that the carrier's liability is limited to the actual value (repair cost) to determine the loss of goods (damage), and shall not bear other compensation. If an expansion interpretation of provision *"the compensation for loss of goods shall be calculated based on the actual value of the goods"* to all liability for the loss of goods is limited to the actual value of the goods, it would be a misinterpreting from the perspective of textual interpretation. Meanwhile, the provision *"...be calculated based on..."* is stressing the calculation method for determining the material loss of the goods themselves, focusing on "calculating". [4] Therefore, the essence of "compensation amount" should be the calculation method for numerical values. In fact, if the legislative intention is to limit the carrier's liability for the loss (damage) of goods to the liability stipulated in the Article 55, and not assume any other liability, a clearer wording should be adopted.

From the perspective of teleological interpretation, the method of actual value calculation of the Article 55 excludes the market price losses, which mainly settle the problem of how to ascertain the actual value of goods, and exclude market price losses due to market fluctuations in the calculation of the difference in actual value before and after the damage of goods, as well as how to apply the "depreciation rate calculation method" accurately. [5] So whether the Supreme Court gazette case Hachiman Shipping S. A. vs Dorval Kaiun K. K. in which the actual value excluded the market price losses, or the "Judgment Rules for Maritime Cargo Transportation Contract Dispute Cases" edited by Justice Wang Shumei, [6] the key point of explanation to the Article 55 is focusing on the reasonable calculation of loss of goods. [7]

However, at present there is still no clear conclusion as to whether the Article 55 has the purpose of delineating the full

liability of the carrier. And for the Article 55 in the Maritime Law, the revised draft specifies the calculation standard for the "actual value of goods" as "the actual value of goods shall be calculated based on the market price at the time of delivery at the place of delivery; if the market price at the time of delivery cannot be proven, it shall be calculated based on the value of the goods at the time of shipment plus insurance and freight", solving the problem that which party shall be responsible for the market value loss, but still not clear the application issues of the principle of full liability for compensation established in the Civil Law.

So, if it is believed that the provisions narrow the original meaning and could not fully express the true meaning of legislation, the way to expand the interpretation shall be subjected to law and reason. And if there is a contrary conclusion drawn from the expanded interpretation comparing to the general principles, whether such an expanded interpretation is appropriate needs for further explored.

3. Interpreting the Article 55 as Limiting the Carrier's Liability Violates the Civil Law Principle of Full Compensation

As the provisions of Article 584 of Civil Law:

"If one party fails to perform its contractual obligations or does not perform its contractual obligations in accordance with the agreement, resulting in losses to the other party, the amount of compensation for the losses shall be equivalent to the losses caused by the breach of contract, including the benefits that can be obtained after the performance of the contract; However, it shall not exceed the losses that the defaulting party could have foreseen or should have foreseen at the time of entering into the contract due to the breach".

3.1. The Full Compensation Principle Established by Article 584 of Civil Law

Article 584 of the Civil Law marks the establishment of the principle of full compensation in Chinese law, [8] which is consistent with Article 113 of Contract Law and Article 112 of the General Principles of Civil Law that both have been abolished, [9] establishing the basis of China's statutory system of compensation for damages as the principle of full compensation. In fact, the principle of full compensation is a basic consensus in the current civil law system, and the legislation of mainstream countries is based on the principle of full compensation, such as the Uniform Commercial Code of the United States, the German Civil Code, the Principles of European Contract Law, the United Nations Convention on Contracts for the International Sale of Goods and the 1979 Sale of Goods Act of the United Kingdom all recognize that the principle of full compensation as a basic principle in the statutory field of default damages. [10] In view of the per-

spective of fairness and restraining of breach of contract, the full compensation principle, as a consensus-based fundamental principle, fully protects the legitimate interests of the non-defaulting party and ensures the stability of contractual relationships.

3.2. Limiting the Carrier's Liability to the Extent of Cargo Damage Violates the Principle of Full Compensation

The principle of full compensation means that the defaulting party shall be liable for all damages suffered by the non defaulting party due to its breach of contract, and the compensation that the defaulting party should pay shall be equal to the losses suffered by the non defaulting party. [11] Taking the above contract dispute between Beierqi Company and Haihua Company as an example, the carrier Haihua Company's breach of contract and failure to fulfill its obligations of cargo management directly result in the generation of harmless treatment costs for damaged goods. According to the principle of full compensation established in Article 584 of the Civil Law, the defaulting party Beierqi Company shall be liable for compensation for such harmless treatment costs. It can be seen that interpreting the Article 55 of Maritime Law as the carrier shall not be liable for losses other than cargo damage would contradict the principle of full compensation established in Article 584 of the Civil Law. Considering that the principle of full compensation is widely recognized by civil law systems around the world, any arbitrary breakthrough in this principle will be detrimental to the construction of the rule of law in China.

4. Inappropriate to Create More Limitation of Liability for Carrier in Addition to the Existing

For the possible liability of compensation to the goods the carrier may be liable for during the shipment, the Maritime Law has respectively established the unit liability limitation and maritime compensation limitation through Articles 56 and Chapter 11. It can be said that the risks faced by carriers during the sea adventure regarding cargos have been fully considered and protected by the law. If the Article 55 of Maritime Law is deemed as the carrier not assuming any other liability except for the loss (damage) of goods, it actually create an implicit liability limitations to the carrier in addition to the unit liability limitation in Article 56 and the maritime compensation liability limitation in Chapter 11, resulting in the cargo side bearing more uncontrollable risks, which is not conducive to the development of the shipping community. Therefore, in the case where the existing liability limitation system has fully protected the interests of the carrier, it is not appropriate to add a liability limitation of "compensation liability limited to cargo damage" for the car-

rier. Therefore, in the case where the existing liability limitation system has fully protected the interests of carrier side, it is not appropriate to add a liability limitation of "compensation liability limited to cargo damage" for the carrier.

5. Conclusion and Suggestions

All time along, the debate on Article 55 of the Maritime Law are mainly centering on the calculation standard of the actual value of the goods, which has been clearly answered in the draft revision of Maritime Law, which was discussed and adopted in principle at the executive meeting of The State Council on August 30, 2024. However, in recent years, the controversy has not stopped especially when some judgment has been judged by limiting the liability of the carrier according to the provision. In this regard, the author believes that the Article 55 itself does not have the meaning of limiting the liability of the carrier, and the viewpoint to limit carrier's liability to cargo damage in some judgment is an expansionary interpretation of the Article 55. Considering that this practice is in conflict with the principle of full compensation established by Article 584 in the Civil Law, and that sufficient protection has been provided to carriers under the unit liability limitation and maritime compensation limitation system under the Maritime Law, the author believes that it is not appropriate to assume that the Article 55 in Maritime Law has the meaning of limiting the carrier's liability.

Therefore, the author suggests in the case where the draft of the Maritime Law has been adopted in principle, considering that the draft has not solved this problem, further clarification and explanation of the Article 55 should be made through judicial interpretation to maintain the consistency and fairness of court judgments.

Abbreviations

40RF 40Reefer Container

Author Contributions

Yalong Wang: Datacuration, Methodology, Resources, Writing—originaldraft, Writing—review&editing

Changtao Zhang: Datacuration, Methodology, Resources, Writing—review&editing

Conflicts of Interest

The author declares no conflicts of interest.

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