The "Emma Maersk"
[2006] SGHC 180

Case Number : Adm in Rem 67/2004

Decision Date : 13 October 2006

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Mathiew Christophe Rajoo (Dennismathiew) for the plaintiff; Yap Yin Soon and Leona Wong (Allen & Gledhill) for the defendant

Parties : —

Tort – Negligence – Breach of duty – Plaintiff suffering injury while disembarking from ship – Whether defendant breaching statutory duty to ensure a safe disembarkation method – Reg 23(b)(ii) in Chapter V of the Merchant Shipping (Safety Convention) Regulations (Cap 179, Rg 11, 1999 Rev Ed)

Tort – Negligence – Duty of care – Plaintiff suffering injury while disembarking from ship – Whether defendant oweing and breaching a duty at common law to ensure a safe disembarkation method

13 October 2006 *Judgment reserved.*

Judith Prakash J:

Introduction

1 This is a personal injury claim. The plaintiff, Kulasegaram Ranjakunalan, suffered injuries when he was in the process of disembarking from the ship *Emma Maersk* ("the ship") owned by the defendant. The basis of the claim is set out in para 3 of the statement of claim. It states that the defendant owed the plaintiff a duty to take reasonable precautions for the safety of the plaintiff while he was disembarking from the ship onto the pilot launch and/or to provide a properly maintained and rigged gangway and/or to provide a safe system for disembarking pilots.

2 On 18 April 2002, the plaintiff, a harbour pilot employed by PSA Marine Pte Ltd, was instructed to assist in the navigation of the ship from the vicinity of Changi Anchorage to the vicinity of Johor Shoal Pilot Boarding Ground. According to para 4 of the statement of claim, after he completed his pilotage duties, the plaintiff was ordered to disembark from the ship using the ship's port side gangway. The pilot launch came alongside the ship to pick up the plaintiff. While the plaintiff was still on the gangway, the bow of the pilot launch went under and lifted the gangway with considerable force, causing the plaintiff to be thrown from the gangway into the sea.

3 In para 5 of the statement of claim, it was asserted that the accident was caused by the negligence and/or breach of duty and/or breach of statutory duty of the defendant whether by itself or its servants or agents. There were ten sub-paragraphs setting out particulars of this averment. It is not necessary to repeat those particulars in full. For present purposes, the material allegations are the following:

(a) The telescopic metal cylinder at the end of the gangway, which is supposed to prevent the pilot launch from going under the gangway, was not extended or sufficiently extended.

(b) The defendant's servants failed to lower the gangway to a proper height.

(c) The defendant failed to take any or adequate precautions to ensure the safety of the plaintiff when he used the gangway.

(d) The defendant caused or permitted the gangway to be used by the plaintiff without taking any, or any adequate, measures to ensure that the same was properly rigged, lowered and would not lift suddenly when the pilot launch was coming alongside the gangway to enable the plaintiff to disembark from the ship.

(e) The defendant failed to comply with Shipping Circular No 10 of 1999 ("Circular No 10") issued by the Maritime Port Authority of Singapore ("MPA") relating to pilot transfer arrangements.

(f) The defendant failed to comply with reg 23(*b*)(ii) in Chapter V of the Merchant Shipping (Safety Convention) Regulations (Cap 179, Rg 11, 1999 Rev Ed) ("reg 23(*b*)(ii)").

4 The plaintiff relied, in the alternative, on the principle of *res ipsa loquitur*. A further alternative claim was put forward on the basis that the defendant, as occupier of the ship, owed a duty of care to the plaintiff who was an invitee of the defendant. It was averred that this duty had been breached and that the particulars of the breach were the same as those set out in para 5 of the statement of claim.

5 The defendant's account of the accident was set out in paras 6 to 10 of the defence. These stated that after the plaintiff had piloted the ship to the position where he considered it safe for him to disembark, he informed the master that he wished to disembark the ship onto the pilot boat using the port side accommodation ladder (*ie*, the gangway referred to in the statement of claim). The defendant denied that the plaintiff was ordered to use this ladder as it would not have been possible for the master to compel the plaintiff to do so. The decision to use the ladder was the plaintiff's and was made for his own convenience. The plaintiff's request was not unusual and there was no reason for the master to prevent the plaintiff from using the ladder as requested. Its use was permissible and the prevailing conditions at that time raised no grounds for concern as regards safety. The weather and visibility were good and the wind and sea conditions were calm.

6 The port side ladder was accordingly rigged and made safe and ready for use. A crew member was operating it. A senior deck cadet officer accompanied the plaintiff from the bridge to the ladder. The cadet had a direct communication link with the bridge and the bridge wing. At the material time, the master was on the bridge wing in order to monitor the disembarkation process.

7 When the plaintiff and the senior deck officer reached the ladder, the plaintiff being satisfied that the ladder was properly rigged and safe, proceeded down it at his own volition to await the arrival of the pilot boat. The defendant asserted that at all material times the plaintiff had direct radio communication with the oncoming pilot boat and only the plaintiff and the pilot boat could dictate the extent to which the ladder should be lowered or raised, and when it would be safe for the pilot boat to actually come alongside for the transfer to be performed. When the plaintiff reached the bottom platform of the ladder or close to it, he instructed the senior deck officer to further lower the ladder. The senior deck officer promptly conveyed these instructions to the crew member who was operating the ladder and the ladder was lowered further to the level as directed by the plaintiff and was thereafter kept steady. The plaintiff did not convey any further instructions to the ship and was waiting at the bottom of the ladder for the arrival of the pilot boat alongside for the transfer.

8 As the pilot boat neared the ship, it seemed to catch a wave and lose control. The bow of the pilot boat contacted the ladder and went under and lifted it. The force of the impact was very strong and it also caused the ladder to shake. The plaintiff lost his grip and fell overboard. The accident occurred at around 0800 hours. The ship's main engines were stopped immediately and the crew were called for emergency action. The plaintiff was, however, quickly retrieved by the pilot boat.

9 The defence went on to deny that the defendant, its servants or agents, were negligent or in breach of statutory or any other duty to the plaintiff. The defendant averred that at all material times, there was a proper system and there were adequate measures in place to ensure the safety of the plaintiff, that the ladder was rigged in a safe and secure state, that the ladder was safe and secure for use and that the defendant was in compliance with Circular No 10 and reg 23(*b*)(ii). In the alternative, the defendant pleaded that the accident was an inevitable one that could not have been avoided notwithstanding the exercise of all reasonable care and skill on the part of the defendant, its servants and agents. Alternatively, the accident was caused by the negligence of the pilot boat.

10 At the trial, the plaintiff himself and one Capt Balasubramaniam Prem Kumar ("Capt Prem Kumar"), a master mariner who was also a harbour pilot in Singapore for a short period, appeared as witnesses for the plaintiff. Testifying on behalf of the defendant, were the master of the ship, Capt Thirunarayanan Sriram ("Capt Sriram"), the third officer at the material time, Chakkarapani Kamalakannan ("Mr Kannan"), one Michael Nicolaas Adrianus Soeters ("Mr Soeters"), an employee of the manufacturer of the accommodation ladder, one Amit Pal ("Mr Pal"), an assistant general manager in the quality management department of the defendant, and Seet Keng Leong ("Mr Seet"), a marine consultant who was a harbour pilot in Singapore for 23 years.

