Review

Evaluation of Civil and Business Acts on Carrier Liability in Iranian Law

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Several theories have been presented on carrier liability among which the fault and responsibility theories are of more importance. In the fault assumption if the carrier is able to prove that he/she has done a reasonable action and although the fault doesn't lie with him/her, damage has been caused, then he/she is exempted from responsibility. On the other hand in the responsibility assumption he/she is exempted from responsibility only if he/she is able to prove the cause of damage, and also the damage is not attributed to him/her. There are some contradictions in Iranian civil and business Acts. Civil Articles 513 through 517 and Business Articles 378 and 386 are the associated Articles. Civil Act assumes that the transportation contract is from lease contract while the business Act assumes that it follows the advocacy provisions. In this paper these differences and the carrier promise for goods delivery are presented based on the above Act.

Keywords: civil Act- business Act- fault assumption- responsibility assumption- carrier liability.

INTRODUCTION

Types of Responsibility systems

To prove the breach of promise performance the promise provisions should be made clear. The most important classification of the promises is the classification into two categories: promise to result and promise to means. In promise to means the promisor should do his best to achieve the desired result. In this classification he/she must behave in a standard manner in his/her special conditions. Therefore the promisee should prove that the promisor has not had the standard nature and has failed to provide the means for the agreed and in the other words he/she has promisor a fault to demonstrate the breach of contract [1]. However the degree of fault that provokes the promisor responsibility is not the same in all cases but it depends on the promise provisions and the agreement of the two parties. On the other hand in promise to result in cases where there is a high probability to achieve the desired result usually the promisor undertakes obtaining the result and providing means for promise performance is a preliminary provision for obligation. To prove the promise breach in this type of promise it is only sufficient to demonstrate that the desired result has not been achieved. However if it is proved that a force majeure event has prevented the contract performance then the promisor is exempted from responsibility. In the case that the promisor has guaranteed obtaining the desired result proving any event cannot make him irresponsible (absolute responsibility).

Lawyers and judicial procedures have presented an interpretation and analysis of contract whereby the carrier is also promisor for both cargo and passenger safety. In other words safety promise is also included in the carrier promises. This promise in the case of goods transportation may be either a promise to result or means. The carrier liability depends on how he/she has accepted the promise and/or legislator has assumed in the position of the two parties' decisions. Therefore the problem analysis should be considered different depending on the safety promise consideration of (a) promise to means (b) promise to result.
(a) **Safety promise is a promise to means.**

In this case the carrier commits to do the standard cares to save the cargo i.e. the carrier should provide the necessary standard transportation means and applies his/her best qualifications in this field. The carrier has responsibility only when it is proved that the detriment is due to his/her fault. There are two states in burden of proof of this fault. First on the basis of general rules the burden commits to the claimant or lost. Second the legislator has assumed the carrier fault ease for lost and oblige him/her to defend and ejection of circumstantial evidence of the fault.

(b) **Safety promise is a promise to result.**

In this assumption the carrier commits to convey the cargo safely and he/she is responsible for not attaining the desired result (safely conveying the cargo to destination) and the followed detriments unless he/she prove that an unavoidable force majeure has prevented from attaining the desired result. In other words the caused detriment to the cargo is not attributed to him/her. Hence in this case the burden of proof that the carrier has not promisor a fault is not a way to make him/her irresponsible. Albeit in this assumption if the carrier has guarantied the cargo safety or such a promise has been imposed on him/her by Act then he/she is responsible for any detriment although it is an external force majeure factor. In this assumption the carrier regardless of any fault or precaution he has taken he/she is responsible for the detriments caused by not attaining the desired result. So there are four different responsibility systems:

1. A system based on the proved fault
2. A system based on the fault assumption: which is removed by proving of non committing fault or proving of doing common efforts by carrier
3. A system based on the responsibility assumption: which can be ejected by proving of detriment cause or non-performing the promise and that it can not be attributed to the carrier.
4. Absolute responsibility system.

In addition to the way of the carrier defense the difference of systems (2) and (3) can also be observed in the detriment caused by unknown factors. According to the system based on the fault assumption in the case of detriments caused by unknown factors the carrier can easily defend him/herself and make oneself irresponsible since it is only sufficient to prove that he/she has not promisor the fault while in the system based on responsibility assumption the carrier becomes responsible in this case and can not make oneself irresponsible because to be exempted he/she should prove the cause of detriment and that it can not be attributable to him/her while in this assumption the detriment cause is unknown and that is impossible.

