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REVIEW ARTICLE

Rule of Prescription Under Article III, Rule 6 of Hague/Hague-Visby Rules: When Does the Clock of Limitation Start Ticking?

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Abstract:

The pursuit of an internationally recognized regime which governs the allocation of risk of liability has been the predominant purpose of maritime law. At the same time, it is also necessary to set a time limit within which a legal action may be brought against the carrier. There are two regimes which govern the carriage of goods by sea and are adopted by many countries, the Hague Rules, and the Hague-Visby Rules and the time limit for claims set out in the rules against the carrier is one year from the day on which the goods are delivered or should have been delivered by the carrier. The rationale behind this is that the carrier cannot be expected to keep records for long periods and must be notified while the events are still fairly recent and recorded, as to what claims are to be presented. At present, Pakistan has adopted the Hague Rules in its Carriage of Goods by Sea Act, 1925 and despite the clarity embodied in the period of limitation as laid down under Article III, Rule 6, Pakistani Courts have given various interpretations to the term “delivery”, resulting in different outcome of the cases. In relation thereof, this article examines and discusses several judgments for decades on the subject of rule of prescription, along with the analysis of Article III, Rule 2 on the interpretation of “discharge”, and puts forward some suggestions and recommendations on the law laid down by the Convention.

The rules for transport documents are based on Hague or Hague-Visby Rules, and therefore, it is necessary at the outset of the article to provide an overview of the transport system in the country. The need for efficient working of the transport system in the country is absolutely vital in view of its role in a country's economic growth.

Keywords: Carrier, Delivery, Discharge, Rule of prescription, Limitation, Transportation.

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1. INTRODUCTION

1.1. Modes of Transportation and Logistics

The sustainable economic growth of the country is dependent on an efficient and low-cost transport and logistics sector. The transport and logistics sector comprises railways, roads, ports, shipping and aviation. The road network has been expanding rapidly over the past decade, and road traffic, both passenger and freight have grown significantly. On the other hand, Pakistan railways, though cost-effective in the past, has lost its competitiveness to road transport. Port traffic in Pakistan has also been growing annually in recent years. The major container terminals in Pakistan comprise of Pakistan International Container Terminal (PICT), Qasim International Container Terminal (QICT) and Karachi International Container Terminal (KICT). Due to the limited infrastructure development, these ports lack capacity and therefore, invite port traffic. Consequently, there is a prevailing need for efficient infrastructure for sustainability.

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For meeting the goals of economic growth in Pakistan, the government has taken measures to develop the transport and logistics sector that efficiently meets the requirements of growing population and expanding economic activities. During a visit by the President of China to Pakistan in 2015, both the countries had signed a financial agreement to achieve a coherent performance of the transport system, called the China Pakistan Economic Corridor (CPEC).

China is the second largest economy and energy user in the world, which is importing about 83% of oil supply by sea. However, due to some regional disputes, it faces challenges in getting access to deep water through Pakistan. Therefore, China-Pakistan Economic Corridor will link the city of Kashgar in Western China and the Gwadar Port in Pakistan by developing a transport infrastructure network comprising road and rail.

Importance of the efficient logistics and transportation can be ascertained from the fact that \$6.1 billion investment was allocated to transform the existing road infrastructure, while \$3.61 billion was to be invested in railways. Additionally, the integral part of the CPEC is the development of Gwadar Port,

and at present, the majority of Pakistan's international trade is channeled through KPT and Port Qasim. Therefore, with the development of Gwadar Port, there will be an opportunity to increase marine cargo, and this would essentially reduce delays due to congestion at Karachi ports (Fig. 1).



Fig. (1). Karachi Port Trust.

2. HISTORICAL BACKGROUND OF HAGUE AND HAGUE-VISBY RULES

The laws concerning the carriage of goods by sea originated from the Harter Act 1893 of the United States of America, which was adopted by the Australian Sea Carriage of Goods Act of 1904 and Canadian Carriage of Goods by Water Act of 1910. These acts influenced the formulation of the Hague Rules of 1924 [1 - 3]. Subsequently, although Hague Rules set out standard basic obligations and responsibilities of the carrier and shipper for goods covered under a bill of lading, these rules were amended in 1968 by the Brussels amendments, and since then, are known as the Hague-Visby Rules. Moreover, though subsequent rules were later proposed by the United Nations, namely Hamburg Rules of 1978, which provided more protection to shippers, however, most of the countries still continue to endorse Hague/Hague-Visby Rules in the commercial documents.