11 In his closing submissions, the plaintiff reiterated that his injuries were caused by:

(a) the negligence of the defendant, its servants or agents;

(b) the defendant's breaches of statutory duty;

(c) the defendant's breaches of duty as occupier of the ship; and

(d) the case of *res ipsa loquitur*.

The issue that I have to decide therefore is whether the plaintiff has established that the defendant was in breach of any duty as alleged and, if so, whether his injuries were caused by any such breach.

The defendant's duties in respect of pilot disembarkation from the ship

12 It was not in dispute that the defendant had a duty to provide the plaintiff with a safe method of embarkation and disembarkation from the ship. This duty is set out in reg 23 of the Merchant Shipping (Safety Convention) Regulations and is also emphasised in Circular No 10 which the MPA sent out for the purpose of drawing the attention of shipowners, masters and other relevant persons to the applicable international regulations and good practices relating to pilot transfer arrangements. Regulation 23(*a*)(i) provides that ships engaged on voyages in the course of which pilots are likely to be employed shall be provided with pilot transfer arrangements. By reg 23(*b*)(i), these arrangements must efficiently fulfil their purpose of enabling pilots to embark and disembark safely. By reg 23(*b*)(ii), the rigging of the pilot transfer arrangements and the embarkation of the pilot have to be supervised by a responsible officer who is in communication with the navigation bridge and who has to arrange for the escort of the pilot by a safe route to and from the navigation bridge. This

duty is also reflected in Circular No 10 which states that masters and officers of ships:

(a) should appreciate the hazards encountered by pilots during embarkation or disembarkation of a ship in the course of their work;

(b) should pay particular attention to the preparation of pilot ladders and other ladders when such ladders are required to be used to ensure that they are in good order and condition and properly rigged; and

(c) should exercise proper supervision to ensure that the ladders are properly rigged with stanchions and ropes.

The defendant's witnesses accepted that the defendant was bound by reg 23 and by the requirements of Circular No 10. The master, Capt Sriram, admitted that his statutory duty was to give any pilot safe access when that pilot was disembarking from the ship. He also agreed that there were no exceptions to the rule that the master was responsible for the pilot's safety. I observed during the trial that the defendant's witnesses were straightforward in their acceptance of their responsibilities and did not try to evade their duties. Their stand was that they had discharged all these responsibilities with the proper degree of care and could not have done anything to avoid the accident which had occurred without any fault on the part of the ship or those on board her.

The accounts of the accident

13 Before I go on to discuss the submissions, I will relate briefly each party's account of how the accident happened as set out in the affidavits of evidence-in-chief filed on behalf of that party.

14 The plaintiff was 48 years old at the time of the accident. He was a master mariner and an experienced pilot who had joined the Port of Singapore Authority as a harbour pilot in July 1993. Thereafter, he passed various examinations and obtained the highest qualification possible for pilots. This meant that he was qualified to pilot ships of any size including very large crude oil tankers like the ship herself.

15 On 18 April 2002, the plaintiff was instructed to board the ship which was then anchored at the Changi Special Purpose Anchorage and to assist the master in the navigation of the ship from the anchorage to the open sea. The plaintiff left for the ship from the Tanjong Pagar Pilot Station on board a pilot launch at about 0630 hours on 18 April 2002. At the time, the ship's portside gangway was lowered for embarkation. (I note here that the plaintiff consistently used the word "gangway" whilst the defendant employed the words "accommodation ladder" to refer to the same piece of equipment. To avoid confusion between the accommodation ladder and another method of embarkation/disembarkation from a ship known as the combination ladder, I will adopt the plaintiff's usage whenever mentioning the method used in this case.)

16 When the plaintiff arrived on the main deck of the ship at about 0720 hours after climbing up the gangway, he was escorted by a crew member to the navigation bridge. There he met Capt Sriram. The ship's anchor was heaved up and the ship proceeded on its way with the plaintiff advising the master on the courses that the ship should take. Before the ship had arrived at the location where pilots usually disembark, Capt Sriram told the plaintiff that he would take the ship from there and that the plaintiff could disembark. The plaintiff was then taken by the deck cadet to the portside gangway where he saw another seaman waiting.

17 The plaintiff proceeded down the gangway as he saw the pilot boat approaching. When he

arrived at the lowest platform on the gangway, he noticed that the gangway was about two metres above the water level. That was too high and he signalled to the crew on the main deck to lower the gangway. As the pilot boat approached the gangway, the plaintiff readied himself to disembark onto the pilot boat. When the boat came closer, it went under the gangway and lifted it with great force, throwing the plaintiff into the air at the same time. He fell into the sea as a result.

18 After the plaintiff fell into the sea he was struggling to stay afloat. While he was in the water, he noticed that the telescopic cylinder at the bottom of the gangway was in a corroded state and was not extended at all to prevent the boat from going under the gangway. He was surprised to see the cylinder in that state. The plaintiff said that he believed that had the gangway been properly maintained, the telescopic metal cylinder could have been extended easily. The function of the cylinder was to prevent the pilot launch from going under the gangway. Also, if the gangway had been lowered further, it would have prevented the pilot boat from going under the gangway and contacting the gangway.

19 Mr Kannan who was then the third officer on the ship testified that just before 0700 hours on 18 April 2002, when he was on the bridge of the ship, the pilot office contacted the ship. Mr Kannan took the call and was told that the pilot would arrive shortly. He was asked whether the gangways were rigged and ready for use. Mr Kannan informed the pilot office that both gangways would be ready for use and that the pilot could come on board from either side. The master then instructed Mr Kannan to continue with the pre-departure checks he had been working on. This involved also physically checking on the gangways again and overseeing the anchor operation. These checks were done by Mr Kannan who confirmed to the bridge by walkie-talkie that the gangways were in order.

20 Mr Kannan confirmed that he thoroughly checked the portside gangway just prior to the plaintiff's arrival and embarkation. He found both it and the starboard gangway to be in order and secure and ready and safe for use. He then asked a deck cadet to standby to receive the pilot, to oversee the embarkation process and take the pilot to the bridge. Mr Kannan himself proceeded forward to the anchor station. He remained at the anchor station thereafter and did not see either the plaintiff embark or, later, the accident.

21 Capt Sriram was the only witness for the defendant who saw the accident. He testified that he had started sailing in November 1989 and had been an employee of the defendant since November 1996 when he joined them as a chief officer. He was promoted to captain in April 2000 and from 2 April 2002 to 20 June 2002 he was the master of the ship. Prior to that, he had sailed on many similar vessels as master. At the time of the incident, he held a valid certificate of competency as master of a foreign-going ship issued by the Government of India.

22 The ship arrived in Singapore on 17 April 2002. Prior to her arrival in port, the gangways, both port and starboard sides, and the pilot ladders were rigged and in place, checked and were ready for use. The telescopic cylinder installed in each gangway was not extended at any time. According to Capt Sriram, there was no requirement in Singapore for such a cylinder to be installed, let alone used if installed, and therefore he did not instruct the officers to extend the cylinders. He also stated that the telescopic cylinder was meant to act as a fender to protect the gangway and in particular the bottom platform against contact damage from approaching small craft. It was not meant to withstand severe impact or act as a braking or safety device in respect of users of the gangway.

