

DAMAGES TO CARGO AND SHIPS – GENERAL AND PARTICULAR AVERAGES

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ABSTRACT

Due to the complexity of activities which can generate cargo surveys in respect of transport, maritime ships can be in such situations that will not allow carrying out activities onboard under normal conditions, leading to damages to the ships or carried cargo, thus entailing litigations between participants in such transport. Damages approach have had a spectacular evolution, so that the currently requested survey reports for the construction and settlement of such litigations became far-reaching and specialized. This paper will point out elements of damages going under concepts of general and particular averages.

Keywords: *Damage, cargo, survey, litigation, general average, particular average.*

1. INTRODUCTION

According to the maritime commercial literature, the damage is the total outstanding expenses and prejudice brought to the ship and cargo onboard or only to one of them subsequent to loading and departure and until their return and unloading. In the opinion of some authors, the damage is a prejudice brought to a ship or its cargo, as a result of a navigation accident or any force majeure event, as well as expenses or sacrifices incurred during transport, in order to prevent a danger threatening the ship.

Damages represent all deteriorations caused to the ship's hull, her inventory, as well as cargo onboard intended to transport.

Thus, there are two corresponding categories of damages: damages to the ship and damages to cargo.

Damages to the ship represent: the total prejudices brought to the ship's hull and her installations, being mainly generated by navigation accidents as: boarding, grounding, fire onboard, explosion onboard, touch of the sea bottom, leakage and engine damages.

Cargo damages represent: total prejudices brought to the goods due to damages to the ship or cargo.

Considering the manner of cost coverage and setting of responsibility, there are two distinct forms of damages: general average and particular average.

All overhead expenses and prejudices willingly incurred for the salvage of ship and goods are considered general averages and all prejudices brought and all expenses incurred in respect of the ship or goods onboard are considered particular averages.

2. ELEMENTS OF GENERAL AND PARTICULAR AVERAGES

2.1. Definition elements and general damages typology

The common damage is the extraordinary maritime sacrifice or outstanding expenses intentionally and rationally incurred by the ship's master, in order to save the ship and cargo (goods loaded onboard) from a danger threatening them during the maritime transport that should be borne by the parties taking benefit from it, proportionally to the asset values at risk.

Depending on the category of goods destroyed as a result of the master's decision to save the ship, general averages are classified by:

2.1.1. Damages to ship

Damages to the ship are damages intentionally caused to the ship by its master and consist of the following:

- Sacrifice of equipment and appurtenances;
- Intentional ship grounding, decided by the ship's master to save the cargo;
- Damages caused to the ship by intentional salvage act, decided by the ship's master;
- Forcing the sails or propelling ship devices and boilers on a grounded ship.

2.1.2. Damages to cargo

Damages to cargo are damages intentionally caused to cargo by the ship's master and consist of the following:

- Damaged goods in case of not enough fuel;
- Loss of goods placed on barges and boats, when the goods were loaded on such boats so that the ship may enter a port or cross the bar of a river and when the ship needs to be refloated;
- Damaged goods in case of not enough fuel or that are assigned as compensation for the settlement of a dispute or for ransom of crewmembers sent ashore during sea service on board and taken prisoners or held hostage;
- Loss of goods stowed on barges and boats, when the cargo was loaded on such boats so that the ship may enter a port or cross the bar of a river and when the ship needs to be refloated, even if this loss was caused fortuitously because the initial act which has jeopardized such goods was the master's intentional act;
- Any damages caused to goods by master's intentional act, such as damages to the goods left within ship holds by throwing overboard sacrificed goods or damages caused to goods

subsequent to fire extinguishing operations onboard.

2.1.3. Damages-expenses

Damages expenses represent costs incurred by the master for the common expedition salvage and actually constitute the ordinary form of general average:

- Refloating expenses, intended to avoid total loss;
- Salaries and food costs, due to the ship's forced staying in a port;
- Expenses incurred in order to draw up the general average regulations.
- Ransom expenses for crewmembers.

2.2. Defining elements of the general average

The following elements must coexist so that general averages may be considered:

- The general average act must be intentional. It shall not be, in any case, accidental or unavoidable;
- The general average act must be extraordinary.

For example, in order that an expense incurred by the carrier may be considered a cost included in the general average statement regulations, it must exceed the regular expenses incurred by the said voyage, being certainly determined by that intentional act.

The average statement is the document related to a general average liquidation, as drawn up by an expert called average adjuster.