Fig. (2). Evolution of rules.

In Pakistan, we still continue to rely on outdated Carriage of Goods by Sea Act, 1925, though serious efforts were made in the year 2004-05 to amend the Act by taking all the stakeholders on board and amendments were put forward to the Ministry to enable it to move the bill in the parliament to amend the outdated Act. However, the Ministry of Law and justice has not yet revised the bill to address the modern day needs.

The relevant provision laying down the period of limitation is Article III, Rule 6 of the Hague/Hague-Visby Rules which prescribes one year from the date of “delivery of goods”, or from the date when the goods “ought to have been delivered”. The term “delivery” in a bill of lading is ordinarily taken to refer to the transfer of possession to the consignee or the consignee’s agent. However, despite ordinary usage of the term, Pakistani courts have not reached a consensus upon when the one year clock starts so as to bar the claim against the carrier, and conflicts have arisen as to whether delivery is seen as an actual delivery to the consignee, or when the goods are discharged at the port mentioned in the bill of lading (Fig. 2).

3. DISCUSSION

It is necessary to reach a consensus on the interpretation of the term, ‘delivery’, since the one year time bar laid down under Article III, Rule 6 has far reaching consequences, as the carrier is discharged from all liability whatsoever arising in respect of the goods. It has the special legal effect of extinguishing the claim by the shipper against the carrier and not one which bars the remedy which leaving the claim itself in existence. In some cases, the rule has been interpreted so strictly so as to bar the time extension mutually agreed between the parties. In a leading judgment of Dorab Patel [4], it was thought that once the consignment is delivered to the consignee, whether in damaged or undamaged condition, neither party could extend the period of limitation. In such a case, extension supposedly granted would be illegal (Fig. 3). However, in another case of Abdul Jalil Choudhury v. The Muhammadi Steamship Co. Ltd [5], discussed in the judgment of Dorab Patel, it was held that the carrier can extend the time for the performance of the contract of affreightment, and similarly, parties can also enter into a new contract for the delivery of the cargo shipped. It may seemingly appear to be the ‘rule of limitation’, and not ‘rule of prescription’, however, Justice Dorab Patel clarified the stance taken in *Abdul Jalil*, and stated that the parties can extend the period of limitation by agreement so long as the delivery is not completed, and therefore, once the consignment is delivered, there cannot be a fresh agreement to deliver it because that would be impossible. Despite the relaxation provided for an extension before the delivery of the consignment, the court in subsequent case of National Insurance Corporation v. Pakistan National Shipping Corporation held that the period of limitation prescribed under Article III, Rule 6 of Hague Rules cannot be extended by the consent of the parties [6]. Therefore, from the purview of the leading judgments, it can be seen that rule has been construed strictly, which is also evident from the provision itself which incorporates the words ‘in any event’ which are unlimited in scope so as to encompass every possibility so as to bar the claim against carrier after a lapse of one year. In *Crescent Sugar Mills and Distillery Ltd. v. American Export Isbrandt Sen Inc* [7], it was observed by the Learned Judge that the word ‘in any event suggest the wide protection afforded to the carriers and the ship in all events and circumstances”. Moreover, it was also noted by L.J. Tuckey, who gave the leading judgment in *The Happy Ranger* [8, 9], subsequently affirmed in *Daewoo Heavy Industries Ltd. & Anor v. Klipriver Shipping Ltd. & Anor* that:

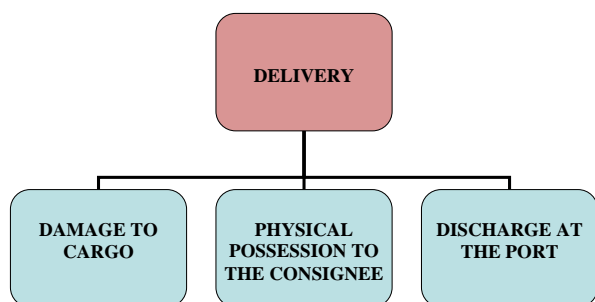


Fig. (3). "Delivery".

