Neutral Citation: [2016] IEHC 603

THE HIGH COURT

[2013 No. 12500 P.]

BETWEEN

ROBERT KIERAN

PLAINTIFF

AND

DUBLIN PORT COMPANY AND KOMMANDITGESELLSCHAFT REEDEREI W. GRIMPE GMBH & CO. M/S "JOHANNA DESIREE"

DEFENDANTS

JUDGMENT of Mr. Justice Brian J. McGovern delivered on the 28th day of October, 2016

1. These proceedings arise out of an accident which took place at sea on 15th November, 2011. The plaintiff is a pilot in the port of Dublin and claims that he was disembarking a pilot boat belonging to the first named defendant and embarking on the second named defendant's vessel, the M/S "*Johanna Desiree*" ("*the vessel*"), when he was caused to fall into the sea. He alleges that the two vessels were navigated in a negligent manner and that, as a result, the pilot ladder became fouled causing the plaintiff to lose his grip. There is no suggestion that the pilot boat collided with the vessel.

2. Following an application by the first named defendant, the Deputy Master has ordered the trial of the following preliminary issues:-

> (a) Whether or not the plaintiff's claim is a maritime claim within the meaning of s. 46(2) of the Civil Liability Act 1961;
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> (b) If the plaintiff's claim is not a maritime claim within the meaning of s. 46(2) of the Civil Liability Act 1961, whether or not the plaintiff is entitled to maintain these proceedings and/or is prohibited and/or is restricted from maintaining these proceedings on the basis that no authorisation issued from the Injuries Board prior to the institution and commencement of the proceedings;
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> (c) Whether or not the court ought to decline jurisdiction to hear and determine the plaintiff's proceedings on the basis that no authorisation was obtained prior to the institution and commencement of the within proceedings which issued on 14th day of December, 2013; and,
>
> (d) Whether or not the plaintiff's claim is statute barred pursuant to the provisions of the Statute of Limitations, as amended.

3. Section 46(2) of the Act of 1961 has been considered in a number of cases with varying interpretations. The principal submission made by the first named defendant in this application is that s. 46(2) requires two principal conditions in order to become operative:-

> (i) The damage or injury must relate to a collision between two or more vessels; and,
>
> (ii) Any injury, if suffered, is by a person on board either vessel.

4. The plaintiff argues that it is not necessary for a collision to have taken place for s. 46(2) to apply.

5. Section 46(1)(a) clearly envisages the involvement of two or more vessels and commences with the words "*where, by the fault of two or more vessels, damage is caused to one or more of those vessels or to another vessel or to the cargo of any of those vessels or any property on board…*". Section 46(1)(a) does not apply to a claim for loss of life or personal injuries.

6. Section 46(2) states, *inter alia*,:-

> *"Where, by the sole or concurrent fault of a vessel damage is caused to that or another vessel or to the cargo or any property on board either vessel, or loss of life or personal injury is suffered by any person on board either vessel, then, subject to subsection (3) of this section, no action shall be maintainable to enforce a claim for damages or lien in respect of such damage, loss of life or injury unless proceedings are commenced within two years from the date when such damage, loss of life or injury was caused…"*

7. There seems to be a clear distinction between subsections (1) and (2). Section 46(1) refers to "*the fault of two or more vessels…*", whereas s. 46(2) refers to "*the sole or concurrent fault of a vessel…*". The word "*collision*" does not appear in either subsection.

8. In *McGuinness v. Marine Institute* [2010] 2 I.R. 71, Dunne J. held that s. 46(2) can only apply to a personal injuries action suffered by an individual on board one of two or more vessels. At para. 24 she states:-

> *"In considering the interpretation of s. 46(2) I think it is also of assistance to compare it with s. 46(1). Section 46 as a whole seems to me to lay out the statutory scheme applicable to collisions between vessels. Looking at the scheme as a whole as contained in s. 46 it seems to me that it is clearly the intention of the Oireachtas that the provisions of s. 46 are only intended to apply to circumstances involving collisions arising from the fault of two or more vessels."*

9. Prior to this decision, in *Lawless v. Dublin Port and Docks Board* [1998] 2 I.R. 502, Barr J. applied s. 46(2) to an accident involving a claim for personal injuries where there was only one vessel involved. The plaintiff was on board a tug which collided with a quay wall in Dublin Port in consequence of which the plaintiff was thrown against the galley of the tug suffering back injuries. While the tug was towing another vessel, the other vessel was not in any way involved in the incident.

10. In *Carleton v. O'Regan* [1997] 1 I.L.R.M. 370, Barr J. refused to extend time under s. 46(3) in respect of an accident where the two year time limit prescribed by s. 46(2) was in issue. That was a case involving a collision between two vessels.