2. Articles related to carrier responsibility in business and civil Act

**CIVIL ACT**

Civil Act Articles 513 through 517 approved in 1928 have considered this subject. In Article 513 of this Act the transportation contract has been considered as a kind of lease contract. According to this Article the major types of leasing persons are as follow:

1. leasing workers of any kind
2. Leasing carriers of passengers or cargo including overland, marine, or airway.

Civil Article 516 in relation to the statement of promises and duties states that " the promises of carriers from overland, marine, or airway for the protection of the goods that surrendered to them are the same as the promises stated for the trustees. Therefore if there is any default or infringe they are responsible for the breakdown of the goods they have been given to carry and this responsibility is from the date they have taken the goods.

**BUSINESS ACT**

As a result of increasing development of business exchanges, the transportation contract got a significant importance. Therefore the business Act has made some fundamental changes that are proportional to the requirement velocity and confidence in business affairs. To this end and according to the Article 378 of business Act and following European authors the transportation contract became under advocacy provisions, unless in the cases it is exempted. According to the Article 386 of this Act "if the cargo is lost or damaged then the carrier will be responsible for its price unless he/ she prove that being lost or damaged is related to the substance kind of the cargo or it is documented to the fault of sender or recipient and/or it is caused by the instructions one of them has given or it is related to the accidents that no heedful carrier could prevent that. The amount of the detriment in the contract of the two parties can be identified more or less than the perfect price of the cargo.

3. Comparison of dictums adjudged in civil and business Acts about carrier

It is noticed that the civil Act has assumed the transportation contract from guilds of lease contract while the business Act has assumed it under advocacy contract. According to this it should be noted that there
are some basic differences between civil and business Act provisions from the standpoint of transportation contract that are as follow:

Civil Act assumes the transportation contract from kinds of lease contracts and since this is from binding contract, none of the two parties can revoke the contract without the agreement of the other party. On the other hand business Act has changed the nature of this contract and assumed it under the provisions of advocacy contract. Consequently the carrier has been considered as a Lawyer. The result principally is that one of the two parties can revoke the transportation contract. In addition the advocacy contract has not bargain nature since in advocacy contract there are no two mutual promises but there is only one commitment. It should also be noted that in transportation contract there are mutual promises. Despite the fact that transportation contract is neither under lease contract nor under advocacy contract, it should be accepted that in most of transportation contracts there can be observed some aspects from both above contracts. Usually both cargo owners and carriers work via their agencies and there are institutes that merely have the agency of the carriers. The carriers also perform some of the tasks of cargo owners for instance they perform the loading or unloading instead of the cargo owner.

On the other hand in the transportation contract the cargo is delivered to the carrier and he/she is required to maintain and then give them back. Article 516 has also stated this. However it should be accepted that the trust contract has not bargain nature and principally the trustee freely maintain the property. In addition the trustee is responsible if the fault is proved while in the transportation contract the responsible is the carrier in principle.

According to the above discussions (and consideration that the business Act acts as a special Act governing on the provisions of civil Act) it can be noted that except from postal transport the transportation contract neither has the nature of lease contract nor has the nature of advocacy contract but in its status it is a special kind of identified contracts which has been established in modern business rights but in the case of absence of special text it is under the provisions of advocacy contract. According to the Article 10 of civil Act as a private contract between the two parties is necessary to follow. In the provisions of civil and business Act the subject of carrier burden of proof is also presented in two kinds. According to the Article 516 of civil Act the carrier is trustee and is not responsible in the case of being lost or damaged unless in the case of infringe or default. It is obvious that the carrier is responsible in the case that the cargo being infringed or some detriment caused to it unless he/she prove that the detriment has been caused by the substance kind of the cargo or the fault of sender or recipient or by instructions and decisions of recipient or sender of the cargo or the accident caused by an action that no careful carrier could prevent that. Therefore in principle the carrier is responsible unless he/she prove that no fault has made by him/her.