"...the words 'in any event' means what they say. They are unlimited in scope and I can see no reason for giving them anything other than their natural meaning. A limitation of liability is different in character from an exception. The words 'in any event' do not appear in any of the other article IV exemptions including Rule 6 and as a matter of construction I do not think they were intended to refer only to those events which give rise to the article IV exemptions. I do not attach significance to the fact that the only other place where they appear in Article III where it is accepted that the time bar provisions apply both to Article III, Rule 1 and 2 claims..."

As such, given the consequences of Article III(6), it is necessary that the actual claimant/underwriter sues in the competent jurisdiction within the stipulated period since the parties cannot be joined once the period has expired [10].

It may also be noted that Article III, Rule 6 of Hague and Hague Visby Rules set down one year period of limitation, though there is a slight difference in the wording which may have been the reason for the different interpretations of judgments rendered subsequent to Hague Rules, since Pakistan takes its influence from English law which has adopted Hague Visby Rules. According to Article III, Rule 6 of the Hague Rules, adopted by Carriage of Goods by Sea Act, 1925, it provides that:

"...In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered".

Whereas, the similar provision of Hague-Visby Rules set down the following provision:

"Subject to paragraph 6bis the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period, may however, be extended if the parties so agree after the cause of action has arisen".

From the perusal of the aforesaid articles it is evident that while the provision of Hague Rules is narrower in nature supposedly restricting the liability in respect of "loss or damage", the Hague-Visby Rules does not focus on the aspect of damage and thereby discharging the carrier from "all liability whatsoever in respect of goods" unless the suit is brought within one year from the date of delivery. In view of the difference in both the provisions, it may allow parties to

argue that a claim under Hague Rules may begin to run from the date of loss, owing to "damage" being the focal point in the provision.

This article will seek to examine the various interpretations given by the Pakistani courts and as will be seen that although the predominant view appears to have been from the date of damage and/or loss, however, when Hague Rules are considered in its entirety, the date of commencement of limitation period should be the date of delivery of consignment at the discharge port. The rationale behind this is that it is not always possible for the carriers to deliver consignments directly to each of the numerous consignees, except in case of direct delivery cases where there is generally one receiver of the goods is involved [11]. Reliance is also placed on Marine Cargo Claims by William Tetley [12]. Moreover, in *British India Steam Navigation Company Ltd. v. National Security Insurance Company Ltd* [13], it was held that personal delivery to consignee or his agent was not required where settled and established practice of port recognized another mode of delivery.

In the case of *New Jubilee Insurance Co. Ltd v/s The United Oriental Steamship Co.*, [14] the Division Bench of Sindh High Court has been held as under:

Carrier's liability begins when goods loaded and ends when goods discharged from ship - Provision in bills of lading providing for cesser of liability of carrier as soon as goods from ship or free from ship's tackle - Not inconsistent with, or repugnant to, provisions of Act XXVI of 1925 or Rules framed there under.

Hence, from the purview of the aforesaid provision, the plausible view appears to be that the liability of a carrier for carriage of goods under the rules is for the period from the time when the goods are loaded on to the ship up to the time when they are discharged from the vessel. As such, the date of commencement of period of limitation ought to be the date when the goods are delivered at the port of discharge which is also in cognizance with provisions of bills of lading providing for the cesser of liability of the carrier in respect of goods carried in his ship as soon as the goods have been discharged from the ship or are free from the ship's tackle. However, the disagreement continues to persist with respect to the starting point of limitation which will now be examined below.