Other elements for a general average:

- The general average act shall be performed only to the interests of the owners of cargo onboard;
- The general average can take place only in case of a dangerous situation which must be actual and assessed according to the actual circumstances at the time;
- The existence of a useful result for the concerned parties. In the absence of such result there is no general average act;
- The parties involved in a general average act must be parts in a common maritime expedition;
- The sacrifice made (outstanding expense incurred) must be reasonable;
- The general average contribution is not conditioned by the obtaining of a useful result. It shall be liquidated by virtue of a document called average statement, drawn up by an expert in damages (average adjuster), who is kept to set the damages to be recovered (passive) as well as the contribution values or receivables (actives);

According to commercial literature are considered general averages:

- Objects assigned by mutual agreement and as ship and cargo redemption;
- Objects thrown overboard in order to save the ship;

- Masts, sails, ropes and other tools intended to common salvage;
- Anchors and other objects abandoned or thrown into the sea for common salvage;
- Damages caused to the objects left on the ship;
- Damages caused to the ship, by throwing some objects overboard through operations of facilitating the salvage of loaded merchandise or to facilitate water leakage;
- Damages to the ship and cargo subsequent to fire extinguishing onboard;
- Expenses incurred with the personnel involved in salvage operations of ship and cargo;
- Expenses incurred with the personnel during the ship harbouring in a port because of a conflict which prevents the voyage to the port of call, until the ship and cargo are released of their respective liabilities;
- Docking or undocking costs and navigation fees paid in a port where the ship was forced to harbour because of a storm or other force majeure events;
- Expenses with the crew in a port of forced harbouring, during repairs necessary to continue the voyage when the repairs are deemed general average;
- Expenses related to unloading and reloading onboard, in order to facilitate certain operations on the ship in the port of forced harbouring; expenses for security and renting of warehouses where the objects were stored;
- Expenses incurred to secure the release or return of the arrested ship, when the arrest is not exclusively due to the ship, master or owner, as well as the crew and that period;
- Loading-unloading expenses necessary during storm or by other reasons;
- Damages due to the willing shore sinking, for salvaging the ship from the storm or other imminent danger;

Expenses incurred by the owner to ensure his liability towards the owner of goods are not allowed in the general average.

Drawing up the average statement is entrusted to an expert in such operations, that is an average adjuster, to whom all the necessary documents shall be made available and who shall set the eligible amounts in the general average, as well as the contribution of parties involved in the maritime expedition to cover such expenses.

In English law, the owner is compelled to proceed to the regulation of general average, but he is not kept to retain the services of a professional average adjuster, because he can perform this operation himself through specialized services at his disposal.

In conclusion, the aim of the general average is:

- To balance the caused losses, intending to make them reasonable to all concerned parties;
- To allow the master the leverage to act in the attempt to salvage the ship and goods under threat, by renting tugboats or by throwing the

goods overboard, without creating the concern about who shall pay for it.

The general average means the existence of a system in which all parties holding financial interest in maritime expedition pay compensations to the party incurring an intentional loss or incurred expenses to allow the completion of the voyage.

2.3. Defining elements of the particular average

The particular average is the damage caused to the cargo, subsequent to a maritime accident or due to causes closely related to the nature of things (ship or goods), without representing the will of someone or the intention of acting with regards to the same .

From this definition the following characteristics of the particular average result:

- There is a net differentiation from the general average;
- The particular average concerns either the ship or the cargo;
- The particular average is derived from navigation accidents;
- The particular average originates from the nature of cargo or is due to the ship;
- The particular average is the direct consequence of an objective event which took place;
- Within the particular average damages are caused without the possibility of their prevention.

Particular averages occur subsequent to events which directly affect the cargo, either as a result of a force majeure event (for example, a storm which led to the ship's grounding), of errors of navigation (with subsequent grounding or collision) and ship management, either as a result of vices of such goods (spontaneous combustion, degradation, condensation or mouldiness), circumstances in which the incurred deteriorations or expenses concern only a part of those concerned in the maritime expedition, either the ship or only the cargo.

According to the literature are considered particular averages:

- Any loss or damage brought to the loaded goods, due to a storm, fire, looting, shipwreck, sinking or another force majeure reason;
- Loss of masts, sails, ropes, anchors or any other type of damage caused to the ship for the reasons mentioned above;
- Any damage due to a vice of the ship, lack of supplies onboard or any other reason attributable to the owner, ship owner or ship master;
- Personnel expenses during the ordinary quarantine or repair works due to the ship's age or another cause attributable to the owner, ship owner or ship master or during the stay in a port and related expenses for to securing the release of the ship or cargo;

- Expenses to preserve the loaded cargo or repair of their packing, when these expenses are not due to damages considered general averages.

The same article sets forth that damages brought to cargo by accidents due to the master or other crewmembers negligence are particular averages to be borne by the owner of such goods, the same being entitled to claim compensations from the master.

Maritime damages can occur both to the carrier ship and its cargo. It is important to specify that under certain particular circumstances, maritime damages can be also due to the vicinity of such ships to others or some fixed port installations.

In this respect, we can state that there are special circumstances which generate damages to cargo shipped by sea.

Among those, the most important are:

- Damages to the goods, generated by damages to the ship;
- Damages due to the nature of goods;
- Damages due to the goods vicinity;
- Damages occurred prior to the goods loading;
- Damages caused by handling and transport;
- Damages caused by the wilful destruction of goods.

2.4. Damages to goods generated by damages to the ship

They can have a significant negative and rapid influence on goods. The repercussions of all navigation accidents which result in damages to the ship also generate damages to the carried goods.

