

Maritime and Commercial Law Newsletter

Contents

Rules:

- Wang Kai: The PRC Supreme Court guided to eliminate the gap between urban and rural personal injury compensation standard.....1

News

- WJNCO Awarded “ALB Shipping Law Firm of the Year” Again3
- WJNCO Was Listed in LEGALBAND’s Chinese Top Ranked Law Firms 20224

Cases and Insights

- Tian Zhiqiang: Is the carrier obliged to return the cargo after accepting an LOI for cargo return?....5

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| RULES

The PRC Supreme Court guided to eliminate the gap between urban and rural personal injury compensation standard

On 24 April 2022, the PRC Supreme People's Court released the amended *Interpretations by the Supreme People's Court on Several Issues Concerning the Application of Law in Trial on Personal Injury Compensation Cases* (the Amended Interpretations), which officially unifies the compensation standard for urban and rural personal injury claims based on the pilot practices carried out by high people's courts around the country since 2019.

The unified standard

According to the Amended Interpretations, compensations for disability and death shall be calculated according to the per-capita disposable income of urban residents in the previous year in the place where the court locates; the living expenses of a dependent shall be calculated according to the per-capita consumption expenditure of urban residents in the previous year in the place where the court locates.

The compensation for disability or death could be calculated according to the per-capita disposable income of urban residents in the claimant's place of residence or habitual residence if the claimant succeeds in proving that these figures are higher than those in the place where the court locates.

The aforesaid "per-capita disposable income of urban residents" and "per-capita consumption expenditure of urban residents" are subject to the figures announced by the governmental statistics departments for provinces, autonomous regions, municipalities directly under the Central Government, special economic zones, and cities under separate state planning.

Tabled as below are China's special economic zones (SEZ) and cities under separate state planning (CSSP) and the competent courts (for maritime cases) located therein.

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SEZ	Competent courts (for maritime cases)
Shenzhen	Guangzhou Maritime Court, Guangdong Higher People's Court
Zhuhai	Guangzhou Maritime Court, Guangdong Higher People's Court
Xiamen	Xiamen Maritime Court, Fujian Higher People's Court
Shantou	Guangzhou Maritime Court, Guangdong Higher People's Court
Hainan	Haikou Maritime Court, Hainan Higher People's Court

CSSP	Competent courts (for maritime cases)
Shenzhen	Guangzhou Maritime Court, Guangdong Higher People's Court
Qingdao	Qingdao Maritime Court, Shandong Higher People's Court
Xiamen	Xiamen Maritime Court, Fujian Higher People's Court
Dalian	Dalian Maritime Court, Liaoning Higher People's Court
Ningbo	Ningbo Maritime Court, Zhejiang Higher People's Court

Influence of the unified standard

The unified standard is obviously in favour of the claimants. It not only alleviates the claimants' burden of proof as no more evidence of residence place is required, but also raises the compensation level for rural claimants. According to China's economic data in recent years, urban per capita disposable income and consumption expenditure have been continuously increasing year by year, which means that personal injury claims will see higher and higher compensation levels. Accordingly, it indicates that the liable party will be paying higher and higher compensations.

It is worth noting that the Amended Interpretations applies to personal injury claims resulting from tort occurring after 1 May 2022. Compensation calculation for claims in tort occurring before 1 May 2022 are still subject to previous laws, judicial interpretations and judicial practice.

As far as personal injury claims associated with maritime accidents are concerned, most maritime courts and their appeal courts have piloted the unified standard as required by the Supreme People's Court before promulgation of the Amended Interpretations. Therefore, even though the personal injury occurred before 1 May 2022, the urban standard would still be applicable before most maritime courts and their appeal courts, which is consistent with the Amended Interpretations.

However, it should be noted that, different from the standard determined by the Supreme People's Court the Amended Interpretations, the Nanjing Maritime Court and the Jiangsu Higher People's Court applied special standards when they piloted the unified standard for personal injury claims. According to the *Notice of the Jiangsu Higher People's Court on Issues Relating to Application of the Standards for Personal Injury Compensation*, "for personal injury claims arising from tort occurring before 30 April 2022, the Province's Pilot Work Scheme will continue to apply. The relevant standards are as follows:

1. wage income in the sum of RMB26,721 and net business income in the sum of RMB6,215 among the province's per capita disposable income in 2021;
2. living consumption expenditure per capita in 2021 of RMB31,451; and
3. average burden coefficient of 1.80 in the province in 2021".

Thus, for personal injury claims considered by the Nanjing Maritime Court and the Jiangsu Higher People's Court, the special local standard is still applicable to those caused by tort occurring before 30 April 2022, whilst those occurring after 1 May 2022 will be subject to the Amended Interpretations by the Supreme People's Court.