23 The ship reached the pilot station in Singapore at about 2000 hours on 17 April 2002 and was to be piloted to the Changi Special Purpose Anchorage. The arrival pilot boarded and disembarked the ship by the portside gangway and this was seen by Capt Sriram from the bridge wing. Capt Sriram said that his experience was that pilots in Singapore preferred to use the gangway to board ships as

opposed to using the combination ladder (*ie*, a combination of the gangway and the pilot ladder).

24 On 18 April 2002, Capt Sriram went on to the bridge shortly after 7.00am. At about 0718 hours, the plaintiff arrived by pilot boat and boarded the ship. Capt Sriram was on the portside bridge wing and he saw the plaintiff use the portside gangway to embark. After the plaintiff embarked the ship, the gangway was hoisted up halfway for security reasons. The plaintiff arrived on the bridge and Capt Sriram briefed him on matters relating to the ship's manoeuvring capabilities. The plaintiff did not mention the boarding arrangements.

25 At about 0740 hours, the ship started making her way out of the anchorage with the assistance of the plaintiff. After the plaintiff had piloted the ship to the position where he considered it safe for him to disembark, he contacted the pilot boat and asked her to approach the ship. He also instructed the master that the ship should be kept dead slow ahead on the course steered until he disembarked. Thereafter, the ship should turn and join the channel. These instructions were followed: the ship's approximate speed was kept at about one to two knots during the time of the plaintiff's disembarkation.

26 According to Capt Sriram, the plaintiff told him that he wished to disembark the ship onto the pilot boat using the portside gangway. It was not true that, as alleged by the plaintiff, he was ordered to disembark using the portside gangway and that that was the only point of egress available. All other methods of disembarkation were available including the combination arrangement involving the pilot ladders.

27 Capt Sriram asserted that the plaintiff's request was not an unusual one. He said he could see no safety issues with the use of the portside gangway for disembarkation. There was no traffic in the close vicinity of the ship, the sea and weather were calm and there was good visibility. Capt Sriram therefore called the seaman who was on gangway watch, GP Luzon, and instructed him to standby for the plaintiff's disembarkation. He also instructed Senior Deck Cadet Officer Ocliaso ("Mr Ocliaso") who had escorted the plaintiff to the bridge on his embarkation to accompany the plaintiff for the disembarkation as well. Mr Ocliaso then escorted the plaintiff from the bridge and showed him the way to the portside gangway. At all times, Mr Ocliaso had a direct communication link with the bridge and the bridge wing.

28 In the meantime, Capt Sriram went to the bridge wing where he could view and supervise the disembarkation process while retaining command of the bridge. He was equipped with binoculars. From the bridge wing, he could see whether there was any obstacle, discharge or protrusion on the ship's side and whether the side was clear for the approach of the pilot boat. He also had a good view of the portside gangway down to its bottom ladder. Capt Sriram saw Mr Ocliaso and the plaintiff making their way to the portside gangway. When they reached the gangway, which at that time was lowered at around midpoint, the captain saw the plaintiff and Mr Ocliaso shaking hands with each other after which the plaintiff stepped onto the gangway.

29 As the plaintiff proceeded down the gangway, Capt Sriram noticed that Mr Ocliaso remained at the top of the gangway while keeping a close watch on the plaintiff. As the plaintiff descended the gangway, he signalled for it to be lowered further. Mr Ocliaso conveyed these instructions to GP Luzon who was operating the gangway and the gangway descended accordingly. Capt Sriram also saw the pilot boat approaching. There was a deck hand on board her and, as the boat neared the ship, the deck hand signalled Mr Ocliaso and GP Luzon to further adjust the height of the gangway. That was done as directed.

30 Just before contact, the adjustments to the gangway had been accomplished and the

gangway was stationery. At the same time, the plaintiff was waiting at or near the bottom of the gangway for the transfer and the ship was moving at a steady course and speed of about one to two knots. Capt Sriram could see that the pilot boat was approaching the gangway with its bow in the direction of the platform and stern away from the ship at an angle of approximately 30º. As the boat neared the ship (the distance was about three boat-lengths), she reduced her speed to go alongside. To Capt Sriram, it seemed that the reduction in speed was not sufficient and the momentum of the pilot boat caused her bow to go under the bottom platform of the gangway. The bow waves created by the approach of the boat hit the ship's side and travelled back to the boat causing her to roll. As a result of this, the bow of the boat lifted the bottom platform with some force. The plaintiff lost his grip and fell off the platform into the sea between the ship and the boat. This occurred at around 0800 hours.

Was the defendant negligent in relation to the disembarkation process?

31 The plaintiff's submissions on negligence started with the proposition that the court ought to find as a fact that the gangway was lowered to a height that was higher than the height of the deck of the pilot boat. There was actually no dispute about this fact as Capt Sriram's own account of the incident was that the bow of the pilot boat had gone under the gangway. This could only have happened if the gangway was at a higher level than the bow of the boat. Further, the defendant did not attempt to argue that the gangway had been lowered to a height that was equal to or below the height of the deck of the pilot boat. It could not do so in the light of Capt Sriram's position that when the gangway is used for disembarkation, its bottom platform must at all times be kept at a height above the height of the incoming pilot boat.

32 The plaintiff's position is different. He contended that the pilot boat should come alongside the bottom platform of the accommodation ladder and therefore the height of the bottom platform should correspond with the height of the deck of the pilot boat, or be even lower than that, in order to prevent the pilot boat from going under the gangway. The plaintiff complained that the defendant had not done anything to ensure that the gangway was lowered to such a safe height. Further, he said, the defendant did not do anything to ensure that the signals that were given by the pilot boat were correct and in compliance with the intentions or methods of the defendant, in connection with the lowering of the gangway for the safe disembarkation of the plaintiff. Additionally, the defendant did not take any steps to ensure that the instructions that were given by the pilot boat "were complied with and accepted by the Pilot boat as sufficient". The ship did not notify the pilot boat that she would be relying on the boat for advice and instructions on the height to which the gangway should be lowered to enable the plaintiff to disembark safely. In this connection, the plaintiff stressed the evidence given by Capt Sriram during cross-examination when he said that the pilot boat was the entity instructing the ship to lower or heave up the gangway. It was put to the master that he did nothing to ensure that the gangway was lowered to a height that was safe for the pilot to transfer from the ship to the boat. His answer was that the crew were doing what the pilot boat had instructed them to do and had lowered the gangway to the level that the pilot boat wanted. When it was then put to him that the ship had left the height of the gangway completely to the pilot boat, his reply was "Yes, that is the usual thing".

33 The next submission was that the defendant had chosen to use a less safe method of transferring the plaintiff when there was a much safer method that had been recommended by the authorities. The safer method was the combination ladder and in this connection the master had agreed in cross-examination that whilst both the gangway method and the combination method were safe methods to use for disembarkation while the ship was moving, the combination method was better. Since the defendant had chosen to use the less safe method, additional precautions should have been taken to ensure the safety of the plaintiff.

