SPC Guiding Case No. 234: Application by Nanjing Hua [X] Shipping Co., Ltd. to Establish a Limitation Fund for Maritime Liability

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Keywords

Civil; application to establish a limitation fund for maritime liability; fund amount; ocean-going transport vessel; coastal transport vessel

Holding

Where, in the same maritime accident, the maritime liability limit of one of the vessels involved should be calculated according to Article 210(1) of the Maritime Law of the People's Republic of China or Article 3 of the Provisions on the Maritime Liability Limits for Vessels of Less Than 300 Gross Tons and for Vessels Engaged in Coastal Transport and Coastal Operations, then regardless of whether that vessel applies to establish a limitation fund for maritime liability or asserts limitation of maritime liability, the maritime liability limits of the other vessels involved shall not be governed by Article 4 of the Provisions on the Maritime Liability Limits for Vessels of Less Than 300 Gross Tons and for Vessels Engaged in Coastal Transport and Coastal Operations.

Basic Facts

The vessel "Hua [X]zhou" owned by Nanjing Hua [X] Shipping Co., Ltd. (hereinafter "Nanjing Hua [X] Shipping Company") was a seagoing vessel (2,986 gross tons) engaged in ordinary cargo transport along the domestic coast and the middle and lower reaches of the Yangtze River. On November 21, 2020, the "Hua [X]zhou" collided with the Singaporean-flagged vessel "Mou Chun" (27,800 gross tons), owned by Wan [X] Shipping (Singapore) Pte. Ltd., in the waters near the No. 32 anchorage at the Pearl River Estuary, causing partial damage to both vessels and causing some of the containers and cargo on board the "Mou Chun" to fall into the water.

On December 28, 2020, Nanjing Hua [X] Shipping Company, with respect to all non-personal-injury liability that might arise from the collision between the "Hua [X]zhou" and the "Mou Chun", applied to the Guangzhou Maritime Court, in accordance with Article 4 of the Provisions on the Maritime Liability Limits for Vessels of Less Than 300 Gross Tons and for Vessels Engaged in Coastal Transport and Coastal Operations (hereinafter the "Liability Limit Provisions"), to establish a limitation fund for maritime liability of 291,081 Special Drawing Rights (calculated at 50% of the liability limit). Wan [X] Shipping (Singapore) Pte. Ltd. did not apply to establish a limitation fund for maritime liability.

The Guangzhou Maritime Safety Administration and Wan [X] Shipping (Singapore) Pte. Ltd. did not raise objections to the subject qualification of Nanjing Hua [X] Shipping Company or the nature of the claims involved in the accident, but raised objections to the amount of the limitation fund for maritime liability, arguing that one of the vessels involved in the accident, the "Mou Chun", was a Singaporean-flagged vessel whose accident voyage was from Singapore to Nansha Port, Guangzhou, China, and that according to Article 5 of the Liability Limit Provisions, the "Hua [X]zhou" should apply the standard prescribed in Article 210(1) of the Maritime Law to calculate the amount of the limitation fund for maritime liability, and could not apply Article 4 of the Liability Limit Provisions concerning calculation at 50% of the liability limit. Therefore, the limit of the limitation fund for maritime liability applied for by Nanjing Hua [X] Shipping Company should be set at 582,162 Special Drawing Rights plus corresponding interest.

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Judgment

On April 2, 2021, the Guangzhou Maritime Court rendered the civil ruling (2021) Yue 72 Min Te No. 5: (1) granting the application of the applicant Nanjing Hua [X] Shipping Co., Ltd. to establish a limitation fund for maritime liability; (2) the amount of the limitation fund for maritime liability shall be 582,162 Special Drawing Rights plus interest; and (3) the applicant Nanjing Hua [X] Shipping Co., Ltd. shall, within three days from the effective date of this ruling, establish the limitation fund for maritime liability in RMB or with security acceptable to this court. If the fund is not established within the time limit, the application shall be treated as voluntarily withdrawn. After the ruling was made, no party appealed, and the ruling became legally effective.

