Multimodal Transport: Issues and Concepts

The twentieth century has seen tremendous developments in the evolution of transport systems at a global level. The innovations in the form of air-transport, increased safety norms for all modes of transport and the rapid strides in communications have had considerable effect on transport services. Nowhere is this more apparent than in the field of multimodal transport where the intermingling of various means of transport has contributed to the enormous complications that surround the conduct of reliable and efficient long range transport.

The term multimodal transport which is also sometimes referred to as "inter-modal", "combined" and "through" transport, is used to indicate the process when goods are carried from one place to another by different means of transport. In this sense, it is of considerably larger scope and hence complexity when placed in comparison to unimodal transport.

The field of multimodal transport has been principally affected by two intricacies, both of relatively recent origin. Firstly, there is the container revolution which has led to goods being perceived not in their individual form, but as a combination, which is in the form of a single container. It is said that the container revolution really started with a shipment of household goods in liftvans, and some non-vessel owning forwarders have already developed a specialised full moving service from residence to residence which includes liability for loss or damage under their
freight forwarding contract. Due to this, it becomes close to impossible to identify the precise point of time at which the damage has occurred.

The second, and from the legal point of view, more important area was the precise status of a multimodal transport operator, a complication which owes its existence to the classic job of multi-modal transport operator. He takes instruction from the consignor and the consignee as to the pick up point and the destination of the goods; he further goes on to make arrangements with the carriers for collection, cargo and delivery of the goods but those arrangements are made as an agent of the owner of the goods. He may accept responsibility for the entire transportation, but carry out none of it himself. An example of this kind of case would be that seen in Transcontainer v. Custodian Security.\(^1\)

As a result, one is unable to categorise the multimodal transport operator as either an agent of the carriers or an agent of the cargo interests. The consequence of this confusion is manifested if we turn to the nature of the contract, because before bringing a claim the goods owner has to identify the person who may be legally liable.

To solve these practical and detailed conundrums, the Indian Government has seen it fit to pass the Multimodal Transportation of Goods Act 1993. The Preamble to the Act states that this is, "an Act to provide for the regulation of the multimodal transpor-

\(^1\) (1988) 1 Lloyd's Rep. 128.
tation of goods, from any place in India to any place outside India on the basis of a multimodal transport contract and for matters concerned therewith or incidental thereto."

Multi-modal Transport: Commercial and Technological Evolution

Multi-modal transport operators have come of late to occupy a position of considerable importance. The larger of them often themselves own or control means of transport such as ships, railways, roadways etc. Moving beyond the confines of transport they have entered into logistics and distribution systems used by manufacturers and retailers.

Added to this, developments in electronic communication have facilitated the transport industry. Communication serves to enable transporters and operators to book containers, enter into contracts of carriage over long distance and control the movement of goods at various stages of transportation. The effect of these innovations has been to lead the multi-modal transport operators to put in considerable investment in the form of equipment and communications. These factors have served to expand the scope of multi-modal transport and to increase the stake which parties connected to this mode of transport have in it.

Liability Attachment

The Multi-modal Transportation of Goods Act gives an independent status to the multi-modal transport operator. Section 2(m) defines a multi-modal transport operator as a person who:
"(i) concludes a multimodal transport contract on his own behalf or through another person acting on his behalf. (ii) acts as principal and not as an agent either of the consignor or of the carrier participating in the multi-modal transportation, and who assumed responsibility for the performance of the said contract; and (iii) is registered under Sub-section (3) of Section 4."

As can be seen from the above, a multi-modal transport operator is perceived as acting in his own capacity and not as an agent of either the consignor or the carrier. This independent status is of considerable importance in the identification and allotment of liability.

Chapter IV of the Act is titled "Responsibilities and liabilities of the multi-modal transport operator". In this chapter Section 13 states that the multi-modal transport operator would be liable for loss, damage or delay in delivery of the consignment unless he proves that no fault or neglect on the part of either his agents or servants or himself had caused or contributed to such loss, damage or delay. Further the multi-modal transport operator is liable when such loss, damage or delay took place when the goods were in his charge. Hence it becomes necessary to firstly identify the period during which the consignment is in the charge of the multi-modal transport operator and secondly to define the terms "agents" and "servants". At this stage it is interesting to note that while the Multi-modal Transportation of Goods Act refers only to agents and servants, the UN Convention of International Multi-modal Transport of Goods makes the multi-modal transport operator liable for acts and omissions
of his servant/agent as well as any person of whose services he makes use for the performance of the multi-modal transport contract.

