

Supreme Court interprets 'wilful misconduct' by carriers

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The carriage of goods by road is governed in Spain by the Convention on the Contract for the International Carriage of Goods by Road (CMR), which took effect in Spain in 1974, and the Act on Land Transport (15/2009), which took effect in 2010. The act follows the CMR and the Comité Maritime International Rules 1999.

Background

Due to the differences between continental and common law, the Spanish courts have found it difficult to distinguish between the legal concepts of 'wilful misconduct' and 'gross negligence'. Some legal systems, when considering Article 29 of the CMR, compare intentional gross negligence with wilful misconduct. However, others adopt a literal and restrictive interpretation, rejecting the possibility of a carrier availing itself of compensation limits only if it has knowingly and consciously committed gross negligence, which could lead to forum shopping.

Traditionally, the essential difference between wilful misconduct and negligence under Spanish law was the existence of intention to:

- damage;
- injure; or
- avoid or breach the fulfilment of an obligation.

Conversely, the concept of gross negligence was not contemplated in Spanish law.

Decisions

In recent years, the courts have issued rulings exploring wilful misconduct and gross negligence in a number of cases involving the theft of goods during carriage. Specifically, Supreme Court Judgments 382/2015, dated July 9 2015, and 399/2015, dated July 10 2015, have clarified and consolidated these concepts.

In a new approach, the Supreme Court – in its July 10 2015 judgment – considered the limitation of carriers' liability under Articles 19, 17.2, 23 and 29 of the CMR (and the equivalent Spanish law provisions – namely, Articles 57 and 62 of the Act on Land Transport). The court declared that:

"The circumstances that occurred during the cargo theft, (parking in a dangerous location, accessible and with no surveillance, weak protection of merchandise on a trailer covered by canvas and absence of surveillance on the part of the driver) can be interpreted as a wilful misconduct on the behaviour of the carrier, due to lack of fulfilment of his safekeeping basic duties: that will justify not to apply quantitative limits ruled in the article 23, linked with the article 29 of the CMR."

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As such, the Supreme Court held that, in accordance with Spanish law and jurisprudence, it is sufficient to reject a carrier's right to limit its liability if the carrier was aware that the goods could be stolen even if there was no recklessness (only knowledge that damage would likely occur). The Supreme Court:

- broadened the meaning of gross negligence to include a carrier's awareness that – by failing to fulfil its custodial obligation and essential care duties – the goods could be stolen; and
- held that, in such cases, the carrier loses the right to limit its liability.

Therefore, intention or animus to cause damage is no longer necessary to a finding of gross negligence. Rather, if damage occurs as a consequence of the carrier's performance, which goes beyond mere negligence and includes a failure to fulfil its obligations under the contract (ie, an awareness infraction), the limits of its responsibility will be breached.

Comment

Both judgments adopt the broad meaning of 'wilful misconduct' "as a logical consequence or necessary for the infringement of a legal duty consciously committed, without need of animus or intent to harm".

The general rule under Spanish law is that the burden of proof that a carrier intended or at least knew of its wrongdoing lies with the party claiming the carrier's liability. The courts have discretion to assess the evidence and decide whether damages were caused by wilful misconduct or an equivalent default.

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