An Investigation of Elements and Conditions of Compensation in Iran marine Insurance Law

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INTRODUCTION

Marine insurance is an issue of maritime laws which generally include a set of rules and marine norms governing relations between people and the states on all issues and activities related to maritime industry and voyages (transportation of passengers). Way back then, shipping was done through the sea and most of the transportations were done by the sea all around the world. Now, in case that the cargos get damaged during loading or unloading or travelling the ship, thus, this would necessitates insuring the cargos in order to compensate the losses.

Now this question has been raised that what insurance should be used and what issues should be covered. In Iran laws, there is no law entitled marine insurance law, and the present marine insurance operations in Iran law are under the Insurance Act of 1937 unless a new marine insurance bill is passed. Two main issues can be investigated in marine insurance; first, the elements of insurance and then the issues which are covered by insurance while the former includes the obligations of the parties (the insured and insurer) based on the contract. Hence, the insured is obliged to do obligations and the insurer is also obliged to compensate the losses caused by marine risks and any obligation is fulfilled under the fulfillment of obligation of the other party and based on the contract which has been signed between two parties. Besides, the covered issues under the marine insurance include ship insurance, cargo insurance and the insurance of transport fare. In this study data were collected from the library and through note taking and the following issues have been investigated; history of marine insurance in Iran laws, marine insurance definitions and elements of marine insurance including the obligations of the parties and their commitment versus each other and also the issues related to marine insurance.

Literature review:

The first insurance emerged in the 15th century for shipping in the Mediterranean countries, particularly Italy. Thus, the insurance operations was as follow: first the ship or the cargos owners paid some money to...
merchants and they guaranteed that in case of any accident or loss of cargoes, the loss shall be compensated in accordance with the guarantee.

However, in Iran despite Article 119 stipulation in maritime law enacted in 1964, according to which each state shall formulate and submit the law of marine insurance, but it hasn’t approved it.

From 1941 to 2003, the insurance law ruled with no resolution on marine insurance and non-marine insurance and then in 2003, drafting marine insurance bill placed on top of PMO (Ports and Maritime Organization) agenda and it was prepared according to commercial insurance bill (1938) and the laws of other countries, but after compilation it was presented to Cabinet. Besides, Central Insurance opposed it in 2009 and based on decision of Legal vice president, it was returned to be reviewed. In 2010, a committee in partnership with the insurance industry and maritime authorities and experts took responsibility to review it. But due to its slow speed, just 18 articles have been reviewed out of 80 articles and it is going to take several years to be completed. Therefore, since this bill has not passed yet, marine insurance is placed under the Insurance Act 1938.

**Definitions:**

First before defining insurance and marine insurance, it is necessary to know maritime law that is subsidiary of marine insurance.

**Maritime law** (The Law of ADMIRALITY): Basically, it includes a series of laws and regulations governed on marine customary and the relations between the people and governments in all issues and activities related to sailing (passenger transport). However, specifically it includes a series of laws and regulations governed on marine customary and the relations between the people and governments and all those who use ships and issues arising from their operations, and issues related to shipping, transportation, passengers and safety at sea.

**Insurance:** It is an operation whereby one party (the insurer) is committed in return for receiving some money (premium or contribution share) in case of certain risks or any accident to another party (the insured or beneficiary) compensates the loss [3]. But in legal terms, insurance is a contract through which one party promises in return for payment or funds from the other party, in case of occurrence of any incident, compensates the loss or pays a certain amount of money. Therefore, the one who obliged is the insurer, the obliged party is the insured, the payment which insurer pays to the insured is the insurance premium and what insured is the insurance issue [2]. However, the marine insurance has not defined comprehensively in Iran law, but in other countries such as England it is defined according to 1st Article in English Marin “Marine Insurance is a contract whereby the insurer obliges to pay under the agreement, the marine loss and maritime travel of the insured to compensate the possible losses [14].

Some have defined, in Iran law, the marine insurance as follow; marine insurance is a kind of insurance that covers random and unpredictable losses such as dangers of the sea that means any loss or damages that might occur during sailing or voyage at the sea, however losses caused by the seizure of a ship at sea are not included in marine insurance, but if it has been caused by a ship collision with other vessels, it includes insurance coverage [8].

The above definition is simply the area of marine insurance, while marine insurance is a contract that the insurer undertakes to the extent mentioned in the agreement, compensates the insured losses caused by marine dangers. Therefore, the marine insurance means to provide compensation for losses caused by shipping and other maritime activities within the laws of the insurance parties, which can include ship insurance (hull insurance) cargo insurance and transport fare insurance [7].

The main elements of the marine insurance

Insurance can be considered as a contract and any contract contains some elements to sign and continue it, the marine insurance contract includes two elements:

(a) the obligations of the parties (in which the obligations of the parties versus each other can be referred, and (b) insurance compensation coverage (that refers to issues placed under marine insurance such as; ship, cargo, transportation fare).

First element: Obligations of the parties:

This section examined the obligations of the insurer versus the insured and vice versa.

