

Risks and Liabilities of Carrying Goods

The risks and liabilities of carrying goods are largely prescribed by the Carriage of Goods Act, so knowledge of this area can assist a transport operator in managing its business.

The Act is now 30 years old and governs thousands of carriages of goods every day by land, water or air anywhere in New Zealand and in New Zealand ports. Its vision was to reduce the amount of litigation involving the loss of goods while under the care of a carrier. It set in place a regime prescribing the responsibilities of those involved in carrying goods.

That regime centres around a number of definitions. An actual carrier is the carrier who has the goods for the purpose of carrying them, or performing an incidental service. A contracting carrier is the carrier who enters into the contract with the shipper or consignee and may subcontract the carriage to the actual carrier. There may also be a string of subcontracts.

The Act also defines the term "carrier", which has a wide meaning and includes any person who carries or arranges the carriage of goods owned by the shipper or consignee. It therefore includes an operator like a freight forwarder who arranges for someone else to carry the goods. It also includes a person who performs or arranges any incidental service in respect of the goods. An incidental service includes services such as consolidators, packers, stevedores and warehouse people.

If there is loss to the goods, the Act prescribes who is responsible. There are four different types of contracts in the Act and unless specified, there is a presumption that the goods are carried at "limited carrier's risk".

Under this contract, the shipper or consignee recovers any losses from the contracting carrier. If that carrier did not have the goods at the time of loss, they can then make a claim against the actual carrier.

The Act limits legal action against carriers "as such" and limits a carrier's responsibility to \$1,500 per unit of goods. This limit is not available, however, where a carrier intentionally damages the goods.



The purpose of the regime is to assign risks so that parties (including their insurers) know where they stand and can make the appropriate provisions. The regime has recently been reviewed by the Supreme Court decision in **Ports of Auckland Limited v Southpac Trucks Limited [2009] NZSC112**. In Southpac, the question was whether Ports of Auckland Limited (POAL) was protected by the Act. If so, it was only liable to pay \$1,500 towards the \$60,000 worth of damage it had caused to a new Kenworth truck.

The drama began when one of POAL's fork hoists crashed into the Kenworth as it was being driven off the vessel it had arrived upon.

The carriage of the Kenworth was undertaken by CP Ships (UK) Limited. CP Ships was responsible for unloading the Kenworth from the vessel to the southwest corner of the wharf, where it would remain under the care of POAL until released to Southpac.

CP Ships contracted with a division of POAL for POAL to provide stevedoring services to the vessel. That division of POAL then subcontracted the work to Wallace Investments Limited. It was Wallace therefore that was driving the Kenworth when a fork hoist driven by a POAL employee drove into it. The fork hoist was being driven for purposes unrelated to the carriage of the Kenworth.

Southpac issued proceedings against POAL alleging that POAL was not protected by the Act. In essence Southpac argued that to be awarded the protection of the Act, POAL had to be either a contracting carrier or an actual carrier. Southpac said that as the fork hoist driver was neither an actual carrier nor was it performing an aspect of the contract of carriage of the Kenworth, the Act did not apply.

POAL, argued that its liability was limited to \$1,500 because, by virtue of providing stevedoring services in relation to the Kenworth, it was acting as a "carrier" under the Act. It said it did not matter that the fork hoist caused the damage.

The Court held there was no doubt that POAL was a "carrier" of the Kenworth at the time it was damaged and its liability was therefore limited to \$1,500.

It was doing so as the "procurer" of the carriage of the goods at the time. This is so either because it had arranged Wallace to carry the Kenworth or because it had arranged for Wallace to act as a stevedore in relation to the Kenworth. The Court said this was so, even though POAL was neither the actual carrier nor the contracting carrier.

In doing so the Court said:

1. The Act was designed to apportion risk between parties involved in the carriage of goods;
2. The risk should lie where the balance of convenience places it, and it is more convenient for the carrier to shoulder the risk;

3. For insurance purposes, it is necessary to place an upper limit on that liability;

4. The Act is intended to apply to all domestic carriers;

5. The Act intended to provide parties to a contract of carriage with certainty in relation to any loss or damage to goods. Certainty is achieved by allowing parties to allocate the risk themselves (by choosing one the four types of contract) or where the parties make no choice, by applying the default limited carriers' risk.

The Supreme Court has made it clear that all that is required for protection under the Act is that the party being sued for the loss or damage of the goods be acting as a "carrier" at the time the goods are damaged. It need not be a contracting carrier, or an actual carrier. The Supreme Court noted that "to hold otherwise would thwart the purpose of the legislation, which is intended to cover the situation of all carriers".

(Fortune Manning represented Southpac in this matter).

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