NEWS

WJNCO Awarded “ALB Shipping Law Firm of the Year” Again

On the evening of July 21, 2022, the ceremony of the 19th SSQ ALB China Law Awards was held in Park Hyatt Beijing, which aimed to pay tribute to the outstanding performance of the leading law firms and the excellent in-house teams, and the prominent transactional cases in the previous year. The annual SSQ ALB China Law Awards 2022 has 43 award categories, attracting over 200 law firms and legal teams to participate and receiving more than 1400 nominations. Lawyers, in-house counsels, investment bankers, and company CEOs of significant influence on the Chinese legal market attended the ceremony and witnessed the birth of winners of prestigious awards.



WJNCO is again awarded “ALB Shipping Law Firm of the Year” for the tenth time since 2008. Mr. Han Yongdong, director of Beijing office and senior partner of WJNCO attended the event and accepted the

Shipping Law Firm of the Year
年度船运业律师事务所大奖

Wang Jing & Co. Law Firm
敬海律师事务所



WJNCO upholds the values of “Professionalism, Efficiency, Sharing and Inheritance” in the provision of excellent legal services for clients worldwide, including P&I clubs, shipowners, insurance companies, offshore corporations, banking and financial institutions, logistic companies, and trading companies.

ALB China Law Award is one of the world’s leading legal media. The ten times “ALB Shipping Law Firm of the Year” award is a definite recognition of WJNCO’s professional and excellent legal services and an encouragement for WJNCO to continue to cultivate in the shipping market. WJNCO will strive for excellence and achieve further success.

| NEWS

WJNCO Was Listed in LEGALBAND's Chinese Top Ranked Law Firms 2022

On 17 May 2022, the renowned law rating agency LEGALBAND released its guides on Top Ranked Law Firms and Top Ranked Lawyers of the year 2022.



By virtue of its preeminent performance and reputation among clients, WJNCO was again listed in the Top Ranked Law Firm with practice areas of maritime & admiralty and insurance.

Maritime & Admiralty – Band 1
Insurance – Band 2

For Top Ranked Lawyers, Mr. Chen Xiangyong, the firm's Director and Mr. Zhong Cheng, the Senior Consultant have their names on the list.



Mr. Chen Xiangyong : Maritime & Admiralty
Director and Managing Partner



Mr. Zhong Cheng : Insurance Senior Consultant

WJNCO's listed in the rank again demonstrates its specialist strength in the areas of shipping and insurance, clients' recognition, as well as its impact on the industry. Striving for perfection and forging ahead, WJNCO will always keep its high standard in providing professional and efficient legal services to its clients and for the market. WJNCO will maintain its leading role in the practice areas of maritime & admiralty, finance & insurance, and offshore engineering, and be committed to providing more professional, international and diversified legal services for cross-border dispute resolution.

The Chinese research team of LEGALBAND spent months carrying out long-term and in-depth observation on the Chinese legal market. The comprehensive research heard the voices from clients and the market that enables the result and the ranking to depict fully the specialties and strengths of each and every law firm.

| CASES AND INSIGHTS

Is the carrier obliged to return the cargo after accepting an LOI for cargo return?

I. Facts

In July 2019, Company A carried 12 containers of Frozen PACIFIC MACKEREL from China to Nigeria, where straight bills of lading naming Company B as the shipper were issued after cargo loading.

Change of destination was requested by the shipper (Company B) for many times during the voyage but did not actualize because the shipper missed the deadline for filing relevant applications. The shipper then applied for return of cargo by providing to Company A an LOI as requested, but the cargo was detained at the destination port of Nigeria for a long time and deteriorated after the local port authority refused to grant the cargo return, despite of repeated communications and coordination by Company A with local Customs.

In July 2020, Company B sued Company A before the Qingdao Maritime Court for loss of cargo caused by their failure in return of cargo.

II. Judgments

In the first instance trial, Qingdao Maritime Court held Company A as not liable for following reasons:

First of all, Company A as the carrier issued original bills of lading to Company B, which evidenced a contractual relationship for sea carriage between them.

Secondly, Company A and Company B did not reach any consent to cargo return because: a. Company A as the carrier had no fault to discharge the cargo at the destination port as agreed in the B/L; b. Company B alleged there was an agreement on cargo return, which should be regarded as a new sea carriage contract, but they failed to produce solid evidence for supporting purpose.

The evidence available could only prove that:

- a. the LOI was a unilateral confirmation given by Company B to undertake relevant costs in case cargo had been returned;

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- b. Company B did not actually pay the deposit for cargo return;
- c. communications between Company A and Company B via their agents could be considered as efforts made to actualize the cargo return but Company B never obtained from Company A any expressive consent to cargo return.

Company B appealed but the appeal was dismissed for reasons that:

The LOI was merely an offer made by Company B inviting Company A to return the cargo. An agreement on cargo return could only be regarded as being concluded after Company A expressly accepted the offer.

Nonetheless Company A did not express to accept the offer, as:

- a. neither Company A nor its agent gave to Company B any expressive notice of offer acceptance;
- b. Company B failed to evidence any customary trading practice between Company A and Company B where receipt of an LOI or deposit should be deemed as mutual consent on return of cargo.

