

The Bases of Responsibility in CIM Convention and its Comparison with Iranian Law

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Abstract: Current research has paid to the 4 bases of liability (Proved fault prove, Presumption of fault, Strict Liability, Absolute responsibility) in addition to the exploration and explanation of liability based on CIM convention (transport via railway) and has compared the bases of responsibility in CIM with the liability of railway transfer carrier in Iran. The results of the study shows that there is no significant and outstanding difference between bases of responsibility in CIM and Iran and except in partial cases, will ask the carrier based on presumption of fault. [Ebrahim Taghizadeh, Sahar Alipoor, **The Bases of Responsibility in CIM Convention and its Comparison with Iranian Law**. Journal of American Science 2012;8(3):594-595]. (ISSN: 1545-1003). <http://www.americanscience.org>. 78

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Introduction:

It is obvious that all of legal systems such as common law and Islam, divide civil responsibility to the following categories based on the fact that with the proof of fault and causality the responsibility is upon loser or not; 'proved fault prove', 'presumption of fault', 'absolute responsibility' and 'strict responsibility' (Katoozian, 2002).

Proved fault prove': in this type of the responsibility the loser must prove the fault of the carrier.

Presumption of fault; in this type the fault of the actor of lose is supposed and there is no need for loser to prove the lose but, the actor of lose should prove that he/she doesn't violated.

Strict Liability: in this type of liability, there is no need for any fault but also law makers suppose the causality relationship and actor of lose should prove the causality relationship and this is possible only by prove of conquering force.

Absolute responsibility: in this type of responsibility, law makers absolutely and completely considers the actor of lose as the responsible person to the extent that even the prove of the causality and conquering force don't cancel the liability of the actor of lose (Taghizadeh, 2010).

So, according to the 4 types of mentioned responsibilities we'll investigate the railway carrier in CIM convention and Iranian law.

Bases of Railway Carrier in Iranian Law:

In Iranian law, the resources of railway transportation carrier are; civil law, trade law, the law of the tariffs and regulation of goods transportation with railway.

From the point that in this regulations the different bases have been announced and proposed for the responsibility, the separate investigation is needed (Erfani, 2006). Based on Iranian Law, the contract of transportation is from the regulations considering individual hire. So this law considers the carrier as the hired person for the employer and considers the carrier as the renter. So, the occupation of the hiring is from the safekeeping type and will be judged under safekeeping regulations. Thus based on article 516 of Iranian civil law, the carrier is not responsible to damage unless his/her fault be proved. So the Iranian law has accepted the "proved fault prove" responsibility. From the other hand, based on the article 386 in this law, for the prove of fault upon the carrier, doesn't necessitate the prove of fault. Also the prove of the lack of fault doesn't cancel the responsibility. So, in this manner the law maker considered the "strict liability" (Mazdarani, 2010).

From the fact that Iranian law of railway transportation is incomplete based on the responsibility of the carrier and from the other hand based on article 2 of Iranian trade law the carriage is a commercial action, so the base of the responsibility in the railway transportation is "strict liability". Additionally, the law of trade is from the specific laws and has priority on civil law (Mohammadi, 1994).

The base of responsibility in the CIM convention

Based on CIM convention, the responsibility of the carrier is supposed and he/she is committed to gain a reliable result. In this type of the responsibility there is no attention to the fault. If the damage occurs, based on the law, the committed person has strict liability. In this manner, the liable person doesn't be exculpated after the lack of fault but, he/she should prove the existence of external factor

or causality. In other words in this type of the responsibility, the existence of causality relationship between the fault and the damage is proposed and the loser doesn't need both the prove of fault and the prove of causality. So it is the wanted to prove the lack of causality. This fact can be understand from the paragraph (1) of article 36 that stated the carrier is responsible for the damages and loses during the carriage time period. But, by the prove of some conditions she/he is exculpated from the responsibility. From these conditions are; if the damage or lose occurs by the wrong command of the submitter, or; if they lose is rooted in unpredictable facts. In the article 36 of the convention it can be read; the railway company is liable for the partial or total damages from the point of the acceptance to the time of delivery.

It should be added that such base "strict liability" has been accepted in the Hamburg and CMR conventions.

Conclusions:

As it is stated in the paper, the CIM convention suggests "strict liability for the railway transport carrier. On the other hand, for investigating the bases of carrier responsibility in Iran it is necessary to differentiate between internal and international transportation rules. From the point that Iran has joined to the CIM convention, we should know that base of this convention the transportation claims will be judged but, regarding to the internal transportation, CIM convention rules cannot be

operated. As it stated in the paper, the bases of carrier responsibility in Iran and CIM convention are the same.

References:

1. Eskini, R. (1999). Trade Law (public commercial contracts), Samt publication, Tehran
2. Emami, H. (1985). Civil Law, Eslamieh Publication, Tehran
3. Taghizadeh, E. (2010). The law of marine transportation, Majd publication, Tehran
4. Samadi Ahari, M.H. (1994). Civil Liability of Marine Transportation Carrier, Vol.1
5. Erfani, T. (2006). Civil liability of road transportation, Asare Andishe Publication, Tehran
6. Katoozian, N. (2002). Civil responsibility resulted from fault, Tehran University Publication.
7. Mohammadi, A. (1994). jurisprudence rules, Yalda
8. Mazdarani, H. (2010) the comparative study of the transportation carrier liability in Iran and International Conventions, Transportation and Development, No.40
9. Hashemizadeh, A. (1999) "bases of the marine transportation carrier responsibilities, Imam Sadegh University Research Journal

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