34 The plaintiff then quoted a long passage from the evidence given by Mr Seet during cross-examination and summarised it by stating that if a pilot ladder was used, and that ladder was contacted by a boat coming alongside it, it would not experience vertical shocks in an upward direction nor would it experience horizontal shocks. This is because a pilot ladder is of a flexible construction due to the fact that it is made of rope and wooden or rubber rungs and spreaders. On the other hand, Mr Seet had agreed that a gangway is a rigid construction because it is made of aluminium. He also agreed that a shock to an aluminium gangway caused by a boat coming alongside it would be transmitted to the entire gangway. In the present case, the plaintiff submitted, when the deck of the pilot boat contacted the bottom rung of the gangway, the latter was forced upwards because of the rigid construction of the gangway. The defendant ought to have been aware that a rigid construction would have been affected in this way and should have taken additional precautions to avoid the gangway contacting the pilot boat. As the defendant failed to do so, it was liable in negligence to the plaintiff.

35 The master during cross-examination had stated that the pilot disembarkation method had to be either a combination ladder or a gangway or a pilot ladder. If the gangway method was the chosen one, since the pilot boat might pitch, he considered that it would be better not to lower to gangway to the level of the pilot boat until after the pilot boat came alongside the ship. Capt Sriram confirmed that his instructions to the crew of the ship were that they were supposed to leave the gangway above the level of the deck of the pilot boat and only lower it to deck level when the pilot boat was alongside the ship. The plaintiff submitted that this method of lowering the gangway only after the pilot boat was alongside was dangerous and not recommended by any organisation.

36 At the material time, the sea state experienced was 0.1m to 0.5m. Therefore, as the pilot boat rode the waves, it would have bobbed up and down within a height of between 0.1m and 0.5m. This natural bobbing reaction of the pilot boat should have been anticipated by the crew involved in the disembarkation process. The master himself had agreed that the pilot boat might pitch. He had also given evidence that at the time when the pilot was to make the transfer from the gangway to the pilot boat, in order for him to do so safely, the bottom platform of the gangway would have to be not more than 30cm (one foot) above the deck of the pilot boat. The plaintiff submitted that placing the gangway 30cm above the deck of the pilot boat was certain to ensure that the bottom rung of the gangway would be lifted up in a situation when the sea swell was between 0.1m and 0.5m, *ie*, 10cm and 50cm. In the plaintiff's submission, the pilot boat did not catch a wave as the master had alleged, instead it was lifted naturally by the waves at the material time. The master did not appreciate the movement of the pilot boat in the sea, bobbing up and down in an uncontrolled fashion. If he had, the pilot boat would not have ended up under the bottom platform of the accommodation ladder.

37 Analysing and summarising the plaintiff's submissions, they appear to run as follows. First, the safest method of disembarking a pilot is to provide the combination ladder for his use. The gangway on its own is not as safe a method of disembarkation and, when it is used, extra precautions must be taken by the ship in order to ensure the safety of the pilot. Second, it is for the ship to ensure that the gangway is lowered to a safe height: either the master should not rely entirely on the signals of the pilot himself and the crew on board the pilot boat or, if he is going to take this course, he must inform the boat that he is relying on the boat entirely. Third, the gangway must, before the pilot boat approaches, be lowered to a height that is below the height of the bow of the pilot boat so that the boat will not go beneath the gangway and force it upwards.

38 At this stage, I will deal only with the plaintiff's arguments that the defendant was negligent in its operation of the gangway as it was used in the plaintiff's disembarkation process. I will consider the issue of whether there was any fault on the part of the defendant in providing only a gangway,

and not a gangway in combination with a pilot ladder, subsequently.

39 The defendant's case was that when the gangway is being used for disembarkation, each of the parties involved in the transfer has a distinct role when it comes to adjusting the height of the gangway to a position where it would be safe for the pilot to transfer from the ship to the pilot boat. The defendant submitted that the role of the ship is to maintain a steady course and speed as advised by the pilot and the crew operating the gangway are to mechanically move it and stop it in accordance with the instructions given by the pilot boat. The role of the pilot is to advise the ship on the course and speed to maintain and then to wait for the pilot boat at the gangway. He also has a duty (as the plaintiff himself had confirmed) to conduct visual checks to ensure that the arrangements and the conditions are safe and in order for the transfer to be effected. The pilot boat has the responsibility of guiding the height of the gangway by instructing the crew operating the gangway to lower and trim its height until it is at the appropriate height. The pilot boat has to instruct the ship's crew when to stop the lowering process. All these instructions are communicated by hand signals given by the pilot boat to the crew on the ship. The boat will have a deck hand on the deck to assist the pilot boat master in this function.

40 The defendant further submitted that there are two reasons for placing this responsibility on the pilot boat. Firstly, it would be in the best position (in both absolute terms and in relation to the pilot on the gangway and the crew who would be positioned at some height above the disembarkation point) to do so. Secondly, pilot boats have different freeboards and dimensions which the ship would not know and the particular pilot boat would be in the best position to set the height given those considerations and the manner in which the boat was interacting with the sea conditions at the material time.

41 I accept the defendant's submissions on the established practice and find that the job of determining how high the gangway had to be in order to ensure a smooth transfer to the pilot boat was the responsibility of the pilot boat. Those submissions were supported by the evidence. The weight of the evidence did not support the plaintiff's contention that the ship has to ensure that the signals given by the pilot boat are correct or to notify the pilot boat that she will be relying on the boat for instructions on the height to which the gangway should be lowered to ensure a safe disembarkation by the pilot. The plaintiff's contentions in this respect were against the established practice that was known to all parties at that time.

42 In relation to the evidence on this practice, it was contained, first, in the affidavit of evidence-in-chief of Mr Seet. Mr Seet went into some detail on the normal practice followed in such situations. He stated that the height of the gangway must be as advised and determined by the pilot and pilot boat master. The pilot boat master must bring his pilot boat in at a small angle close to parallel or parallel to the vessel, bearing in mind the height of the platform and the waves that the pilot boat is riding, and ensuring the safety of the pilot and pilot boat. If the pilot boat master is not certain that he can do this safely, for example, because the gangway platform is too high or too low, he must abort his approach and try again. Then, the pilot or the pilot boat master must signal or communicate to the crew of the ship to lower or raise the gangway before the boat attempts another approach. The exact and proper height of the gangway is best determined by the pilot boat master and the pilot as they are almost at eye level with the pilot boat and the lower platform of the gangway. Further, it is these two persons who can see and feel clearly the waves that the pilot boat is experiencing. The ship's crew can only mechanically move the gangway. They are many metres above the bottom of the gangway and can only get an aerial view so they are in no position to determine its final height. The foregoing evidence was not challenged by the plaintiff when Mr Seet took the stand.