In *The Karachi Steam Navigation Co. Ltd., V/s. Ebrahim Gani* [15] it was held that the date from which one year for a suit for compensation for goods delivered short should be calculated is the date on which the cargo is discharged by the steamship company at Karachi Port Trust. The Court placed reliance on Section 47 of Karachi Port Trust Act, 1886, which provides that the Karachi Port is the agent of the owner of the goods and delivery of the goods by the steamship company under the statutory provision of this enactment is the delivery of the goods to the consignee. Although the view with respect to the provision of Karachi Port Trust was rejected by the Supreme Court in *Abdul Jalil Chaudhry V/s. The Muhammadi Steamship Company, Ltd* [16], however, the law laid down the date of delivery fixed under the contract to be the time to determine the period of limitation. It was further held by the

learned judge in the absence of such a date, a reasonable period would be determined considering the facts and circumstances of each case.

Subsequently, there have been rulings which have focused on “discharge of the cargo” to be the starting point of limitation. In *New Zealand Insurance Co. Ltd v/s. M.A. Rauf and Others* [17] where the word **delivery** occurring in Article III Clause (6) of the Schedule to the Carriage of Goods by Sea Act 1925 has been interpreted as equal to *discharge* appearing in Article III Rule (2) which is as follows [18]:

“Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.”

The Court stated that the expression ‘one year after delivery of the goods or the date when goods should have been delivered’ occurring in Article III, Rule 6, really means one year after the discharge of the goods or the date when the goods should have been discharged. The word ‘discharge’ implies complete discharge of all goods covered by the consignment. Hence, in a case where the goods are completely discharged, the period of one year shall be calculated from the date of discharge of the goods. If however, the time for the discharge of the goods is spread over a number of days, the said period shall be calculated from the date of completion of the discharge. In the case of non-delivery of or short delivery of goods by the carrier and the ship, time shall commence to run from the date when the goods should have been delivered, which implies the last date up to which the discharge of undelivered goods can be expected.

However, subsequently in the case of *Nippon Yusen Kaisa (NYK) Lines v. MSC Textiles (Private) Limited* [19], the Learned judge considered the case of *New Zealand Insurance* and held that discharge of goods does not mean to discharge at the port of destination, but to the person who is entitled to take the delivery. Therefore, if consignee, because of his reason failed to get the release of the consignment, the responsibility of the carrier does not end here. It was further stated by the Learned Judge that it would be the responsibility of the carrier, if the carrier does not come forward to receive delivery of goods, he should give proper notice to him and a reasonable time to pick up goods.

However, the *Asian Pollex* case misunderstood the observation made by the Division Bench in the case of *New Zealand Insurance* by reaching to the conclusion that delivery means handed over to consignee which is wholly misconceived and not contemplated by the Carriage of Goods by Sea Act.

However, in the subsequent cases, in cases of damages, the Pakistani courts have taken the view that it is the date of loss or injury to goods when time begins to pass for taking legal action against the carrier. In *Pakistan National Shipping Corporation v. National Insurance Corporation* [20], although the case primarily compared to article 30 and 31 of the Limitation Act, 1908, instead of providing a ruling on Hague Rules. However, the Court observed that for suits against carrier for loss or injury to goods would be from the date of occurrence of loss or injury. The court further observed that the period of limitation to run from the date of ‘loss’ or ‘injury’ would be the date

where the loss, on being apprehended, is surveyed, ascertained or assessed, that is necessary. It is only when the loss, on being discovered, becomes actionable and not before that time. Similar view was also shown by *Central Insurance Co. Ltd. v. Koninklijke Nedlloyd* [21 - 23], that holding the period of limitation for filing of suit for damages was one year from the date when the loss or injury occurred. The court further went on to hold that the suit for damages having been filed beyond one year from date when loss or injury occurred or even from the date of survey report, would be hit by law of limitation.

However, having discussed the leading cases above, it may be difficult to ascertain the starting point of limitation in case of damage, since the loss may occur during the voyage and hence, creating uncertainty as to when the loss occurred. Moreover, for the reasons discussed above, it is also not reasonable to set the direct delivery to the consignee to be the starting point of limitation. As such, the decision taken in *Jubilee Insurance* seems to be the most plausible one creating certainty as there would always be a known date for delivery on port of discharge. The stance taken in *Jubilee*, and several other Pakistan judgments have been also held in English Courts.

