Neutral Citation: [2016] IEHC 604

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

(No. 2)

JUDGMENT of Mr. Justice Brian J. McGovern delivered on the 2nd day of November, 2016

1. On 28th October, 2016, I gave judgment in this matter. Subsequent to this judgment being handed down, counsel returned to court to address me with regard to an error which had been made in the submissions to the court. Counsel for the plaintiff informed the court that the reference to Article 14 of the Collision Convention of 1910 was incorrectly cited in both written and oral submissions. He informed the court that he had intended to refer to Article 13.

2. In the course of my judgment, having considered the oral and written submissions of the parties, I had alluded to the fact that Article 14 did no more than offer the Contracting Parties to the Convention a limited period in which to extend the scope of the Convention. I do not resile from that statement; however, my attention has now been drawn to Article 13 which states:-

> "*This Convention extends to the making good of damages which a vessel has caused to another vessel, or to goods or persons on board either vessel, either by the execution or non-execution of a manoeuvre or by the non-observance of the Regulations,* **even if no collision had actually taken place."** (Emphasis added)

3. In *McGuinness v. Marine Institute* [2010] 2 I.R. 71, Dunne J. traced the genesis of s. 46 of the Civil Liability Act 1961 back to the Maritime Conventions Act 1911, which gave statutory effect to the Collision Convention of 1910. That Convention included Article 13 quoted above. It follows that, insofar as s. 46 gives statutory effect to the Collision Convention of 1910, it must be deemed to include within its scope claims arising out of the interaction of two or more vessels causing damage to a vessel or cargo or other property on board or personal injury to a person on board, even if no collision had actually taken place. It is obvious that this Article was never brought to the attention of Dunne J. in *McGuinness v. Marine Institute*. Furthermore, as I pointed out in my earlier judgment, Dunne J. stated that she had not been referred to any case involving the Maritime Conventions Act 1911 or the Collision Convention of 1910 which did not involve a collision involving two or more vessels.

4. In my earlier judgment, I held that, for s. 46 of the Civil Liability Act to apply, it was not necessary that the vessels involved were in collision and I pointed to the anomaly that would be created between the Act and 1952 Collision Convention if I were to hold otherwise.

5. I am now reinforced in my view that no collision is necessary to bring a claim within the scope of s. 46 of the Civil Liability Act having regard to the absence of any reference to collision in the section itself and the unambiguous statement contained in Article 13 of the Collision Convention of 1910.

6. For the avoidance of doubt, this Court affirms the order which was made on the 28th October, 2016, in favour of the plaintiff. The purpose of this judgment is to clarify that which has gone before in view of the modified submissions made by counsel.