43 Second, the plaintiff's expert, Capt Prem Kumar, was asked about these matters and, generally, agreed with Mr Seet's view. He agreed, in particular, that it is the pilot boat which should read the situation and decide when and how it should approach the ship. He concurred that it is the pilot boat's job to guide and determine the height of the gangway and to only come in when the boat concludes that it is safe to do so. Capt Prem Kumar had stated in his affidavit that the deck hand on the pilot boat would usually signal to the responsible officer on the ship regarding the height of the gangway. When he was reminded of this statement by counsel for the plaintiff, Capt Prem Kumar confirmed that it was correct. It was then put to him that the accepted and established practice was for the pilot boat to determine and guide the height of the gangway and relay the appropriate signals to the ship which should in turn follow the signals. Capt Prem Kumar accepted this position as correct. He agreed that if the ship's crew had complied with the pilot boat's signals, the bottom platform of the gangway should end up where it was supposed to be. He also agreed that as long as the signals given were followed by the crew and there was a responsible officer supervising the process, the ship would have fulfilled its responsibilities. Finally, the plaintiff himself did not take a different view when he was cross-examined. He agreed that the pilot boat was the one that gave the signals as to how much the gangway had to be lowered. He agreed too that the responsibility of the people on the ship operating the ladder was to ensure that these signals from the pilot boat were properly followed.

44 Aside from following the instructions from the pilot boat on the height adjustment, there were only two other possible ways of effecting the change in the height of the gangway such that the plaintiff could move onto the pilot boat. I agree with the defendant that neither of these options was feasible. The first one was that the master could have kept the gangway very high, lowering it only once the pilot boat came alongside and was steady. This method, however, would not have been in accordance with the accepted practice where the crew of the ship had to follow the instructions given as the pilot boat came in. In any case, the plaintiff's complaint was that the gangway was too high at the relevant time and ought to have been lowered further. The other option open to the ship (and the one that the plaintiff advocated from time to time) would have been to try and position the gangway at the level of the deck of the pilot boat or slightly below that deck. Quite apart from the fact that this, again, was not in accordance with the accepted practice, it would have been almost an impossible task for the ship to achieve without direction from the pilot boat given that the boat was approaching the ship and with the boat's own movements and the wave movements, it would have been very hard for the crew to gauge from above what the right height was. Further, it would be dangerous to expose the gangway at that level because there would then be a risk of a head-on impact as the pilot boat made her way alongside the ship.

45 Thus, I agree that it was reasonable for the ship to have assumed that if it followed the instructions given by the pilot boat and the plaintiff, the gangway would be where it was supposed to be or at least where the pilot boat wanted it. Capt Prem Kumar agreed that in this case, since the pilot boat had already given signals to the crew at the gangway to lower it, and the crew had followed those signals, then having regard to the pilot boat's action in continuing to make its approach to the ship, it was reasonable for the crew at the top of the gangway to assume that the gangway was correctly positioned. The evidence of the master, which I accept, was that the plaintiff, while on the gangway, had signalled for the gangway to be lowered and that the deck hand on the pilot boat had given signals for further adjustment of the height of the ladder. Both sets of signals were obeyed by the ship's crew and the height of the gangway adjusted accordingly.

46 The plaintiff made much of the fact that Capt Sriram stated in cross-examination that the gangway should always be above the pilot boat and that his standing instructions to the crew were to lower it to a height which would allow the plaintiff to step off the gangway and onto the deck of the pilot boat only after the pilot boat was alongside. He submitted that it was the master's intention that the pilot boat come alongside the ship when the bottom platform of the gangway was higher

than the deck of the boat and it was consistent with this intention that the boat went underneath the gangway. During the hearing, I too had some concern about the master's belief that the gangway should always be higher than or "above" the deck of the pilot boat as it seemed to me that this might be a dangerous practice. Having considered the submissions and the evidence further, however, I have come to the conclusion that that belief does not show any want of care or negligence on the part of the master or the ship.

47 There are two reasons for this conclusion. First, the evidence that I have considered and discussed above indicated that in this particular case, whatever the master's belief was, the ship had obeyed the instructions of the pilot and the pilot boat in relation to the height of the gangway. The master did not interfere with this adjustment. He was observing from the gangway and to him it appeared that the height was in accordance with the correct practice of keeping the gangway above the pilot boat and only making a final adjustment, in accordance with the instructions of the pilot boat, when the boat was in the lee of the ship and ready to take on the pilot. He did say also that from where he was he could not confirm what height the gangway was at in relation to the sea level and therefore was depending on the pilot boat and the plaintiff to make the necessary judgment. It would seem therefore that he was not intending to interfere in any case. To him, the pilot boat was in charge of the height adjustment and was in the best position to assess the situation and consider whether the approach should be made or whether it should be aborted and the height of the gangway adjusted further.

48 Secondly, I think that the master's answers in cross-examination when considered further and as a whole do not show that he advocated a dangerous practice. The master explained that there were various ways that a pilot boat can pick up a pilot. Some boats go right forward of the gangway and then fall astern and take the pilot on astern. Alternatively, as a pilot boat usually has a flare in the front, it can also just put its bow into the area of the gangway and pick up the pilot on the bow. Even in this case, the gangway when lowered at the bow will not contact the pilot boat. Capt Sriram stated that the pilot boat should always stay clear of the gangway when she comes alongside but it is left to the pilot boat to do this as different boats have different dimensions and different ways of picking up pilots which the ship is unfamiliar with and has no control over.

49 A number of questions were posed to the master which involved asking him whether at the point when the pilot boat came alongside the gangway, it would or should be "above" the pilot boat. The master's answer was always a resounding "yes" because he said that that was a safe method and it is only when the pilot boat is steady and the final adjustment is made to the gangway that the transfer takes place. Counsel for the plaintiff then suggested that if the gangway was above the pilot boat, the pilot boat would be "under" or directly below the gangway. Capt Sriram, however, in his response, made it clear that the gangway would always be clear of the pilot boat even when lowered and would not come into contact with it. In this case, when the boat was coming closer to the bottom platform, he was under the impression that she would stop her engines and then turn around with a twist in order to keep the stern near the ladder and the bow clear of it. This was a familiar manoeuvre. From his experience, he was quite certain that in such a case, the bottom platform would not contact the bow of the ship. The master also explained when the pilot was disembarking, the pilot boat would be in the lee of the ship and this would mean that it would be steady. It was only when the pilot boat was steady in the lee that the final adjustment of the gangway would be made. If despite the lee, the pilot boat was bumping up and down, the gangway would not have been lowered further so there was no possibility of the gangway contacting the deck of the pilot boat. As far as the master was concerned, the boat would not be bobbing up and down at the time that it was alongside the ship to take on the pilot.

50 When I asked the master about his preferred practice, he was adamant that it was not

dangerous. This is the exchange:

> Court: Don't you think that this method of lowering the pilot – the platform onto the top of the deck of the pilot boat is a dangerous method?
>
> Witness: Actually what we do is we don't really lower it. We keep it up. And as the boat comes alongside, she's clear of the ship's platform. So as we lower it, she's well steady and she is not going to bounce like that because the flare of the boat is there.
>
> Court: The what of the boat?
>
> Witness: The flare means the front portion of the boat is curved.
>
> Court: Yes.
>
> Witness: So that allows for the clearance for the gangway to come down – the bottom platform to come down.
>
> Q: Did you instruct the pilot boat on the manner it should come alongside the – your vessel?
>
> A: No, pilot boat is done by the pilot boat. And I am in charge of my vessel, so I don't instruct the pilot boat as to how she has to come.