Reasoning

This case was an application to establish a limitation fund for maritime liability, and the focus of the dispute was whether the amount of the fund established by the "Hua [X]zhou" should be calculated at 50% of the maritime liability limit prescribed in Article 210(1) of the Maritime Law.

The maritime liability limit is the maximum amount of compensation that the responsible subject bears in accordance with law for all restrictable claims such as personal injury and non-personal-injury claims. Article 210(1) of the Maritime Law expressly prescribes the calculation rules for the maritime liability limits of ocean-going transport vessels of 300 gross tons or more, namely that different standards apply according to different tonnage. On this basis, Article 210(2) of the Maritime Law provides: "For vessels of less than 300 gross tons, vessels engaged in transport between ports of the People's Republic of China, and vessels engaged in coastal operations, their liability limits shall be formulated by the competent transport department under the State Council and implemented after approval by the State Council." Accordingly, with the approval of the State Council, the former Ministry of Transport issued the Liability Limit Provisions in November 1993, which prescribed the calculation standards for the liability limits of ocean-going transport vessels of less than 300 gross tons, and in Article 4 prescribed the special rule that the maritime liability limit of vessels engaged in coastal cargo transport between ports of the People's Republic of China or coastal operations shall be calculated at 50% of the liability limit of ocean-going transport vessels. At the same time, for the situation where both ocean-going transport vessels and coastal transport or operation vessels are involved in the same accident, Article 5 of the Liability Limit Provisions provides: "Where the maritime liability limit of one of the vessels involved in the same accident is governed by Article 210 of the Maritime Law of the People's Republic of China or Article 3 of these Provisions, the maritime liability limits of the other vessels involved shall likewise be governed accordingly." This article in effect establishes the rule of "applying the higher rather than the lower," aimed at achieving equal protection of the parties to the same accident. Accordingly, as long as one of the vessels involved in the same accident is a vessel whose liability limit is calculated under Article 210(1) of the Maritime Law or Article 3 of the Liability Limit Provisions, then regardless of whether that vessel applies to establish a limitation fund for maritime liability or asserts limitation of maritime liability, the other vessels involved in the accident that are engaged in cargo transport between ports of the People's Republic of China or coastal operations shall likewise apply the same provisions to calculate their maritime liability limits according to tonnage, and may no longer apply Article 4 of the Liability Limit Provisions concerning calculation at 50% of the liability limit.

In this case, the maritime accident involved was a collision between the "Hua [X]zhou" and the "Mou Chun". The "Hua [X]zhou" was a seagoing vessel engaged in ordinary cargo transport along the domestic coast and the middle and lower reaches of the Yangtze River, while the "Mou Chun" was a Singaporean-flagged vessel whose accident voyage was from Singapore to Nansha Port, Guangzhou, China. The "Mou Chun" was an ocean-going vessel of more than 300 gross tons, belonging to the category of vessels whose liability limit should be determined under Article 210(1) of the Maritime Law. Regardless of whether the "Mou Chun" applied to establish a limitation fund for maritime liability or invoked the defense of limitation of maritime liability, the maritime liability limit of the "Hua [X]zhou" should be calculated according to its tonnage, and could not be calculated at 50% of the liability limit. Accordingly, since the "Hua [X]zhou" was a vessel of more

than 300 gross tons, the maritime liability limit of the "Hua [X]zhou" should apply Article 210(1) of the Maritime Law in the same manner as the "Mou Chun".

In summary, the people's court supported the objection raised by the Guangzhou Maritime Safety Administration and Wan [X] Shipping (Singapore) Pte. Ltd. that Nanjing Hua [X] Shipping Company had no right to calculate the liability limit under Article 4 of the Liability Limit Provisions.

Relevant Legal Provisions

Article 210 of the Maritime Law of the People's Republic of China

Articles 3, 4 and 5 of the Provisions on the Maritime Liability Limits for Vessels of Less Than 300 Gross Tons and for Vessels Engaged in Coastal Transport and Coastal Operations (Order No. 5 of the Ministry of Transport, 1993)

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