III. Comments

For international shipping, if the cargo receiver at the destination port refuses to take cargo delivery or abandons the cargo, could the shipper request the carrier (or NVOCC) to return the cargo? How to legitimately conclude an agreement for cargo return? These are controversial issues in the actual judicial practice.

1) Shipper has the right to request Carrier to return the cargo

The PRC Maritime Code does not specify whether the shipper unilaterally has the right to change the destination or request for cargo return during the sea voyage. As such general provisions of the PRC Civil Code shall be applicable to consider this issue. According to Article 829 of the PRC Civil Code (previously Article 308 of the PRC Contract Law), *"before the carrier delivers cargoes to the consignee, the shipper may ask the carrier to stop the transportation, return cargoes, change destinations, or deliver cargoes to another consignee; the shipper shall however compensate the carrier for losses thus caused"*. Such provision in fact grants the shipper the right to unilaterally change or cancel the transportation contract when the cargo is not delivered, which lays the foundation for the request for cargo return.

2) Carrier's consent on cargo return must be expressed in statutory forms

Article 480 of the PRC Civil Code provides that, offer acceptance/consent shall be expressed by way of notice, unless, in light of trading practices or as indicated by the offer, the consent can be demonstrated by actions. It means under Chinese law, the statutory forms of acceptance/consent shall be notices or actions, whilst silence or inaction shall not be construed as acceptance or consent unless otherwise provided by law.

In current judicial practice, it is normally considered that the shipper is not entitled to unilaterally request for cargo return which would constitute a modification of contract for carriage of goods by sea. In this particular case, Company B provided a LOI to Company A for the cargo return, which was regarded by the court as an offer, whilst Company A, as the carrier, should have expressed to accept or consent the offer by way of notice or action, so as to establish a legally valid contract on cargo return.

However, different Chinese courts have different views on how to determine whether offer acceptance/consent has been made by virtue of the carrier's action when the carrier did not express their acceptance/consent by no-

tice. In the case of dispute over carriage of goods by sea between MOHAMED MOSTAFA AHMED MOHAMED AMMAR (“MOHAMED”) and OOCL ((2013)Zhe Hai Zhong Zi No.28), the Zhejiang Higher Court held that MOHAMED submitted a complete chain of evidence to prove that an agreement on cargo return had been concluded between the parties, where MOHAMED paid USD10,300 via the agent and returned the full set of original bills of lading, and a statement was issued by the agent confirming the return of cargo was handled as per the request of the freight forwarder with the original bills of lading being returned to OOCL.

New evidence supplemented by OOCL in the appeal proceedings, an LOI issued by Hengtaifu, which showed that MOHAMED had provided security for the cargo return, also testified existence of a contract on return of cargo between the parties. In other words, the Zhejiang Higher Court considered that shipper’s request for cargo return, the payment of freight for cargo return and the return of a full set of bills of lading were sufficient to prove that a contract on return of cargo had been concluded between the parties, whilst an LOI for return of cargo was further evidence to corroborate it. However, for this particular case, the Shandong Higher Court viewed that no agreement on cargo return was concluded unless the shipper could submit sufficient evidence to prove any customary trading practice, regardless that freight was paid and the LOI was provided by the shipper to the carrier.

In another similar precedent, Zhejiang Longda vs. A.P.Moller-Maersk (Guiding Case No.108), the PRC Supreme Court fully demonstrated rights and obligations of a shipper and a carrier under a valid contract on cargo return. According to the Supreme Court, under a contract of carriage of goods by sea, the shipper did not necessarily have the right to unlimitedly request modifications of the contract, nor did the carrier have to comply with the shipper’s requests for modifications unconditionally. To balance the parties’ interests, the carrier should be entitled to certain defences when the shipper requested modifications to the contract. The carrier could reject the shipper’s request for changing destination or for returning cargo if such request was difficult to comply with or would severely impact the carrier’s normal operations, provided that a notice setting out reasons had been sent to the shipper timely. It transpires that the carrier is entitled to reject the shipper’s request for cargo return, namely not to accept or consent with the shipper’s offer for return of cargo, but the carrier should explain the reasons for such refusal to the shipper in a timely manner.

In view of the above, for cargoes that have arrived at the destination and are ready to be delivered, agreements on return of cargoes cannot be deemed as having been concluded, unless the shipper has obtained from the carrier explicit acceptance/consent by notice or under common practice via conducts including issuing of a LOI or payment of deposit. In the absence of valid agreements on cargo return, the shipper is not entitled to claim against the carrier for failure in returning the cargoes.

Accordingly, to avoid unnecessary disputes and possible risks, the carrier is suggested not to give definite response as to whether cargo could be returned, either before or after receipt of the shipper’s LOI/deposit for return of cargo. If all formalities for cargo return can be completed at the destination port and the cargo has been reloaded on board the ship smoothly, the carrier will issue bill of lading for the return shipment as confirmation of consent to cargo return. As the shipper is concerned, they are suggested to obtain from the carrier their explicit consent to cargo return as soon as possible; otherwise, they shall consider adopting other remedies such as taking cargo delivery or cargo resale for loss mitigation purpose.