**Obligations of the insurer:**

The insured is one party of insurance contract and the contract is usually signed in his favor unless otherwise is stipulated in the insurance policy. The insured may be a natural or legal person, and the insured may also refers personally to the insurer to sign an insurance policy issued or it may be done by an insurance agent or broker. The insured obligations have been classified into; (a) obligations based on the distance when compared to the time of signing a contract: It covers the tasks that are partly related to the time of signing and partly after signing the contract, (b) unrelated obligations to an incidence occurrence (obligations that the insurer
takes the responsibility even without occurrence) and obligations related to the incident (in which the insurer is responsible in case it happens). Thus, the insurer obligations are investigated in following:

1. At the time of signing the contract, in a good faith the insured shall give all the information about the status of the insured issue correctly, so the insurer on the basis of the available information and circumstances attempts to take risks and asks premiums proportional according to the level of risk and the weakness of danger. The most important information are cargo type, value, transport type, origin and destination of the shipment, beneficiary of insurance and demanded coverage as well as the insurer) which are mentioned completely in brochures [5].

2. Paying the premiums:

The first responsibility of the insured is to pay the installment of the premium on due date, otherwise if the losses occur he can’t claim for compensation. Premium, is the money the insured pays to the insurer in order to compensate the potential losses to the insurance or other obligations that are undertaken by insurance in the process of shipment and in return for this payment the insurer undertakes that according to the terms of the insurance policy and regulations compensates the occurred losses [10].

3. Sanctions for non-payment:

If the insured does not pay the premium, the insurer may initially according to the general principles, prosecute the contract enforcement in jurisdiction. Moreover, after warning to the insured who undid, the insurer can suspend the insurance and subsequently he can cancel the contract [3].

4. Warning:

The insurer should make the insured aware of the issues that exacerbate the risk and they have been specified in the contract. However, a situation is exacerbates if the situation of an object in time of signing contract was specified, so the insured would not attempt to sign the contract or he would accept it with higher premium. But in the case of non-compliance with this issue, the law has not anticipated any enforcement. [5].

Obligations of the insured:

The most important duty of the insurer is paying compensation that must be done in accordance with the terms and conditions in insurance policy. After notification of the incident by the insured, the insurer has to pay compensation and in case of delay, he is supposed to pay late fee (past due fund) and non-profit indemnification [9].

The insured must realize his obligation, as a general rule, a creditor who is demanding an obligation, not only must prove the occurrence of incidence, but also he must prove the commitment of the insurer to pay compensation. Basically, compensation the insurer is required to pay in case of incidence occurrence is in cash. The purpose of the insurance contract is to pay the compensation to the insured which is realized with the insurer commitment for compensation. Compensation means the insurer imagines the insured is in the situation before incidence occurrence and it seems that no loss has taken place, though that may not adequately compensate.

Another obligation of the insured is to pay compensation for delay in payment, hence, the losses of the creditor due to delay in paying compensation is repaid by the insurer and the compensation is calculated from the date of notification by the executor to the insured [5].

Also a related issue to insurer obligations is how compensation is done:

In the case of insurance and in some insurance contracts, how compensation may be done is determined by the insured. In Article 19 of Iran Insurance Law the general rule to compensate losses is; “The insured responsibility is to notify the difference between the price of the insured property immediately before and after the incident with remaining prices after the incidence, and the compensation will be paid in cash, unless the right to repair or replace is not predicted for the insured in the insurance document. So, the insured is obliged to provide repair or replacement or deliver the insured issues in time that traditionally does get less than due time”.

In this way, the insured is obligated to pay the difference between the price of the property, immediately after the incident. In compensation insurance, it is accepted that insurance can’t pay compensation exceeding the actual damage and increase the funds, thus, limiting the insured obligation until the maximum value of property before the incidence indicates that insurance doesn’t pay more than actual losses [7].

Second element: Compensation coverage of insurance

This section focuses on the issues which are related to marine insurance, and what losses are covered by insurance. Marine insurance covers three kinds of losses; losses to the ship, cargo and transport fare, which are investigated respectively:
1-ship:
Ship insurance includes the ship hull equipment and machinery insurance, in each it is investigated whether that part is lost generally or partially or if just the insured ship is damaged or another ship is damaged as well.

1.1 All ship is damaged actually or supposedly:
If the ship actually was damaged, it shows that the insured issue was destroyed or damaged so that it is not the same issue which was insured.
If the ship supposedly was damaged it shows that the insured cannot use his ship any more due to incidence and according to the circumstances, he may not recover the ship or goods or the cost of recycling the ship or the good may be more than their real cost.

1.2 Special losses:
These losses refer to general or partial damages to the ship for example collision with another ship and make a hole in the ship hull.

1.3 General or joint losses:
There are some damages which occurred regarding the requirements of sailing when a danger emerged, due to wise decision of the ship captain just to save a part of the ship or cargoes. These damages must be voluntary and public and therefore they don’t contain accidental and sudden damages, however, these damages are justified if general and public safety of the ship is in danger [8].