51 In my judgment, the plaintiff has not established that the ship or any of its crew were negligent in the manner in which the gangway was provided for the plaintiff's disembarkation. I do not accept the argument that it is for the ship to ensure that the gangway is lowered to a safe height. I find that the normal practice when the gangway is used is for the ship to lower the gangway in accordance with the instructions of the pilot boat and the pilot himself and that although the master considered that the gangway must always be kept above the height of the pilot boat until the pilot boat is alongside, he left the calibration of this procedure to the pilot boat and did not interfere in any way in the lowering process. It was not necessary for the ship to inform the pilot boat or the pilot that it was relying on their instructions in relation to the lowering of the gangway as that was the accepted procedure. I also find that it was not for the ship to lower the gangway to a height that was below the height of the pilot boat before the pilot boat approached. This is because the pilot boat being at eye level would have a better appreciation of the distance that the gangway needed to be lowered for the safe disembarkation than would the crew operating the gangway who would be located a distance above its bottom platform. The evidence before me in fact established that the master and crew had exercised all usual and reasonable care and skill to ensure the plaintiff's safety during the disembarkation process and to guard against all reasonably anticipated risks.

Breach of statutory duty

52 The plaintiff submitted that the defendant was in breach of its statutory duties imposed by reg 23 ([12] *supra*). The material provisions of reg 23 are the following:

> Regulation 23
>
> *Pilot Transfer Arrangements*
>
> (*a*) *Applications*

(i) Ships engaged on voyages in the course of which pilots are likely to be employed shall be provided with pilot transfer arrangements.

(ii) Equipment and arrangements for pilot transfer … shall comply with the requirements of this Regulation …

…

(*b*) *General*

(i) …

(ii) The rigging of the pilot transfer arrangements and the embarkation of a pilot shall be supervised by a responsible officer having means of communication with the navigation bridge who shall also arrange for the escort of the pilot by a safe route to and from the navigation bridge. …

(*c*) *Transfer arrangements*

(i) Arrangements shall be provided to enable the pilot to embark and disembark safely on either side of the ship.

(ii) …

(iii) Safe and convenient access to, and egress from, the ship shall be provided by either:

(1) …

(2) an accommodation ladder in conjunction with the pilot ladder, or other equally safe and convenient means, whenever the distance from the surface of the water to the point of access to the ship is more than 9 m. …

…

53 The first submission that the plaintiff made in relation to the alleged breach of statutory duty was that by reason of reg 23, the defendant was obliged to provide him with a combination ladder or an equivalent safe method to disembark from the ship. Had the defendant provided such combination ladder, the plaintiff would not have been thrown from the last platform of the gangway. The plaintiff did not admit that there was a practice in Singapore of using the gangway to disembark from moving vessels and said that even if such a practice existed, it would not exonerate the defendant from its obligation to ensure that the plaintiff disembarked safely. In any case, in the plaintiff's submission, the practice would contravene Circular No 10 and reg 23 which required the defendant to provide the combination ladder.

54 The plaintiff went on to submit that since the defendant had adopted a method that differed from the one recommended by the authorities, the defendant was under a duty to take extra precautions to ensure that the plaintiff disembarked safely. These extra precautions were:

(a) to ensure that a responsible officer stood next to the plaintiff during disembarkation to ensure that the gangway was lowered to a height that corresponded with the height of the deck

of the pilot boat;

(b) to ensure that the ship's crew on its deck complied with the instructions given by the pilot boat; and

(c) to extend the telescopic cylinder at the end of the gangway so that the pilot boat would be prevented from going under the ladder.

55 The first issue that arises here therefore is whether the defendant was in breach of duty when it provided only the gangway and not the pilot ladder in combination with the gangway for the plaintiff's disembarkation. The defendant did not dispute that the combination ladder was generally, and usually, the best method of disembarkation. The defendant submitted, however, that since the regulation allowed for some flexibility in embarkation/disembarkation methods as long as the alternative provided was "equally safe and convenient" (see reg 23(*c*)(iii)(2)), in the circumstances that existed in this case, the gangway had been an equally safe and convenient method and therefore the defendant had provided a safe method of disembarkation and was not in breach of its statutory duty.

56 In this connection, the master, Mr Kannan, and Mr Seet had all stated in cross-examination that the gangway on its own was a safe method of disembarkation. All three men had agreed that on the day in question, it was in order to use the gangway. The circumstances that permitted the use of the gangway came out very clearly in the evidence of the third officer, Mr Kannan. When asked whether the gangway method was as safe as the combination ladder method, he replied:

> It is not always the safe method, your Honour. It depends upon the environmental condition, the speed in which the vessel is going, and the pilot boat's height. It all has to be taken into consideration. In [a] place like Singapore and on that pleasant day, the wind, weather all that [was] very light and there was no swell at all, and the boat was a small boat. The vessel was proceeding hardly at a very slow speed. It was perfectly safe, your Honour.

57 The defendant's expert when asked to look at reg 23 had testified that "other equally safe and convenient means" referred to the gangway used by itself without the pilot ladder. In his view, whilst generally the gangway by itself was slightly less safe (his wording was "a slight difference but very marginal") than the gangway when used with the pilot ladder, in the conditions that existed at the time of the incident, the use of the gangway was just as safe as the use of the combination ladder would have been.

58 I have noted the above evidence. It is also significant that the plaintiff himself did not dispute that the prevailing conditions on that day were right and safe for a transfer using the gangway only. Under cross-examination, he agreed that the ship was travelling at a safe speed for the transfer; that the sea was calm and that the wind was a very light breeze. He was not sure about the traffic in the vicinity of the ship since his view was restricted but, as far as he could see, the area was clear. He agreed that when he was on the gangway preparing for disembarkation, nothing, including the weather and the sea and traffic conditions, caused him any concern. Further, the plaintiff confirmed that he had no concerns about the safety, or otherwise, of the gangway right up to the time that he was standing at or near the bottom of the gangway waiting for the pilot boat's arrival. It was put to him that he did not think at any point of time when he was on the gangway that his safety was at risk. The plaintiff replied that at that time, he did not know that his safety was at risk when he was at the platform. It was then put to him that at no time before the actual impact had he had any cause to suspect that his safety was at risk. The plaintiff agreed with this. He also agreed that at the time when he knew that he was going to use the gangway for disembarkation

purposes, he had no concerns because at that time "everything looked superficially ok to me". It was clear to me, when I heard the plaintiff give evidence, that on the day of the incident, he had no concerns about using the gangway to disembark from a moving ship. At the time he had raised no objection to the method. When he arrived on deck after being escorted from the bridge by Mr Ocliaso, he shook the latter's hand and then proceeded down the gangway without any ado. The plaintiff, as an experienced pilot, knew that he could object at any time to the proposed method of disembarkation or could have insisted on a different method being provided. I find that he did not do so because at that time, the method offered to him appeared, even if superficially, to be in order. If the method offered was an unusual or abnormal one, he would not have said that superficially everything was all right. Nor would he have said that at that time he had no cause to suspect that his safety was at risk.

