IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1978] SGHC 60

Suit 4351/1975

Between

National Jaya (Pte) Ltd

… *Plaintiff*

And

Hong Tat Marine Shipping Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Admiralty and Shipping — Carriage of goods by sea

Version No 1: 11 Sep 2026 (01:05 hrs)

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National Jaya (Pte) Ltd v Hong Tat Marine Shipping Pte Ltd

[1978] SGHC 60

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Wee Chong Jin CJ
09 November 1978

1 Cur Adv Vult

2 National Jaya (Pte) Ltd the plaintiffs, had seven cases of marble slabs and three cases of glass mosaic worth $28,768 to send to Pertamina of Jakarta, Indonesia. Hong Tat Marine Shipping Pte Ltd the defendants, agreed to ship them on their vessel Hai Sing from Singapore to Merak, a port near Jakarta and issued a Bill of Lading for these goods. The value of the goods was not declared by the plaintiffs before shipment and not inserted in the bill of lading.

3 The Hai Sing was a barge which had no moveable rudder and had no steering power of its own. It was being towed by another vessel belonging to the defendants. It`s deadweight was 785.6 long tons or approximately 800 metric tons but it was in fact carrying 966 metric tons of cargo on the voyage to Merak. On approaching Merak, the tug decided to anchor for the night to await clearance the next day and proceeded to shorten the tow line. During this operation the barge overran the tow line which became entangled necessitating cutting the tow line. The barge`s rear anchor was dropped but because of strong wind, and waves the anchor snapped and the barge was grounded. Water entered

and flooded two hatches resulting in a total loss of the plaintiffs` goods. They claimed against the defendants for their loss.

4 The only issue to be decided is whether or not, on the above facts which are not in dispute, art IV r 5 of the Hague Rules as incorporated in the Carriage of Goods by Sea Act (Cap 184, 1970 Ed) (the Act) applied to limit the liability of the defendants. Article IV r 5 reads as follows:

> *Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding Â£l00 per package or unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.*

5 It is conceded that the defendants were in breach of art III r 1 which reads, as follows:

> *The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to -*
>
> (a) make the ship seaworthy;
>
> (b) properly man, equip and supply the ship;
>
> (c) make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

6 It is also conceded that the non-fulfilment of art III r 1 caused the loss of the plaintiffs` goods.

7 The plaintiffs contend that before the carrier can rely on any of the provisions of art IV the carrier must comply with the provisions of art III r 1. They rely on the case of ***Maxine Footwear Co Ltd v Canadian Government Merchant Marine Ltd*** [1959] AC 589 as binding authority in support of their contention.

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8 In that case, the respondents` ship, while in port and after loading had begun, caught fire owing to the negligence of their servants. The appellants` goods which had been loaded under a bill of lading incorporating the Canadian Water Carriage of Goods Act 1936, to which were scheduled the Hague Rules, were lost. On the evidence the judicial committee of the Privy Council said that it was plain that from the time when the ship caught on fire she was unseaworthy; that this unseaworthiness caused the damage to and loss of the appellants` goods and that the negligence of the respondents` servants which caused the fire was a failure to exercise due diligence. The Privy Council held that the appellants were entitled to recover damages for their loss and in their judgment they dealt with a submission of the respondents as follows:

> *Logically, the first submission on behalf of the respondents was that in cases of fire Article III never comes into operation even though the fire makes the ship unseaworthy. All fires and all damages from fire on this argument fall to be dealt with under article IV, r 2(b). If this were right there was at any rate a very strong case for saying that there was no fault or privity of the carrier within that rule, and the respondents would succeed.*

9 In their Lordships` opinion the point fails. Article III, r 1, is an overriding obligation. If it is not fulfilled and the non-fulfilment causes the damage the immunities of article IV cannot be relied on. This is the natural construction apart from the opening words of article III, r 2. The fact that that rule is made subject to the provisions of article IV and r 1 is not so conditioned makes the point clear beyond argument.

10 The defendants contend that the ***Maxine*** case is distinguishable in that r 5 of art IV was not relied on by the carrier and therefore was never considered by the Privy Council. Furthermore, the decision is a limited one. Its effect is limited to `the immunities of Article IV` and r 5 of art IV does not confer an immunity on the carrier but merely confers a right, the right to limit his liability

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for any loss or damage to the goods in an amount not exceeding Â£100 per package or unit. It is submitted that if the Privy Council had to consider r 5 the words `in any event` therein would have to be construed.

11 I find myself in agreement with the defendants` contention and hold that I am not bound by the ***Maxine*** case. The effect of the words `in any event` is stated by the authors of ***Scrutton on Charterparties and Bills of Lading*** (18th Ed) at p 441 as follows:

> *`In any event`. The limit on liability is, it is submitted, available in the event of damage by unseaworthiness where there has been no exercise of due diligence.*

12 The authority cited in support of this submission is the Canadian case of ***Falconbridge Nickel Mines v Chimo Shipping*** [1969] 2 Lloyd LR 277. In that case the carrier expressly relied on, ***inter alia*** , art IV r 5 to limit his liability in a claim by a shipper for loss due to sinking. Kerr J of the Exchequer Court of Canada (Quebec Admiralty District) found that the loss was due to unseaworthiness of the barge caused by the want of due diligence on the part of the carrier to make the barge seaworthy. Kerr J also found that the immunities of art IV r 2 were of no avail to the carrier but that the limitation of liability in r 5, where the words `in any event` are used, applied (see p 298).

13 I find myself in agreement with Kerr J and the submission of the authors of ***Scrutton on Charterparties and Bills of Lading*** (18th Ed)but there remains to be considered another contention of the plaintiffs, namely,that the defendants were guilty of so fundamental a breach of contract as to make the voyage from Singapore to Merak not a voyage the subject of `the contract of carriage of goods by sea` to which the Act applies. The argument is that to carry the plaintiffs` goods on a rudderless barge which had to be towed by another vessel is clearly

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outside the contemplation of the plaintiffs when they entered into the contract of carriage of their goods by sea from Singapore to Merak.

14 I am unable to accept this contention. There is no evidence in support of it. The bill of lading issued by the defendants and accepted by the plaintiffs is evidence of the contract of carriage of goods by sea entered into by the parties and in my judgment the voyage during which the plaintiffs` goods were lost is clearly a voyage the subject of the contract of carriage of goods by sea to which the Act applies.

15 In the result the defendants succeed on the sole issue and there will be judgment accordingly.

16 ***Claim dismissed.***

Wee Chong Jin CJ

G Pannirselvam (Drew & Napier) for the plaintiffs
S Selvadurai (Selvadurai & Emmanuel) for the defendants

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