1.4. Collision condition:
In the case of insurance policies of ship hull one condition was stated with them that is an additional commitment that means the insured sum of the ship indicates two obligations for the insurer, one is obligations to compensate for the damages to the ship and obligations to compensate for the damage to the other ship [11].

2. Cargo Insurance:
It is an insurance according to which the insurer in return for premiums that he received from the insured, is obliged to pay compensation if during the transportation of goods from one point to another (as a result of an incidence occurrence) an item is lost or damaged or the insured incur costs in relation to the risks of losses. Meanwhile, sometimes losses incurred to the third party are compensated by this insurance. Like other types of insurance, this insurance by an insurance contract which is called the insurance policy is realized for shipping in which the parties are the insured who is usually the owner of the goods or the insured person responsible for the maintenance of the goods or a person who is responsible to keep the goods during the insurance time or anyone else who is beneficiary in the survival of the goods and the insurer who is basically an insurance company [6]. Contract of insurance in each country is in accordance with the laws and regulations in that country and transportation of goods from one country to another, especially when it is done by a ship is under the influence of some equipment and international regulations [13]. This insurance based on a contract governing in the relationship between the insurer and the insured and it makes the responsibilities and rights for each of them which are applicable [12].

Cargo insurance specifications:
Transportation (shipping) insurance is regarded as a part of trades and transportation insurance is based on the principle of indemnity (compensation).
These contracts include the loss of goods or assets in a ship which is loaded later or earlier already loaded, however, if the loss occurs due to breach of duty in good conduct of loading, handling, transporting, storing, maintaining, caring, unloading and delivering of property by the ship owner or other persons who carries on the goods (they are legally liable in case of any fault) or the loss occurs due to inability of maritime or inappropriate situation of the ship, the owner who insured the goods is responsible [4].

3. Insurance of transport fare:
In case of transportation fare, the risk of loss of fare or the impossibility to receive fare should not always tend toward the owner, in a way that it requires insurable interest and providing appropriate fare insurance cover. In other word, the ship fare is usually taken before loading and parties agreed that if the travel doesn’t complete, the owner will not return the fare and hence according to transportation contract, the transport fare may be undertaken by either owner or tenant.
However, the insurer responsibility in transport fare insurance is based on two assumptions:
First, if due to the risk of insured issue (crash or collision) the ship and goods undertake general losses or the transportation contract is aborted and terminated, the insurer is liable to pay all transport fare to the insured.
Second, if a portion of cargo is not delivered to the destination or it is delivered in a situation that its nature has been changed, the transport fare is suspended and since the loss to the fare is partial, so it is settled according to the related terms.

Conclusion:
As it was stated, the marine insurance is a contract in which the insurer undertakes, in a special way, compensates the insured losses resulting from the marine risks to the extent that was agreed. Thus, the marine insurance means to provide compensation for losses caused by shipping and other maritime activities within the laws of the insurance parties which includes ship insurance (hull insurance), cargo insurance and transport fare insurance, however, marine insurance is based on a contract in form of an insurance policy or insurance document. In Iran law despite of Article 119 stipulation in maritime law enacted in 1964 according to which a state shall formulate and submit the law of marine insurance, but it hasn’t been approved yet. Besides, the marine insurance is subject to insurance law enacted in 1937. As it was stated in marine insurance definition, this insurance is divided into two elements: first: the obligations of the contract parties, second, the issues under the insurance coverage have to benefit from specific conditions and issues. The marine obligations are divided into the insurer and the insured obligations, while the insured is obliged to sign the contract and give information about the insured goods and other issues and also the insurer is obliged to compensate the losses based on the obligations. Therefore, coverage of losses to the ship and goods and transport fare insurance has to be taken into account.

These contracts include the cargos loss in a ship which is loaded later or earlier, however, if the loss occurs due to breach of duty in good conduct of loading, handling, transporting, storing, maintaining, caring, unloading and delivering of property by the ship owner or other persons who carries on the goods (they are legally liable in case of any fault) or the loss occurs due to inability of maritime or inappropriate situation of the ship, the owner who insured the goods is responsible.

If the insured does not pay the premium, the insurer may initially according to the general principles, prosecute the contract enforcement in jurisdiction. Moreover, after warning to the insured who undid, the insurer can suspend the insurance and subsequently he can cancel the contract. Besides, in ship insurance, the properties and benefits entitled the ship insurance is realized by insurance company, for example:

Ship hull and machinery:
If ship hull equipment and machinery is covered by insurance, the insurer is obliged to compensate the losses in case of loss or damage to the ship hull, machinery and installations and its requirements which have been caused by any risks to the insured part, to a maximum amount that has been determined as the value of the insured issue in insurance policy according to the terms of the insurance policy. Besides, general contribution of loss in other ship or its properties (General share of fare is subject to the obligation) is paid in case of collision between two ships. In respect of insurance of goods transport fare if due to the insured risk (crash) ship and goods are generally wasted or the shipping contract is aborted and terminated, the insurer is liable to pay all the transport fare to the insured.

REFERENCES