World Academy of Science, Engineering and Technology
International Journal of Transport and Vehicle Engineering
Vol:17, No:02, 2023

The Duty of Sea Carrier to Transship the Cargo in Case of Vessel Breakdown

Authors : Mojtaba Eshraghi Arani

Abstract : Concluding the contract for carriage of cargo with the shipper (through bill of lading or charterparty), the carrier must transport the cargo from loading port to the port of discharge and deliver it to the consignee. Unless otherwise agreed in the contract, the carrier must avoid from any deviation, transfer of cargo to another vessel or unreasonable stoppage of carriage in-transit. However, the vessel might break down in-transit for any reason and becomes unable to continue its voyage to the port of discharge. This is a frequent incident in the carriage of goods by sea which leads to important dispute between the carrier/owner and the shipper/charterer (hereinafter called “cargo interests”). It is a generally accepted rule that in such event, the carrier/owner must repair the vessel after which it will continue its voyage to the destination port. The dispute will arise in the case that temporary repair of the vessel cannot be done in the short or reasonable term. There are two options for the contract parties in such a case: First, the carrier/owner is entitled to repair the vessel while having the cargo onboard or discharged in the port of refugee, and the cargo interests must wait till the breakdown is rectified at any time, whenever. Second, the carrier/owner will be responsible to charter another vessel and transfer the entirety of cargo to the substitute vessel. In fact, the main question revolves around the duty of carrier/owner to perform transfer of cargo to another vessel. Such operation which is called “trans-shipment” or “transhipment” (in terms of the oil industry it is usually called “ship-to-ship” or “STS”) needs to be done carefully and with due diligence. In fact, the transshipment operation for various cargoes might be different as each cargo requires its own suitable equipment for transfer to another vessel, so this operation is often costly. Moreover, there is a considerable risk of collision between two vessels in particular in bulk carriers. Bulk cargo is also exposed to the shortage and partial loss in the process of transshipment especially during bad weather. Concerning tankers which carry oil and petrochemical products, transshipment, is most probably followed by sea pollution. On the grounds of the above consequences, the owners are afraid of being held responsible for such operation and are reluctant to perform in the relevant disputes. The main argument raised by them is that no regulation has recognized such duty upon their shoulders so any such operation must be done under the auspices of the cargo interests and all costs must be reimbursed by themselves. Unfortunately, not only the international conventions including Hague rules, Hague-Visby Rules, Hamburg rules and Rotterdam rules but also most domestic laws are silent in this regard. The doctrine has yet to analyse the issue and no legal researches was found out in this regard. A qualitative method with the concept of interpretation of data collection has been used in this paper. The source of the data is the analysis of regulations and cases. It is argued in this article that the paramount rule in the maritime law is “the accomplishment of the voyage” by the carrier/owner in view of which, if the voyage can only be finished by transshipment, then the carrier/owner will be responsible to carry out this operation. The duty of carrier/owner to apply “due diligence” will strengthen this reasoning. Any and all costs and expenses will also be on the account pf the owner/carrier, unless the incident is attributable to any cause arising from the cargo interests’ negligence.

Keywords : cargo, STS, transshipment, vessel, voyage
Conference Title : ICMLT 2023 : International Conference on Maritime Law and Transportation
Conference Location : Paris, France
Conference Dates : February 06-07, 2023