Marina Tanker Sdn Bhd v Chan Fook Choon and Another
[2002] SGHC 125

Case Number : Suit 244/2001

Decision Date : 12 June 2002

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Gerald Yee (Joseph Tan Jude Benny) for the plaintiffs; Tan Kay Khai (Michael Khoo & Partners) for the defendants

Parties : Marina Tanker Sdn Bhd — Chan Fook Choon; Kwok Ai Ing (Both formerly trading as Mariner Engineering Company)

Judgment: ***Cur Adv Vult***

GROUNDS OF DECISION

1. On 5 April 2002, I gave judgment in favour of the plaintiffs in respect of their claim against the defendants for damages arising out of the negligent repair of the engine of the plaintiffs vessel *Nur Marina*. The parties subsequently appeared before me on the issue of quantum and this supplemental judgment relates to those arguments.

2. In the statement of claim, the plaintiffs claimed the following as damages:

(1) repair costs in the sum of $628,277.25;

(2) expenses incurred being:

(i) $2,543 for survey fees and investigations;

(ii) $28,000 for towing costs;

(iii) RM40,099 for additional wages and other expenses;

(3) loss of profits while the vessel was being repaired.

At the start of the trial the plaintiffs dropped their claim for loss of profits. I therefore have to deal only with items (1) and (2).

Expenses

3. I will deal first with the claim for expenses. The first item, the sum of $2,543, was an amount paid to the Salvage Association for inspecting the vessel and carrying out investigations to ascertain the nature and cause of the damage to the engine. The Salvage Association was appointed to carry out this work by the vessels insurers. The plaintiffs did not appoint it. The insurers were interested in ascertaining the cause of the damage so that they could determine whether the loss was covered by their policy of insurance. In my judgment, this amount was not an expense incurred by the plaintiffs as a result of the damage and therefore they cannot claim it from the defendants.

4. The second item, the towage costs of $28,000 was, on the other hand, a direct result of the damage to the engine. The engine was so badly damaged that the vessel could not sail under its own steam from

Kuantan, the port of refuge, to Singapore for permanent repairs to the engine. It had to be towed here and the plaintiffs had no choice but to incur the towage expenses. They are entitled to recover the same.

5. The third item, a sum of RM40,099 is made up of several separate sub-items. First, the plaintiffs paid the chief engineer of the vessel a sum of RM10,000 for himself and the engine room crew for carrying out emergency repairs to the vessel on 21 March 1995 and 25 March 1995. The plaintiffs did not, however, produce any evidence of a legal obligation to make such payments. The chief engineer and the engine room crew were employed on board the vessel and it was part of their duties to maintain the engine and effect minor repairs. No document was produced showing that they were entitled to extra payments for major or emergency repairs. The defendants submitted, and I agree, that this was a voluntary payment that cannot be recovered.

6. The second component of the RM40,099 claim was a claim for RM11,500 representing the cost of hiring a speed boat to carry the plaintiffs technical superintendent from Kuantan to the vessel during the two periods when the vessels engine broke down. The vessel was apparently some 20 miles outside the port. There was no bill evidencing this item and the only documentation adduced to support it were two internal vouchers produced by the vessels managers in respect of payments they had made to the technical superintendent. As there was no proof that this item was actually incurred by the superintendent, I cannot allow it.

7. The third component comprised payments made to the superintendent as subsistence allowance, mileage allowance and hotel charges for his two visits to Kuantan. These totalled RM2,423.50. Again the only evidence of these payments were the managers internal vouchers. No contract setting out the terms of the subsistence allowance and the mileage allowance was produced. Nor were any hotel bills adduced. Accordingly, this claim is disallowed.

8. The last component is the sum of RM16,176 that the plaintiffs paid for some 4,000 litres of lubricating oil for the engine. The defendants objection to this item is that the plaintiffs had decided that they would change the vessels lubricating oil when the vessel returned from Haiphong. Accordingly, they would have incurred this expense even if the engine had not broken down. I agree. This amount cannot be claimed.

Repair costs

9. The repair costs are made up of two bills from Wartsila Diesel (Singapore) Pte Ltd (Wartsila), the manufacturers of the engine. They carried out the repairs after the breakdowns. Their first bill is for the sum of $185,909.95 and covers repairs/inspections of the main engine by service engineers at Kuantan from 27 March to 1 April 1995 and provision of labour, floating crane hire and boat hire for permanent repairs at Singapore. The second bill in the sum of $446,768.30 covers the supply of replacement parts to the engine. In respect of the first bill, the defendants raised objections to items totalling $57,918.25 and in respect of the second bill, they raised objections to items totalling $55,199.37. Their position was that either these items were excessive or that they could not be attributed to the damage arising from the defendants negligence.