4. Probable confictions between civil and business Act

From the viewpoint of some of Lawyers there are some confictions between civil and business Act from transportation responsibility aspect. These two Acts have followed different principles: in civil Act the assumption is that the carrier has not promisor fault and the claimant should prove the carrier fault. In contrast in the business Act the assumption is the carrier fault and he/she should prove that he/she has not promisor the fault. Therefore Article 386 of business Act approved in 1932 abolishes the Article 516 of civil Act approved in 1928. Some of other Lawyers believe that these two bases can be added because "according to the general rules of transactions whenever someone is required by a contract to do something and does not adhere the commitment, non-performing the contract is a kind of fault and according to Act someone who has not behaved according to the content of the contract is guilty and responsible for the consequent detriments unless he/she prove that he/she has not promisor a fault and an external factor has prevented the performance of the testament (Articles 227 and 229 of civil Act). Therefore whenever someone commits to convey safely the cargo to some place then if the cargo damages he/she has not performed the promise and the assumption is that he/she has promisor the fault unless he/she prove the contrary. Following the tradition of the carriers especially the international carriers the business Act has stated an implicit promise that the carrier is required to convey the cargo safely, since according to the Article 225 of civil Act being custom so that the contract expresses it without clarity is the same as writing down in the contract. Hence in the case that the cargo is damaged since the carrier has not performed the promise he/she is guilty because of the contract breach of the content unless the contrary is proved. From this standpoint of the Lawyers "there is no difference between civil and business Act from the basics since both of them assume the guilty as responsible and both of them assume a fault for someone who has not performed the commitment. The only different is that the business Act has assumed that the promise to carry the cargo implicitly includes the promise to convey it safely and followed by this assumption it assumes the carrier as the guilty unless the contrary is proved. It seems that with the above description we should accept a kind of confiction between Article 516 of civil Act and Article 227 and 229 of civil Act. Because according to Article 516 of civil Act merely the occurrence of detriment does not lead to the carrier responsibility but the default or infringe should be proved so that the default or infringe is not assumed. However according to the Articles 227 and 229..."
of civil Act not performing the promise that is not conveying safely the cargo to the destination is itself a fault and consequently the carrier would be responsible. In the other words the legislator has stated the responsibility assumption for the wrongdoer. In this order it should be noted that the dictum of civil and business Act may be added to each other but it seems that we can not add the Article 516 of civil Act and Article 386 of business Act to each other and they are incompatible. In fact it should be said that there is an important difference between civil and business Act so that they have established a quite distinct situations. Article 516 of civil Act has assumed not doing fault and the Articles 227 and 229 of civil Act has established the responsibility assumption based on implicitly accepting the cargo safety promise included in civil Act. But Article 386 of business Act has assumed the fault assumption and it is obvious that they have different effects.

It should also be noted that the business Act is applicable for business transportation operation while the dominant of civil Act provisions is in the field of non professional (non business) transportations.

In the cases of incompatibility of civil and business Act provisions about transportation contract the business provisions is preferred since "according to the Clause 2 of Article 2 of business Act carrying is interpreted as a business action and business actions are under business Act unless it is silent on this field" and "in the cases of silent or briefly speaking or the cases that it explicitly leaves the coverage of business Act the civil Act is applicable and the Articles 516 and 517 can not be considered quite abolished".

Therefore relying to the provisions of business Act the responsibility of carrier is assumed unless he/she prove that an external force majeure caused that (Articles 227 and 229 of civil Act). This responsibility is because of implicitly promise of the carrier to convey safely the cargo to the destination.

This is a promise to result and once the desired result is not attained there appears the responsibility of the carrier to compensate the detriment.

In addition if the detriment caused origins from carrier staff operations then the responsibility will divert to the carrier as the Article 388 of the business Act states: "The carrier is responsible for the accidents and faults that have been occurred during the transportation whether he/she have carried the cargo by his/her own or got someone do that. It is obvious that in the latter case the right to refer to the carrier who has launched him/her is conserved."

Therefore the safety guaranty, commits the safety of the other party of contract with the owner of the cargo, responsibility of actions, agents and agents of him/her and those who have accepted the cooperation in carrying the cargo by the contract. The lost has not the right to refer to carrier staff since the contractual relation that gives him/her the right to claim the detriment only holds between the lost and the carrier and there is no a legal relation between the lost and carrier staff unless relying coercive assurance that is not associated with the transportation contract.

In the field of carrier responsibility originated from staff or his/her allowed agents in one of the opinions for unity of procedure of the supreme court has been stated that: "According to the Article 388 the responsibility burden of the cargo deficiency during the transportation is on the carrier although there is another cooperator.

CONCLUSION

1. Civil Act has assumed the transportation contract from the guilds of lease contract while the business Act has assumed it under advocacy Act.
2. By transportation contract nature evaluation it is observed that it is a special kind of contracts which has been established in modern business Act.
3. In the field of responsibility burden originated from transportation in the Article 516 of civil Act the assumption is not doing fault of carrier and the claimant should prove the carrier fault. However in the business Act the assumption is the carrier fault and he/she should prove that he/she has not made the fault.
4. Some of Lawyers believe that since the business Act is posterior so it is the nullifier of the provisions of the civil Act. However some others believe that the two said basics can be added to each other and they are compatible.
5. Articles 227 and 229 of the civil Act have assumed responsibility assumption and the Article 386 of the business Act has assumed fault assumption.
6. In the cases that the provisions of civil and business Act are incompatible in respect of the transportation contract , the business provisions as special provisions are preferred to the civil Act.

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