11. In *McGuinness v. Marine Institute*, Dunne J. traced the genesis of s. 46 back to the Maritime Conventions Act 1911 which gave statutory effect to the Convention of Brussels 1910. She quoted the text of s. 1 of the Maritime Conventions Act 1911 which is the

equivalent of s. 46(1) of the Civil Liability Act 1961. Section 8 of the Act of 1911 is in similar terms to s. 46(2) and s. 46(3) of the Act of 1961. At para. [21], she said:-

> *"The Maritime Conventions Act 1911 only applies to collisions between two or more vessels. That seems to me to be the clear meaning of the words contained in ss. 1 and 8 of the Act of 1911 which refers to the fault of two or more vessels. It is important to note, as pointed out previously, that all of the decisions opened to me from the United Kingdom in which that Act has been considered involve collisions involving two or more vessels. I was not referred to any case under those legislative provisions which, as pointed out by Barr J. is still the law in the neighbouring jurisdiction, and which do not involve collisions between two or more vessels. It is in that context that I want to consider the construction of s. 46 of the Act of 1961."*

12. Counsel for the plaintiff argues that both the Collision Convention of 1910 (Article 14) and the Collision Convention of 1952 (Article 4) gave the definition of "*collision*" an extended meaning. Article 14 does no more than offer the Contracting Parties to the Convention a limited period in which to extend the scope of the Convention. The Jurisdiction of Courts (Maritime Conventions) Act 1989 incorporated the Collision Convention of 1952 into Irish law. Article 4 states:-

> "*This Convention shall also apply to an action for damage caused by one ship to another or to the property or persons on board such ships through the carrying out of or the omission to carry out a manoeuvre or through non-compliance with regulations* **even when there has been no actual collision."** (Emphasis added)

13. The Collision Convention of 1952 was not part of Irish law when the Civil Liability Act 1961 was enacted. Section 46(6) states:-

> *"This section shall be construed as one with the Merchant Shipping Acts 1894 to 1952."*

14. Counsel for the first named defendant submitted to the court that s. 46(2) of the Act of 1961 exclusively grounds a claim *in rem* thus ruling out the applicability of the section to the plaintiff's claim. Although the Irish case law cited to me establishes some differences in approach, I am in agreement with the conclusion of Barr J. in *Lawless v. Dublin Port and Docks Board* that s. 46 of the Act is not limited to claims made *in rem*. I am also in agreement with the observation made by Dunne J. in *McGuinness v. Marine Institute* at para. 24 when she says:-

> *"…I think it is clear that s. 46(2) of the Act of 1961 can only have application to personal injury actions suffered by an individual on board one of two or more vessels…"*

15. What I have to consider in this case is the first named defendant's submission that the damage or injury must relate to a collision between two or more vessels. I think it is of significance that, at para. 21 of her judgment in the *McGuinness* case, Dunne J. stated that it was important to note that all of the decisions opened to her from the United Kingdom, in which the Maritime Conventions Act 1911 was considered, involved collisions involving two or more vessels. That was the context in which she considered the construction of section 46.

16. The Collision Convention of 1910 was superseded by the Collision Convention of 1952 which is now part of our law. The Convention applies in circumstances where two vessels have interacted in a way where damage is caused by one or both vessels without an actual collision taking place. Presumably this was to deal with situations where a vessel was caused to alter its correct course by the wrongful act of another vessel where, for example, the innocent vessel may have gone aground or struck a jetty.

17. The Collision Convention of 1952 was not part of our law when the Civil Liability Act was enacted. Whether the legislators were aware of the Convention and in particular Article 4 is impossible to say.

18. It is clear that the purpose of the Maritime Conventions Act 1911 was to give effect to the Collision Convention of 1910 and that the preamble to the Act states that the Convention dealt "…*respectively with collisions between vessels and with salvage*…". The heading before s. 1 reads "*provisions as to collisions, & c*". But curiously neither s. 1 nor s. 8 refers to "*collision*".

19. If s. 46 had been enacted on the basis of the Collision Convention of 1952 then it would not be necessary that the two vessels were in collision for the section to apply. I cannot assume that to be the position. I have to look at the text of s. 46 for guidance. On the face of it there is nothing ambiguous about the text and the section simply never mentions "collision".

20. On a literal reading of s. 46 and having regard to the absence of the word "*collision*" therein, it seems to me that the section can and should be interpreted as applying to damage caused to a vessel or cargo or other property on board or personal injury to a person on board in circumstances where there is some interaction between two or more vessels involving fault on the part of one or more of the vessels. Having regard to the fact that the Collision Convention of 1952 has now been adopted into Irish law by the Jurisdiction of Courts (Maritime Convention) Act 1989 and that Article 4 applies the Convention even when there has been no actual collision, it seems to me that the interpretation of s. 46(2) contended for by the first named defendant would create an anomalous position which would result in the section and the Convention being at odds with each other. This point was never argued before Dunne J. in *McGuinness v. Marine Institute*. Having regard to the anomaly that would be created if I were to conclude that a collision is a necessary ingredient to bring a claim within s. 46 and having regard to the absence of any reference to "*collision*" in the section itself, I hold that the plaintiff's claim comes within the ambit of s. 46(2) of the Act.

21. So far as the other issues are concerned, I make the following ruling:-

> (i) The claim is not time barred. It was brought within the two year period allowed under the section. The provisions of the Statute of Limitations 1957, as amended, do not apply by virtue of s. 7 which states:-
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> > *"This Act shall not apply to:-*
> >
> > *(a) any action for which a period of limitation is fixed by any other limitation enactment…"*
> >
> > Section 46(2) is the governing statute as it sets out a limitation period of two years.

22. As the plaintiff comes within the scope of s. 46(2) of the Civil Liability Act, the provisions of the Personal Injuries Assessment Board Act 2003, as amended, do not apply to the plaintiff's claim.