Abstract

It is unavoidable to say that carriage of goods by sea is a transaction that is important for international trade which affect another transaction; that is marine insurance, which is usually appeared parallel. There are so many type of insurable interest that entrepreneurs need to insure in order to reduce some risks in doing business but only civil liability of vessel operator is the subject to study in this thesis .So liability is a risk which shipowners possibly face up and need to have an insurance against third party risks regardless of compulsory or voluntary liability insurance. An interesting issue is liability insurance may not only be contracted in form of liability policy but also in form of indemnity policy, if parties choose to contract in the latter form ,its result is absolutely different from the former, because third parties cannot sue insurers directly according to principle of privity of contract,which,generally,liability insurance in marine insurance is regularly made in form of indemnity policy as can be seen from the rule relating to indemnity of mutual insurance in form of P&Iclub, called “Pay to be paid rule. This rule means insured (shipowner) must indemnify injured person before they are reimbursed from P&I Club.Therefor, the significant of P&I insurance will be focused on P&IClub’s Rules which these rules are valid by virtue of Marine Insurance Act or in case of marine insurer, also known as “No action clause. As the result of this term of contract, this probably leads to loophole in case that this term of contract cannot be fulfilled by insured because of shipowner’s insolvency ,insurer is able to invoke that they don’t have an obligation to indemnify,this situation caused a loss of coverage under marine liability insurance implicitly. Thus it is not fair for injured person who is suppose to obtain a financial benefit from the existence of liability insurance as well.

After writer studied regarding to above issue, it can be stated that direct action concept was not much accepted to tackle this problem in the past. However, today, such concept has been gradually more taken an interest and is considered both in international level as emergence of IMO convention and in national level, scholars including court in countries that is mentioned in this thesis,for instance, Kingdom of

Norway, Republic of France ,State of Quebec(Canada)and in some state of United state of America such as State of Louisiana etc.all agreed in one direction that if aforesaid situation take place , marine insurer should not be automatically released from liability if injured person don't have an opportunity to proof a damage and damages.Hence, direct action concept is used for the purpose of increasing a chance to be indemnified as much as possible. Beside, there is a citation for supporting this concept that the said concept can be apply in case of marine insurance although it is not consistent with marine insurer's practice, nevertheless, direct action concept had better be used as an exception. Furthermore, a good result will come about toward insured and insured's creditor indirectly too; consequently, some countries have an idea to permit a direct action suit against marine insurer under statutory condition. Additionally, in direct action suit, the relationship between marine insurer and third party connecting with insurer's ability to rely on defenses is an important matter in context of maritime law especially about arbitration clause and insured's right to limit a liability, academician in every countries which writer researched unanimously approved that over and above these defenses, court should not authorize insurer to avail himself of others defenses in refusing his liability as appearance of provision of such countries.

When this issue was considered by Thai law, it can be said that it is not clear whether Thai law should permit a direct action suit in case of marine insurance and what the extend that third party should claim directly against marine insurer and P&I Club because general provision of obligation law which are consist of principle of subrogation, principle of assignment, principle of exercising of debtor's claim, principle of novation and principle of third-party beneficiary are not totally applicable to this problem on account of the right to be indemnified was exhausted by the term of contract and the provision of liability insurance that is regarded as an insurance against loss which insured's liability is a risk that was insured as a legal insurable interest, but this part of provision is presumably only applied to liability insurance in the form of liability policy and in the manner of compulsory liability insurance owing to definition of liability insurance in accordance with section 887 is a contract of indemnity on behalf of insured

,it can be seen that P&I insurance is not a liability insurance since insured is the only one person who can claim against P&I Club. So It is not appropriate to apply such provision as the provision most nearly applicable. Moreover, such provision cannot be also applicable in case of marine insurer, in consequence of marine insurance is in line with Draft Thai Marine Insurance Act according to section 868 which there's no visible answer in the said act. Inasmuch as, there is no provision supporting injured person to claim or process for curing his damage for any arising out of maritime disputes. Even though this issue is not an urgent problem. To clarify this loophole by regulation as a subordinate provision will make the law of marine insurance more completely and it's noticeable that there's still some maritime disputes which are not in the framework of convention or Thailand have not had a plan to ratify certain conventions which permitted a direct action yet, encompassing few conventions may not enter into effect by near future. Therefore, it's considerable that national law should be a solution to tackle this problem in all aspect. Aforementioned that direct action is an exception especially in case of voluntary insurance, for this reason the scope of direct action is a substantial point which writer has an opinion that Norwegian law and new English law is a proper model law. So there are several main points to consider as following:

1. Direct action concept should not be applied in case of reinsurance.

2. The right to direct action should not be a separate right.

3. Law should protect injured person (private entity) for all type of damage and shipownwer's bankruptcy should only be a precondition to proceed a direct action suit.

4. Injured person can waive the right to direct action as long as there is a commercial relationship with insured.

5. Insurers should not be allowed to rely on defenses which its effect absolutely denying liability, anyway, insurers is able to deduct sum insured before indemnifying.

However, at present, so many conventions which permit direct action, therefore, Thailand may ratify these conventions as another solution in future.