Severe navigation accidents which can generate damages to the ship are:

- Shipwreck: the ship loses its nautical characteristics;
- Severe accidents: leaks, scraping. They can be generated by bad weather, unlashng of the goods in holds and breaking of deck under the weight of a package. The scraping might generate voluntary beaching subsequent to negligence regarding the study of hydro-meteorological conditions in the navigation area which may cause the ship to go adrift. Also, they can cause damage to the electrical and mechanical installations on ship's deck and engines;
- Fire, explosions onboard ship can be caused by the defective usage or neglect of basic norms regarding the usage of electrical installations, liquid and gas fuels, observance of the smoking area, etc.
- Boarding affects the ship's steadiness and floatability. Boarding can occur due to some causes, such as:
 - Abnormal functioning of an installation;
 - Insufficient monitoring of the horizon;
 - Failure to observe the International Regulation regarding the prevention of boarding at sea.

- Explosions onboard can be caused by: force majeure actions; latent vices of installations; the defective manner in which certain goods are placed onboard.
- Damage to the engines, situation in which the ship can be beached, the goods can breakout the ship, and given such circumstances she becomes a real danger also to other ships encountered.
- Damages to installations, situation in which the main or propulsion machine can no longer be used. The effects if it can be: ship adrift, affecting other ships, goods breakout, etc.

2.5. Damages due to the nature of goods and vicinity to other goods

2.5.1. Damages due to the nature of goods

Caused by the intrinsic characteristics of goods that is their physical-chemical characteristics.

A special attention should be paid to the hazardous cargo and their special stacking, handling, transport and storage conditions. Failure to observe the specified conditions can lead to self-ignition or explosions with destructive effects, both to the ship and cargo.

One of the special conditions to observe in case of such goods is the fact that they are not to be stacked near heating sources or in the vicinity of goods which support the burning and may self-ignite [6].

2.5.2. Damages due to the vicinity with other goods

Are damages caused by unfit stacking of goods or the fact that goods of different nature were loaded in the same area (bilge compartment, holds, cargo holds).

It is necessary that the following recommendations are taken into account:

- Two or more sorts of bulk goods are not to be loaded in the same hold;
- When liquid goods are carried, a good sealing of the connection pipes in order to avoid infiltrations from one tank to another (in case of oil tanker) must be provided.

2.6. Damages caused prior to the loading of goods onboard and those caused by handling and transport

a) Damages caused prior to the loading

The damages caused prior to loading refer to damages which can affect the goods under the following circumstances:

- During certain distances travelling to the loading port where the goods are handled on and off various means of transportation, as from the place of origin up to the loading port;
- In the port, when the goods are stored in warehouses or berths until the arrival of the ship which will take over the cargo.

Given such circumstances, the packing and even the goods can be damaged. Therefore, when the goods are

loaded onboard ship, a special attention should be paid to their condition.

When it is found that the goods are damaged the following decisions should be taken:

- The loading of such goods should be refused;
- The goods are loaded, however the bill of lading shall carry an annotation in respect of the actual condition of the goods upon their loading.

b) Damages caused by handling and transport

Inappropriately carried out loading/unloading operations can cause severe damages to such goods [7].

3. CONCLUSIONS

As conclusion, following situations are pointed out as being examples of inappropriate handling of goods:

- Negligent or inappropriate handling of winches (ship's own loading/unloading installations), allowing the goods loading at too high speed or their abrupt hoisting or overload beyond the loading limit of the installations, when they can break down, causing the fall of goods from heights;
- Using certain tools during loading/unloading operations which are incompatible with the type of handled goods;
- Defective and negligent handling of goods which can lead to the flattening of packages and altering the balance of the whole stack;
- Inadequate anchoring during stacking, which causes the ship's swinging and implicitly the moving of goods, their rubbing against each other or against the holds walls. The damage of goods by rubbing can cause severe damages, especially in case of electric or telephone cable rolls, etc.

4. REFERENCES

- [1] ALEXA, C., CIUREL V., SEBE E., MIHĂESCU A., *Asigurări și reasigurări în comerțul internațional*, Editura All, 1992, București.
- [2] BĂTRÎNCA GH., *Comerț maritim internațional*, Editura Arvin Press, București, 2004
- [3] BEZIRIS, A., *Transport maritim*, Editura Tehnică, București, 1988
- [4] CARAIANI GH., TUDOR M. *Asigurările în transporturile maritime*, Editura Lumina Lex, București, 1998.
- [5] VĂCĂREL I., BERCEA F. *Asigurări și reasigurări*, Editura Expert, București, 1998.
- [6] BĂTRÎNCA, G., RAICU, G., POPESCU, C., *Considerations about introduction of new technologies in the maritime field and their impact on safety at sea*, 6th International Conference on the Management of Technological Changes, Management of Technological Changes, Vol. 1 Pages: 453-456, 2009, ISI Web of Knowledge indexed.
- [7] ANECHITOAE, CONSTANTIN, GRIGORUT CORNEL, BRASOVEANU FLORICA, GRIGORUT,

LAVINIA – MARIA, *Rules Regarding the Navigation on the Territorial Sea and in Romanian Ports*, Constanta

Maritime

University

Annals,

2011.

