Carriage of Goods and CMR Convention (Knapfield v C.A.R.S.)

15/07/2022

Commercial analysis: The quantum of damages for damage done to the claimant's valuable classic cars, while being transported by the defendant from France to England, was limited by the Carriage of Goods by Road Act 1965 (CGRA 1965) and the CMR Convention (CMR). The claimant attempted to avoid the limitation of liability provisions in CMR by a number of alternative arguments including an allegation of wilful misconduct against the carrier. The court rejected all of those attempts and thus limited the recoverable damages to a tiny fraction of the actual financial loss suffered. The judgment will be particularly helpful to practitioners seeking to identify the elements which need to be proved to establish wilful misconduct against carriers. Negligence on its own, even perhaps reckless carelessness, will not be sufficient. Written by James Stuart, barrister at Lamb Chambers, Temple, London.

Knapfield v C.A.R.S Holding Ltd (Company No. 05481676) and other companies [2022] EWHC 1437 (Comm)

What are the practical implications of this case?

The case will be of relevance and interest to those advising private and commercial clients upon claims for losses caused during carriage of goods by road. In particular, the claimant was not a party to the contract for carriage of his goods. But even where the contract is made between the carrier and a third party (here the organiser of the classic car show) the claimant owner of the goods may commonly be the consignee in respect of the carriage, and the CMR limits will apply. The case illustrates the potentially draconian effect of CMR in terms of limiting the loss which is recoverable. Practitioners might wish to use it as a salutary lesson to clients who arrange for their valuable goods to be transported by road, internationally. It also highlights the very high hurdle of proving wilful misconduct in CMR cases. Clients might think that serious gross negligence should be enough to fix the carrier with liability for the whole financial loss suffered. But such negligence will not be wilful misconduct.

What was the background?

The claimant owned two very valuable classic cars—a Mercedes Benz CLK GTR 97 (current value of €9.25m) and a 1948 Talbot-Lago valued at £2.25m which he kept at his home in Buckinghamshire. He entered the cars at a classic car event at Chantilly in France in June 2019 and the organisers of the event (not the claimant) arranged for the carriage of the cars by the Second Defendant—a firm of specialist vehicle transporters. On the return journey from France to England, the cars were damaged, according to the expert evidence, because one vehicle had not been properly fixed to the transporter.

The claimant claimed financial loss and damage including cost of repairs of c.£400k and reduction in market value of the CLK 97 of c. £2m and of the Talbot of £450,000—total damages of approximately £3m.

The Second Defendant accepted liability for the damage sustained to the vehicles but relied upon CMR Article 21 as limiting its liability to approximately $20,000. Because the carriage of goods by road involved international carriage, CMR applied.

In response, the claimant sought to establish one or more exclusions from the CMR limits:

- if the sender declares in the consignment note a value for the goods (Article 24 CMR)
- if the sender fixes the amount of a special interest in delivery in the consignment note (Article 26 CMR)
- if the damage is caused by the wilful misconduct of the carrier or its servants of agents (Article 29 CMR)

In the alternative he sought to claim damages for misrepresentation under section 2(1) of the Misrepresentation Act 1967 (MA 1967)and/or he asserted the existence of a separate later contract whereby the defendants agreed to reimburse him for all his losses.

What did the court decide?

The court decided that CMR applied (pursuant to the CGRA 1965) even though the claimant himself was not a party to the contract of carriage. It was sufficient that he was the consignee of the vehicles in respect of the transport from France back to the UK. The claimant's attempts to rely upon the exclusions to CMR failed because:

- the claimant was not 'the sender' for the purpose of CMR and there was no consignment note declaring the value of the goods. Thus, CMR Arts. 24 and 26 did not apply. The Claimant's suggestion that the lack of a consignment note was the Defendants' fault so that they could not rely upon the absence of such note, was described by the Judge as "hopeless". There is nothing in CMR which places the burden of issuing a consignment note on the carrier
- CMR 26 did not apply in any event because the "special interest" must provide for loss or damage which is not provided for in Arts 23, 24 and 25 CMR, such as consequential loss. The Claimant's claim was in fact for direct loss or damage provided for in Arts 23 and 25 CMR
- applying the principles as to wilful misconduct in the context of CMR as set out by the Court of Appeal in *Denfleet International v TNT Global SpA* [2007] EWCA Civ 405, the claimant must prove:
  - [a] misconduct by the carrier
  - [b] the carrier (or its employee or agent) committed the misconduct deliberately knowing that the conduct was wrongful or with reckless indifference

    an increased real and substantial risk of damage to the goods resulting from the misconduct, and the carrier, employee or agent must have been aware of that additional risk

On the facts of the present case the judge found that wilful misconduct had not been proved.

The claimant's alternative claims under the MA 1967 and in respect of the alleged agreement to reimburse all losses, were rejected on the facts.

The court found that the sums claimed by the claimant (almost £3m) were correct but awarded damages limited by CMR to just $20,000.

Case details

- Court: Queen's Bench Division (Commercial Court)
- Judge: Charles Hollander QC (sitting as a deputy judge of the High Court)
- Date of judgment: 13 June 2022

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