There can be little doubt that the multi-modal transport operator is in charge of the consignment throughout the process of transport that is performed by carriers selected by him. The proof of this can be found in Section 14 which deals with the liability of multi-modal transport operator when the goods have been damaged at some particular stage of transport. Therefore effectively the multi-modal transport operator's liability begins from the moment he takes the goods in his charge to the time of delivery. This is borne out by Article 14 of the UN Convention of Multi-modal Transportation of Goods which even identifies the precise meaning of the term "taking charge" by giving elaborate definitions of the same. Also, the definition of delivery in Section 2 (f) of the Multi-modal Transportation of Goods Act serves as further proof of the same.

As regards the second issue, as to whether the carriers used by the multi-modal transport operator fall within the definition of servant and agents, an explanation of this is seen in Section 14 which contemplates liability of the multi-modal transport operator when the precise stage of transport at which such loss had occurred is unknown. Therefore, the Act visualises holding the multi-modal transport operator liable when the goods are in charge of a carrier appointed by the multi-modal transport operator.

It is also noteworthy that the multi-modal transport operator would not be entitled to any of the
defenses which individual carriers are entitled, as is seen from the definition of liability provided in Section 13 which states that the multi-modal transport operator shall be liable for loss, damage or delay which took place while the consignment was in his charge, implying therefore that the only defenses available to the multi-modal transport operator are those to which the Act itself makes a reference.

To summarise, the responsibility of the multi-modal transport operator covers the entire period when the goods are in his charge and would include liability for the acts of individual carriers. As an example if "X" a multi-modal transport operator is to use a carrier "Y" in the course of transportation of certain goods, "X" would be liable for a negligent act by "Y". "X" cannot avail of any of the defenses which are available to "Y".

Computation of Liability in Multi-modal Transport

The Multi-modal Transportation of Goods Act has attempted to evolve a mixture of two systems of liability namely, "uniform" system and "network" system. The difference between these two is that a uniform system imposes upon claims arising out of multi-modal transport contracts the same liability regime irrespective of the means of transport being used at the time when the goods were lost, damaged or delayed whereas the network scheme on the other hand, provides that damages caused when a particular means of transport is in use, should be dealt with under the convention relevant to that type of transport.
The Act by virtue of Sections 14 and 15 provides for two levels. In the first, if the means of transport where the loss or damage occurred is not known, and the nature and value of the consignment have not been declared by the consignor before hand, then the multi-modal transport operator shall be liable to compensation not exceeding two Special Drawing Rights (SDR) per kilogram of the gross weight of the relevant consignment or 666.67 SDR per package or unit lost or damaged, whichever is higher. Further if the multi-modal transportation does not include carriage of goods by sea or inland waterways liability shall be limited to 8.33 SDRs per kilogram of the gross weight of the goods lost or damaged. Therefore the Act provides that in the absence of water transport, a higher limit or liability shall apply. At the second level if the means of transport which was in use during the occurrence of damage is known and the nature and value of the consignment has not been declared beforehand, then the Act provides that the limit of the liability of multi-modal transport operator shall be determined according to the law applicable to that particular means of transport. Thus the network principle is given effect to, by making the local law applicable to the particular means of transport.

Interestingly, when one contrasts this with the UN Convention on International Multi-modal Transportation of Goods, Article 19 provides that when the loss or damage occurs during one particular stage of transport in which the applicable convention or national law provides for a higher limit of liability, than the generally applicable norm then such higher limits shall apply. In this respect, the UN Convention while incorporating the network principle appears to
be more pragmatic in that it provides for greater benefit to the consignors.

Multi-modal Transport Document

This document is provided by the multi-modal transport operator to the consignor once he (the multi-modal transport operator) has taken charge of the goods. The contents of this document are mentioned in section 9 of the Act.

The uses of the multi-modal transport document are threefold:

1. It is a document of title and receipt of goods,

2. If negotiable, it allows for transfer in title, and

3. To an extent it serves as evidence of the description of the goods as mentioned in the document.

Two issues arise in regard to the multi-modal transport document. Both are connected to the question of liability for loss or damage to the goods that would have to be borne by one multi-modal transport operator. As has been explained above, the quantum of liability in case the mode of transport in use when damage occurred is unknown, depends on whether the goods were to be carried by either sea/inland waterways or not. In this regard Section 14 states that if the multi-modal transportation does not, according to the multi-modal transport contract, include carriage of goods by sea/inland waterways a higher limit of liability is provided.
Therefore depending upon the contents of the multi-modal transport document, the quantum of liability is determined. Section 14 is obviously referring to the Section 9 which declares the contents of the multi-modal transport document. Sub-section (m) of Section 9 reads as follows:

"The intended journey route, modes of transport and places of transhipment if known at the time of its issue."