59 This holding is also consistent with the evidence that the plaintiff had given in court as to his real complaint. He confirmed under cross-examination that his real complaint was not the use of the gangway instead of the combination ladder. Instead, his real complaints were, first, that the ship failed to extend the telescopic metal cylinder, second, that the ship failed to ensure that the gangway was positioned at an appropriate height and, third, that the ship failed to provide an officer to supervise the disembarkation. It is also significant that in his statement of claim, the plaintiff did not include as one of his many particulars of breach of duty that the defendant had provided the gangway instead of the combination ladder. His complaints were directed to the rigging of the gangway, the height of the gangway and the manner in which the gangway was lowered and used. The plaintiff had also cited non-compliance with reg 23(*b*)(ii) as one of his complaints. He did not cite non-compliance with reg 23(*c*)(iii)(2). I conclude that the complaint about the provision of the gangway was really an afterthought, perhaps inspired by observations made by Capt Prem Kumar, and was not a genuine one. I find that at the time of the incident and bearing in mind the then existing conditions, the provision of the gangway for disembarkation instead of the combination ladder, was not a breach of the defendant's statutory duty.

60 I have also noted the conflict in the evidence as to whether it was common practice in Singapore for pilots to use the gangway for disembarkation when the vessel was underway. The defendant's evidence supported this proposition. Capt Sriram who testified that he had sailed to Singapore more than 30 times (both as master and as chief officer) stated that on those occasions, pilots in Singapore had chosen to use the gangway alone. He also stated that because he found this to be the usual procedure in Singapore, he had not noted such requests in the movement book or reported them to the pilot office. As far as Capt Sriram was concerned, the local pilots were aware of local currents and local sea conditions and they would be the best judges of the appropriate method of embarking on and disembarking from visiting vessels. Mr Kannan who also had much sailing experience, confirmed that based on his own experience and having sailed to Singapore at least 15 to 20 times, it was the practice in Singapore to use the gangway. He recognised that the regulations called for the use of the combination ladder when the freeboard of the ship was more than 9m but stated that the pilots in Singapore had asked for the gangway and using the gangway was normal here. This evidence was confirmed by Mr Seet who had been a licensed pilot for more than 23 years and had piloted more than 14,000 ships. He stated that the gangway was commonly used for embarkation and disembarkation. Under cross-examination, he reiterated that in Singapore it was not uncommon to find the gangway being used by itself for this purpose.

61 The plaintiff's expert, Capt Prem Kumar, said it was the usual practice in Singapore to use the gangway when the ship was at anchor but not when she was underway. His opinion was that it was safe and permissible to do so when the ship was stationery. Capt Prem Kumar conceded under cross-examination that since reg 23 did not provide for different approaches depending on whether the vessel was moving or not, on his reading of reg 23, using the gangway to disembark from a stationery

ship would still be a breach of that regulation. Notwithstanding that, he maintained that this was a common practice in Singapore and that it was safe practice. The plaintiff himself, while saying that the use of the gangway alone was not common, admitted that he himself had on about 15 occasions disembarked from a moving ship using the gangway alone. He stated that he considered it safe to do this in circumstances where the shipping company concerned had very high standards, when the sea was calm and when the vessel had efficient officers. He cited as examples companies like BP and Exxon and the defendant.

62 On balance, I find the evidence given for the defendant on this issue to be more believable. I accept that it was a normal practice in Singapore for pilots who were disembarking from vessels underway to use the gangway by itself provided that the weather conditions were, as they were in this case, suitable for the use of this method.

63 Next, I deal with the plaintiff's contention as to the extra precautions that the ship had to observe in order to fulfil its duty to provide a safe method of disembarkation when the gangway alone was being used. The first of these was that a responsible officer should accompany the plaintiff down to the bottom platform of the gangway. This contention was not specifically pleaded in the statement of claim. I suppose it would have been covered by the general assertion that the defendant was under a duty to take adequate precautions to ensure that the plaintiff was safe when he used the gangway. In the submissions also, the plaintiff did not elaborate on this point except to say that the master failed to ensure that a responsible officer, who could have ensured that the gangway was lowered to a height that corresponded with the height of the deck of the pilot boat, accompanied the plaintiff.

64 The defendant's response to this submission was that reg 23(*b*)(ii) did not require a responsible officer to go onto the gangway with the plaintiff. By that regulation, the duties of the responsible officer are to supervise the rigging of the pilot transfer arrangements, to arrange for the escort of the pilot by a safe route to and from the navigation bridge and to supervise the embarkation of the pilot. The duties relating to the rigging of the arrangements were carried out by Mr Kannan and in any case, at trial, there was no issue as to the rigging. As for the escort service, the purpose of having a responsible officer arrange for this is to ensure that the pilot, who is unfamiliar with the layout of the ship, can safely make his way from the gangway to the bridge, and when the pilotage ends, from the bridge back to the gangway. The escort need not be an officer. An officer, however, has to "arrange" for one. This was done by the master and the deck cadet escorted the plaintiff from the bridge to the gangway for his disembarkation. The defendant submitted that it had complied with this requirement. I agree. In court, Capt Prem Kumar and the plaintiff himself, when cross-examined, both accepted this.

65 Regulation 23 also states that the embarkation of the pilot should be supervised by a responsible officer. The defendant accepted that since Circular No 10 is wider in scope than reg 23, it broadens the latter so that the pilot's disembarkation must similarly be supervised. As far as this was concerned, the defendant submitted that it had all along accepted that the master should ensure proper supervision for the whole transfer process. The master himself agreed that he was obliged to ensure that there was a responsible officer to supervise the process. He asserted that in this case he himself had been the responsible officer and that he was supervising the process from the bridge wing where he had a bird's eye view of the whole procedure. He was assisted by the deck cadet who was on the deck with the plaintiff and who was in constant walkie-talkie communication with Capt Sriram. On the evidence, I accept the defendant's submission that it had complied with its obligation to have a responsible officer supervise the disembarkation. As for there having to be a responsible officer on the gangway itself, this is not provided for by reg 23 and whilst the defendant's internal procedures did provide that there should normally be an officer standing by the gangway, Mr Pal confirmed that

the presence of the deck cadet (by the gangway, not on the gangway) was sufficient to comply with these procedures. This was because the master had the authority and the discretion to deviate from the procedures where he considered it proper to do so. In any case, the procedures too did not call for either an officer or a crew member to be on the gangway with the pilot. In my judgment, the defendant was not in breach of any statutory duty or duty of care in failing to ensure that Mr Ocliaso went on to the gangway and stood on the bottom platform with the plaintiff.

66 The second additional precaution put forward by the plaintiff was that the ship had to ensure that the instructions of the pilot boat on the height of the gangway were complied with. I have already dealt with the evidence as to how the ship responded to the instructions given by both the pilot boat and the plaintiff himself. I find that there was no breach of this duty on the part of the defendant.

67 The third precaution put forward by the plaintiff related to the telescopic metal cylinder. In this connection, the plaintiff relied on the evidence of Mr Soeters, the manufacturer's representative, on the two purposes of this cylinder. This witness testified that the cylinder functions in the same way as the bumper of a car. It is a rigid metal tube with aluminium rings which are weak and therefore if it is touched by a large barge or small vessel that is approaching the ship, it would absorb the force of that impact and, hopefully, protect the gangway from sustaining damage. The second purpose of the cylinder is to provide a small "lean-on" for a bulwark or the fender wing of a small vessel which comes alongside the ship. On the basis of this evidence, the plaintiff submitted that the cylinder was designed so that an approaching pilot boat would lean against it and would not go under the gangway and lift it up. Therefore he said, the master was duty bound to extend the cylinder so that the plaintiff's safety while he was on the gangway would have been insured. The master had testified that he never used the cylinder and that he had not instructed the crew to extend it in this case either. The plaintiff submitted that had the cylinder been extended, the incident would not have occurred as the cylinder would have prevented the bow of the pilot boat from going directly under the gangway.