3.1. Role of Technology in Shipping Industry Pakistan

The Shipping Industry plays a vital role in the development of trade and around 80% of world trade is transported by the international shipping industry. The goods on large scale cannot be imported or exported without the availability of efficient system of shipping industry.

Technology enhances the competitiveness and efficiency of business, and with the advent of internet, the e-commerce business has emerged at large scale. The global logistics firms, such as FedEx, may become full service organization coordinating the flow of goods and information within supply chains. Moreover, unlike B2B logistics in which cargos are shipped, doorstep deliveries involve several stops. Therefore, courier companies may need to invest in both large and medium sized fleets, and this will contribute to cost pressure.

In recent time, the delivery landscape has been further complicated with the emergence of digital platforms, such as Careem and Bykea. The benefit to retailers and businesses in using these digital services for delivery in a matter of hours, ensures customer satisfaction.

CONCLUSION

This article examined various cases related to the limitation period prescribed under Hague/Hague-Visby Rules, and there have been different outcomes owing to differing stages at which the period of limitation began to run. Although the different outcomes may also be attributed to change in facts and circumstances of each case, however, we do not consider it to be the only factor that has resulted in uncertainty as to the starting point of limitation.

After consideration of several leading judgments, we consider that the clarity has to be embodied by incorporating the provision enunciating the point when the time begins to run against the carrier. We do not consider that the date of ‘loss’ or

'damage' would result in certainty, since loss may incur during the voyage, and at times it is not ascertained until after the survey is conducted. We also do not consider that personal delivery to the consignee would resolve the matter for the reasons aforesaid. As such, the plausible interpretation would be the date of complete discharge of cargo at the port mentioned in the bill of lading. In case of non-delivery, one would not need to rely on the date of "loss" or "damage", since the provision also stipulates, "ought to be delivered", *i.e.*, the date on which the goods were ought to be delivered at the port of discharge. Such an interpretation would be in cognizance with the wording of the statute and would make the outcome of cases more predictable.

At the end it is hoped that the Law Department of the Government of Pakistan and the relevant concerned Authorities will pay the required attention to take some immediate steps suggested as follows:

(1) There is a need for Government Department for necessary Law amendments in the Carriage of Goods by Sea Act, 1925, whereby providing a provision that enunciates the starting point of limitation to be the date of delivery of cargo at discharge port.

(2) The Government may pass appropriate legislation incorporating the provisions of conventions relating to the liability of carriers.

(3) Pakistan should become signatory to all the International Conventions related to Shipping and allied subjects and incorporate relevant provisions in the local laws for making uniformity among the comity of nations to avoid conflict.

(4) Existing or prevailing laws relating to Maritime should be reviewed and updated so as to effectively protect the interest of the cargo owners, underwriters as well as the carriers and their agents.

(5) Courts in Pakistan should strictly follow the principle laid down in the earlier judgments regarding the Rule of Prescription.

(6) The Government may pass appropriate legislation incorporating the provisions of conventions relating to the liability of carriers.

(7) Heavy cost should be imposed in order to discourage vexatious and frivolous time bar litigation.

(8) Time bar cases should be decided at the early stage of the proceedings to avoid unnecessary litigation and to save the precious time of the court.

(9) An appropriate amendment is to be introduced in COGSA, which protects the rights of carriers against false claims.

(10) Since the majority of trade of the country is dependent on foreign ships, initiatives should be taken to acquire vessels to capture dry cargo and containerized trade.

(11) Upgrading trade terminals, simplifying customs procedures, and modernizing the transport sector to make it compatible with international standards.

(12) Implementation of National Transport Policy which will improve transport and trade infrastructure and also enable Pakistan to reap the benefits of CPEC as well as increase the volume of regional trade with other countries unlocking the economic growth potential of Pakistan.

We deem that this article will facilitate the legal fraternity to change for the betterment in the field of shipping laws in Pakistan and would also greatly facilitate the practice at the Bar.

ABOUT THE AUTHOR

The authors are experienced Maritime lawyers, their field of specialization is Admiralty and Shipping law. They are practicing on civil and maritime side since their inception in the reputed law firm M/s. SurrIDGE & Beecheno.

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CONFLICT OF INTEREST

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