SPC Guiding Case No. 31: Jiangsu Weilun Shipping Co., Ltd. v. Miralda Rose Company (Vessel Collision Damage Compensation Dispute)

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Keywords

Civil / vessel collision damage compensation / agreed violation of navigation rules / determination of liability

Holding

During navigation, where the vessels involved negotiate not to pass each other in accordance with the rules established by the 1972 International Regulations for Preventing Collisions at Sea, and a collision occurs, the content agreed between the parties and the circumstances in which the vessels violated the agreement at the time of the collision shall not be the main basis for a people's court to determine the liability of the two parties; rather, the aforementioned rules shall still be the basis, and the liability for the accident shall be determined on the basis of comprehensively analyzing the causes of the formation of the close-quarters situation, the degree of fault of the vessels involved, and the appropriateness of their handling measures.

Basic Facts

On the evening of June 3, 2008, the "Weilun 06" vessel owned by the plaintiff, Jiangsu Weilun Shipping Co., Ltd., and the "MIRANDA ROSE" vessel (hereinafter the "Rose" vessel) owned by the defendant, Miralda Rose Company, met in the Yuanyuansha cautionary area of Shanghai Port during their respective voyages. At 23:27 that day, another foreign vessel, the "Rio de Janeiro Express," which had left the Waigaoqiao container terminal, contacted the "Rose" vessel and began to overtake it. At 23:32, the pilot of the "Rio de Janeiro Express" called the "Weilun 06" vessel and the "Zhengan 8" vessel located about 0.2 nautical miles ahead and to the left of the "Weilun 06" vessel, requesting the two vessels to pass with green lights. The "Zhengan 8" vessel refused and adjusted its course to the right at a large angle, rapidly crossing to the north side of the cautionary area and departing. The "Weilun 06" vessel, under the insistent request of the pilot of the "Rio de Janeiro Express," agreed to pass with green lights. The "Rose" vessel then contacted the "Weilun 06" vessel and also requested a green-light passing, and the "Weilun 06" vessel replied with agreement. At 23:38, when the "Weilun 06" vessel reached a position slightly to the left of the bow of the "Rose" vessel, it found that the "Rose" vessel was showing a red light, and immediately contacted the "Rose" vessel, requesting it to adjust its navigation to the left as soon as possible. The "Weilun 06" vessel then began to slow down, but the "Rose" vessel, because the "Rio de Janeiro Express" had not yet passed clear after overtaking and was close by, could not adjust its course to the left. At 23:41, the "Weilun 06" vessel passed the "Rio de Janeiro Express" at close range, and was located to the left front of the "Rose" vessel at a distance of only 0.2 nautical miles. At this time, both the "Weilun 06" vessel and the "Rose" vessel perceived the danger and simultaneously turned to the left at a large angle. At 23:42, the right rear part of the "Weilun 06" vessel collided with the right side of the bow of the "Rose" vessel. The accident caused the plaintiff to suffer various losses including salvage fees, pollution cleanup fees, cargo damage and loss fees, and repair fees totaling RMB 4,504,605.75.

The plaintiff then sued, requesting the court to order the "Rose" vessel to bear 80% of the liability on the ground that the "Rose" vessel violated the agreement between the two parties on "green-light passing." The defendant proposed that the plaintiff should bear 90% of the liability for the collision accident involved in the case, and that part of the losses claimed by the plaintiff was unreasonable.

Judgment

On September 20, 2011, the Shanghai Maritime Court rendered civil judgment (2010) Hu Hai Fa Hai Chu Zi No. 24: (1) the defendant Miralda Rose Company should compensate the plaintiff Jiangsu Weilun Shipping Co., Ltd. for losses of RMB 2,252,302.79 within ten days from the effective date of this judgment; (2) the defendant Miralda Rose Company should compensate the plaintiff Jiangsu Weilun Shipping Co., Ltd. for the interest loss on the above amount, calculated at the People's Bank of China's benchmark demand deposit interest rate for the same period, from June 3, 2008, until the effective date of the judgment; (3) the other litigation requests of the plaintiff Jiangsu Weilun Shipping Co., Ltd. were not supported. After the judgment was pronounced, neither party appealed, and the judgment became legally effective.

Reasoning

The court's effective judgment held that: before the two vessels reached a consensus, when the two vessels met on crossing courses, they should have "passed with red lights." The "Rose" vessel, for its own convenience in entering the north channel fairway to exit, first proposed the "green-light passing" proposal. That proposal violated the obligation to give way that it should bear under the 1972 International Regulations for Preventing Collisions at Sea (hereinafter the "1972 Collision Regulations"). However, the "Weilun 06" vessel agreed to that proposal that violated the rules. At this time, the intention of the two parties to pass with green lights should mean that, throughout the entire avoidance process, both parties should always show the green light side of their vessels to the other party. In this special situation, there was no longer a "give-way vessel" and a "stand-on vessel" in the sense of the 1972 Collision Regulations. Therefore, when a risk of collision arose between the two vessels, the two vessels should have an equal responsibility to avoid the collision, and both vessels should navigate with particular caution in accordance with the relevant provisions of the 1972 Collision Regulations. But in fact, after reaching the consensus on green-light passing, both parties thought the other party would give way to them, and failed to effectively observe the conditions of the waters where they were located and to fully assess the situation and collision risk at the time, and only took action after a close-quarters danger had formed, ultimately failing to avoid the collision. In summary, both vessels had negligent lookout, failed to use a safe speed, failed to fulfill the obligation of particularly cautious navigation and to take early action to avoid collision, and both violated the provisions of the 1972 Collision Regulations concerning lookout, safe speed, and action to avoid collision, and were equally responsible for the occurrence of the collision accident, each bearing 50% of the liability.

The defendant was the owner of the "Rose" vessel. In accordance with the Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Vessel Collision Dispute Cases, it should bear compensation liability for the losses caused to the plaintiff by the "Rose" vessel in the collision accident involved in the case. The court, based on the evidence provided by the parties, verified the specific loss amount of the plaintiff, and made the above judgment in accordance with law according to the liability share the defendant should bear.

Relevant Legal Provisions

Article 169 of the Maritime Law of the People's Republic of China.

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