68 The defendant admitted that the crew of the ship was under standing orders not to extend the cylinder unless otherwise instructed by the master or the chief officer. It accepted that on the day in question, the master had given no such instructions. The defendant submitted, however, that the plaintiff had not proved that the accident would not have happened had the cylinder been extended.

69 In deciding this issue, I consider that the important evidence is that given by Mr Soeters as he knew how the gangway was made and what the exact purpose of the cylinder was. The master in his evidence echoed Mr Soeters' view that one of the purposes of the cylinder was to protect the gangway from being damaged by boats coming alongside but he also said that, secondly, it was supposed to be used when the gangway was placed on the quay. Mr Soeters said that this was not the case and the cylinder is never extended when the gangway is on the quay since, in that situation, a part known as the quay role is used instead. As far as the evidence is in conflict, on this issue, I prefer that of Mr Soeters.

70 Mr Soeters' evidence was that the gangway was designed to comply with international standards. It was designed to be used safely, without the extension of the cylinder, for the boarding and disembarking of persons when the vessel to which it was attached was at anchorage or was at sea. For that purpose, the lower platform of the gangway was reinforced. The cylinder was an optional item ordered by the ship builder and it was not a mandatory or standard piece of equipment either under classification rules or by any other applicable regulations. Mr Soeters said that many ships do not have such an item installed as part of their gangways. The cylinder was not designed to

be used as a safety feature to protect users of the gangway but simply to provide some measure of protection to the platform of the gangway from possible contact by small boats. He also affirmed that the cylinder was not meant to withstand strong impact or to act as a braking device for small boats and it would be the responsibility of those boats to make their approach to the ship at a safe speed and angle. He testified that while the cylinder was "designed to be touched by a boat" it "should not" be so touched. Mr Soeters was asked by counsel for the plaintiff whether if a boat came alongside the gangway and the cylinder was extended, there would be possibility of the boat going under the gangway. His answer was that this would depend on the speed and the force with which the boat approached. If there was normal contact without high impact, there would be no possibility of the boat going under whether or not the cylinder was extended. Although Mr Soeters did not say so expressly, the logical inference from his evidence was that if there was a high impact contact, the extended cylinder would not prevent the boat going under the gangway.

71 The evidence also disclosed that there is no law or rule in Singapore that requires a gangway to be fitted with a telescopic cylinder. Capt Prem Kumar conceded during cross-examination that no other ports either required such a cylinder to be installed as a safety feature. He agreed too that the cylinder was not a statutory or class requirement in Singapore.

72 In the light of the evidence, I accept the defendant's submission that the cylinder was not designed to protect a pilot from an impact caused by a pilot boat which comes in improperly and in an unsafe manner. It seems probable that the pilot boat could still end up under the gangway even if it had contacted the cylinder, if it was travelling at more than the normal slow speed it should take when coming alongside. The cylinder is a protective device for the gangway itself. It is not a safety device for users of the ladder and the gangway, as Mr Soeters said, was designed to be used safely without the cylinder. It is highly material that this piece of equipment is an optional extra and not a statutorily prescribed item. In the circumstances, I hold that the master was not in breach of statutory duty when he failed to order that the cylinder be extended.

Other matters

73 The plaintiff submitted that, in the alternative, he should be treated as an invitee on board the ship and that, therefore, the defendant as the occupier of the ship, owed him a duty to use reasonable care to prevent harm to the plaintiff arising from an unusual danger of which the defendant was aware or ought to have been aware. In this case, the plaintiff said, the defendant knew or ought to have known of the dangers arising when pilots disembark using gangways but failed to use reasonable care to prevent the pilot boat from going under the gangway. In essence, the plaintiff's argument here was a rehash of the arguments that I have considered above in relation to the allegation of negligence on the part of the defendant. There is no basis for imposing liability under this head. I have already found that the master and crew were not negligent and had exercised reasonable care in the disembarkation process. In this case also, there were no hidden or unusual dangers that only the defendant was aware of and that the plaintiff as an experienced pilot would not have been aware of.

74 The plaintiff also argued that the defendant was liable because the incident was one that would not in the ordinary case have happened if the defendant had used proper care. I find no merit in this submission because the evidence was that the defendant used proper care and the incident occurred through a circumstance over which the defendant had no control. In this connection, it is convenient to discuss the cause of the accident.

75 I am satisfied from a consideration of the evidence that the accident was one that was beyond the control of the ship and was unexpected. The plaintiff himself had agreed in cross-

examination that during the whole time that he was on the gangway he did not foresee any risk to his own safety. He did not foresee that there would be a violent contact between the gangway and the pilot boat. When he was at the bottom of the gangway, he was in a very good position to see the pilot boat coming in and, even so, he did not notice anything wrong in the way she approached the ship and did not foresee that the accident would happen. The plaintiff agreed that the accident was unexpected though he would not concede that there was anything lacking in the way in which the pilot boat made her final approach to come alongside the gangway.

76 It is apparent from the evidence that the disembarkation procedure went on in a routine fashion right up to the point when the pilot boat made her final approach to come alongside. Until then, there was no issue that the plaintiff's safety was compromised and the master and crew were doing everything which they were supposed to do in accordance with the established practice. At the last minute, the pilot boat failed to reduce speed sufficiently and turn. Instead, she came straight in (at around a 30º angle) and went under the platform. Then, the bow waves created by her approach pushed the boat up so that it strongly contacted the gangway and the plaintiff was thrown off. This was the evidence of Capt Sriram which I accept. The master said that the pilot boat was lifted by the wave created when the boat approached the side of the ship at too great a speed. He asserted that there was no other condition present that could have caused the pilot boat to rise sufficiently to contact the gangway. At the time, both the ship and the gangway were steady as the sea and weather were calm and the pilot boat was in the ship's lee which was the sheltered side of the ship.

77 The pilot boat was expected by all to turn and come alongside the platform at a safe speed so that she was parallel or close to parallel to the platform of the gangway but still clear of it. The final height adjustment, if necessary, would then be made. The ship would not have known prior to this final approach where the pilot boat would have wanted to pick the pilot up, *ie*, on her bow or elsewhere. The plaintiff in his evidence confirmed that the master of the pilot boat was experienced and qualified and would have known what to do. The master of the vessel too was entitled to rely on the expertise of the pilot boat to accomplish her job in a safe and efficient manner.

78 I found the master of the ship to be a credible and forthright witness, albeit somewhat long-winded. I accept that the pilot boat would not have been pushed upwards had she slowed down and approached the ship's side more cautiously. I therefore accept the defendant's contention that the accident was caused by circumstances beyond its control.

Conclusion

79 The plaintiff has failed to establish that his unfortunate and regrettable injury was due to any breach or neglect of duty on the part of the defendant. His claim must therefore be dismissed with costs.

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