INSURANCE - GERMANY

Do not leave your package unattended

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In 2019 the Stuttgart Regional Court considered a dispute about claims for damages following a vehicle transfer from Turkey to Germany. The plaintiff was a member of the defendant, an automobile club. As part of his membership, he was provided with a car insurance policy. The policy covered, among other things, insurance for the return transport of the vehicle if it became unroadworthy.

Facts

During a holiday in Turkey in 2016, the plaintiff was involved in a traffic accident, which resulted in damage to the front of the vehicle.

The plaintiff took the vehicle to the nearest specialist workshop and contacted the defendant to coordinate further action. The defendant arranged for the vehicle to be towed to Customs in Ankara. The defendant requested the plaintiff to be present in order to complete the customs formalities. The plaintiff complied with this request. Approximately three weeks later, the vehicle was handed over to the transport company and delivered to a workshop, which the plaintiff had previously indicated as the recipient, at the beginning of October 2016. On delivery of the vehicle, a workshop employee acknowledged the takeover without noting any defects or damage. The date of delivery was given as 3 October 2016.

A few days later, the plaintiff notified the defendant by telephone and in writing of damage to the roof of the vehicle and the loss of various items that were allegedly in the vehicle. He claimed that the workshop employee's takeover receipt could have no evidentiary effect on the condition of the vehicle, since the workshop employee could not have known in what condition the vehicle had been loaded in Turkey. The plaintiff held that the date 3 October 2016 was wrong because this was a public holiday and the workshop had been closed. Due to the heavy dirt, the damage to the roof could not have been recognised at all. This was noticed only after the vehicle was cleaned in a car wash. It was only when the plaintiff arrived home that he noticed that the other items were missing.

The defendant opposed the claim. The organisation of the return transport had taken place only as a gesture of goodwill. An obligation to the transfer of the vehicle had not existed. The cumulative costs for the transmission damage and the accident damage had developed an economic total loss, so that no further indemnifiable damage with regard to the vehicle could have developed. The defendant had highlighted to the plaintiff that he was not allowed to leave any objects in the vehicle in order not to jeopardise customs clearance. Any claims were excluded due to the lack of a notification of damage in due form and time.

Decision

The lawsuit was partially successful before the Stuttgart Regional Court.(1)

The plaintiff claimed compensation from the defendant for the damage to the vehicle and the costs incurred in assessing the damage. There were no further claims against the defendant, since the defendant did not have to accept responsibility for any misconduct (theft) on the part of the driver.

There was an insurance contract between the parties, which obliged the defendant to be considerate. The contract also stipulated careful handling of the vehicle during the transfer. Any (presumed) fault on the part of the road haulage company must be imputed to the defendant in accordance with Article 278 of the Civil Code. The carrier was to be regarded as the defendant's vicarious agent. The defendant had not acted out of pure courtesy. The transfer of the vehicle from Turkey to Germany was a primary obligation under the existing insurance contract.

The wording of the insurance conditions related only to a cost assumption and the organisation of the return transport. The court held that an averagely understanding policyholder could not infer from this that they themselves would become the contractual partner of the carrier and that the defendant would merely establish the contact. The entire handling of the return transport had been taken over from the plaintiff. In addition, there were the concrete circumstances of the transfer: at no time had the plaintiff been in contact with the carrier. The plaintiff had neither signed any freight documents nor conducted any contractual negotiations with the carrier. Even on the delivery receipt, an automobile club was named as the recipient.

Moreover, the court held that by referring to the delivery receipt, the defendant had acted as the carrier with regard to the plaintiff.

The delivery receipt merely created a presumption that the vehicle was free of damage on delivery to the workshop. However, the court was convinced that the plaintiff had been able to refute this assumption.

There was no claim for damages for the lost items. The defendant was not liable for the carrier's alleged theft of the items.

The defendant was not liable because the carrier had committed a tortious act only when performing the contract. The driver had come into contact with the plaintiff's legal goods only by pure chance. The driver had been given merely the opportunity to commit a tortious act completely detached from the tasks assigned to him, like a third party acting in tort. The situation would have been different if the carrier had been entrusted with the safekeeping, guarding or performance of a task involving the object. However, this would not have been the case if the carrier only took advantage of an actual, favourable opportunity to steal the plaintiff's property. Thereby, only a general life risk had been realised (ie, stolen), which was not influenced by the kind of the owed performance. The duty to refrain from theft exists in general for everyone towards everyone else.

Comment

A reference to the Convention on the Contract for the International Carriage of Goods by Road could have been considered. Such inclusion would lead to the greatest possible concurrence of liability in the member-automobile club-carrier chain. It would also entail legally prescribed limitations and exclusions of liability, which otherwise can only be effectively included in a contract within the framework of general terms and conditions under more difficult conditions (if at all).

For further information on this topic please contact Carsten Vyvers at Arnecke Sibeth Dabelstein by telephone (+49 69 97 98 85 0) or email (c.vyvers@asd-law.com). The Arnecke Sibeth Dabelstein website can be accessed at www.asd-law.com.

Endnotes

(1) Stuttgart Regional Court, 12 September 2019, 22 O 28/18.