10. In response, the plaintiffs relied on the evidence of Mr Michael Christopher Thompson, the surveyor from the Salvage Association, who was sent by the hull underwriters of the vessel to establish the cause of the damage and ascertain the repairs required. In his report dated 3 May 1995, Mr Thompson set out the recommended repairs effected and the repair costs. He referred specifically to the two invoices that Wartsila had rendered and stated that these invoices had been approved as being fair and reasonable for the work carried out and that such work was attributable to the casualty under review. Subsequently, the Salvage Association approved the invoices for payment and the underwriters paid the same.

11. One of the objections that was raised related to the temporary repairs done in Kuantan. At that stage, the no. 3 piston bearing was replaced and a new piston assembly was put in. Subsequently, after the second breakdown, these new parts were found to be damaged as well. The defendants argued that repairs of the new parts could not be claimed against them because there was no evidence that the damage arose from their negligence. Mr Thompson, however, who was aware of both the temporary and permanent repairs, was satisfied that these repairs were also part of the damage arising from the negligent work of the defendants. He was not questioned about how the subsequent damage to the new no. 3 piston and its accessories could have arisen from the defendants negligence. Accordingly, I think it is too late for the defendants to raise this point now.

12. I will deal first with the bill for the replacement parts that came to $446,768.30. Item no. 8 of this bill was $9,370.25 being the cost of replacing six sets of piston rings. There was no evidence that all the piston rings were damaged. According to Wartsilas report AB117, only pistons nos. 4 and 6 were renewed and the rest of the pistons were reused after servicing. The defendants submitted that the plaintiffs thus should only have claimed the cost of two sets of piston rings. That would have amounted to $3,123.42 ie $6,246.83 less than they claimed. In Mr Thompsons report, however, it is stated that the pistons were re-ringed and he went on to include this work as part of the permanent repairs. He also said that the rings were attributable to the casualty. That being the case, I find the defendants must pay for it.

13. Item 16 on the bill was $14,165.45 for a complete set of packing/locking materials. The plaintiffs did not show what those items were for and how the supply of the same was attributable to the defendants default. Mr Thompsons report did not mention this item at all. I disallow the amount.

14. The defendants objected to the cost of $1,039.45 charged for the lubricating oil filter elements replaced by Wartsila on the basis that these elements were located outside the engine and their replacement was not attributable to the defendants work. Mr Thompson, however, made specific reference to the lubricating oil filter elements as replacement parts supplied on board the vessel in his report under the heading Recommended Repairs Effected. Accordingly, I allow this item. The same response is applicable to the defendants objection to item no. 10 that was the cost of $750.60 for replacement of the lubricating oil cooler kit. This was another item specifically mentioned by Mr Thompson under that heading.

15. I next turn to Wartsilas invoice for $185,909.95. I am satisfied that most of the defendants objections have no substance in view of Mr Thompsons report. One item for $8,022.60 was in respect of the replacement of the turbocharger kit. The defendants submitted that there was no evidence that this item was damaged. In Mr Thompsons report, the only reference to the turbocharger was that its bearings were suspect because the turbocharger lubricating system was common with the main engine system. The turbocharger bearings therefore had to be checked. Whilst the turbocharger itself had to be removed, checked and cleaned, according to Mr Thompsons report, he did not state that the turbocharger itself required replacement. Accordingly, I disallow this item.

16. There was also an item for $2,546 in respect of the supply of the cylindrical bearings set for the lubricating oil pump and drive box. The defendants objected on the basis that the lubricating oil pump was located at the lower part of the engine and would not be affected by the improper fitting of the connecting rods. Mr Thompsons report does not mention this item. I disallow it.

17. On this part of the claim, therefore, I have disallowed items totalling $24,734.05. The plaintiffs claims for repairs is therefore reduced to $607,944.20.

Conclusion

18. In the result, I award the plaintiffs damages of $28,000 being the cost of towage services and

$607,944.20 being the cost of repairs together with interest thereon at 6% p.a. from the date my first judgment in this action ie 5 April 2002.

Sgd:

JUDITH PRAKASH

JUDGE

SINGAPORE

This does not merit reporting