Thus Sub-section (m) is flexible in that while making a provision for inclusion of the modes of transport it also caters to a situation where the mode of transport may not be known at the time of issue of the document. This gives rise to the possibility of the multi-modal transport document not being able to provide any guidance as to the modes of transport. If loss or damage were to now occur, the quantum of liability would remain an open question. It is submitted however that when a multi-modal transport document does not contain any evidence as to the mode of transport or even when in fact the mode of transport really used differs from that evidenced by the multi-modal transport document, it must be the fact that prevails over the contents of the document. This would be in keeping with the spirit of the Act, which is to provide some measure of security to multi-modal transport operators and their customers.

Another issue that arises in the context of the multi-modal transport document is the expression used in Section 15 of the Act namely "provisions of the relevant law applicable in relation to the mode of transport during the course of which the loss or damage
occurred". This could give rise to considerable confusion in the context of the Carriage of Goods by Sea Act. This enactment demands the issue of a Bill of Lading with a clause paramount declaring its applicability. Therefore the question arises, that if the Carriage of Goods by Sea Act is to be applied to multi-modal transport then would the multi-modal transport document serve as a Bill of Lading?

It can cause no surprise that this field which is largely barren of judicial cultivation, parties preferring to settle rather than litigate when there is little material on which to base their arguments. Some guidance may however be sought from statutory provisions in the Carriage of Goods by Sea Act and the Multi-Modal Transportation of Goods Act. If we consider the characteristic features of the Bill of Lading, we find that it is firstly a document of title, secondly receipt of goods and finally evidence of the contract of carriage. A multi-modal transport document is regarded as a document of title according to Section 8 of the Act. In this regard therefore, there is no doubt that it is akin to a Bill of Lading. The Act also states that the multi-modal transport document shall be issued by the multi-modal transport operator when he has taken charge of the goods. Clearly it also serves as a receipt of the goods. With regard to the evidentiary value of the multi-modal transport document Section 11 states that it shall be prima facie evidence of the fact that the multi-modal transport operator has taken charge of the goods as described in it, and if transferred to third party, it shall become conclusive evidence of this. Hence there is some discrepancy here in that the Bill of Lading serves as evidence of the contract of carriage while the
multi-modal transport document serves evidence only of the goods received by the operator. However, a far greater conflict occurs if we examine the necessity of a clause paramount. Since the Carriage of Goods by Sea Act does not apply prorio vigore, and it is unlikely that any multi-modal transport document would subject the contract of carriage to the Carriage of Goods by Sea Act, it is submitted that even if the goods are lost at sea, it would not be correct to determine compensation levels based on the Carriage of Goods by Sea Act since that Act does not apply. In A Gagnier & Co. v. The Eastern Co Warehouses, a document issued by forwarding agents was under consideration. It was in the form of a Bill of Lading but the only contract evidenced was a promise by the forwarders to arrange the forwarding of the goods on the usual times for each party of the transit as between owners of goods and owners of steamship or railway lines to various destinations. The forwarders were held not to be liable on that contract for the loss of the goods since despite its form, it was not an undertaking of an absolute character to carry the goods anywhere. One must hence infer that in such a case, it will be common law relating to carriage of goods which will apply together with all its attendant doctrines such as strict liability.

Exceptions to Liability

The multi-modal transport operator is responsible for the goods throughout the period when they are in his charge however as shown above he is not in a position to claim all the exceptions that may be available to the carriers that he may use to convey the goods. A situation could well arise when the
operator may be liable to compensate the consignor but may be unable to himself recover the same compensation from the responsible carrier. In such a case, the multi-modal transport operator will be forced to take on an excessive liability for events for which he is not responsible. It is submitted that some measure of amendment in this regard which would enable the operator to recover from the carrier the said amount must be incorporated into the Act.

Conclusion

Considerable investment has of late taken place in the multi-modal transport industry. As a result the stakes involved in this industry have grown considerably. The legal infrastructure that regulates the industry is however in a sorry state of affairs. As demonstrated above considerable amendment to the legal provisions involved in the industry will be necessary before we can boast of a well developed and advanced transport sector.

A substantial measure of improvement could be achieved, it is submitted, if some of the suggestions that have been put forward in the course of this paper are incorporated in the relevant legislations.

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