The "Seaway"
[2003] SGHC 315

Case Number : Adm in Rem 600162/2002, RA 600019/2003

Decision Date : 30 December 2003

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Steven Chong SC and Loh Wai Yue (Rajah and Tann) for plaintiffs / appellants; S Mohan and Bernard Yee (Gurbani and Co) for defendants / respondents

Parties : —

Admiralty and Shipping – Collision – Limitation action – Whether defendants' liability for damage to plaintiff's wharf limited – Sections 136(1)(b), (d) Merchant Shipping Act (Cap 179, 1996 Rev Ed)

Statutory Interpretation – Construction of statute – Extrinsic aids – Whether plain language rule of statutory interpretation inapt in the circumstances – Whether necessary to refer to legislative history as aid to interpretation

Judgmen reserved

Belinda Ang Saw Ean J:

1 The present appeal raises a point of statutory interpretation. Under section 136 of the Merchant Shipping Act (Cap. 179, Revised Edition 1996) ("MSA"), a shipowner is entitled to limit its liability for specific areas of liability unless the occurrence giving rise to the claim resulted from the actual fault or privity of the shipowner. The preliminary issue in this appeal is not about "actual fault or privity"of the shipowner, but is with the narrower issue of whether the Plaintiffs' claim falls within the ambit section 136(1)(d) of the MSA as a claim for loss or damage to the Plaintiffs' wharf no.8 or an infringement of the Plaintiffs' right. I gather from Counsel that if the Defendants succeed on this preliminary issue, it may well do away with any practical need for a liability action thereby saving time and costs.

2 The Plaintiffs are Shell Eastern Petroleum (Pte) Ltd. They are the owners of the oil terminal at Pulau Bukom where there are berthing facilities for vessels that use the oil terminal. On 6 May 2002, the Defendants' dredger *Seaway* while being navigated by the Defendants' servants collided with and damaged one of the Plaintiffs' wharves. In these proceedings, the Defendants are sued as the registered owners of the *Seaway.* The Plaintiffs' claim is for damages for the negligent damage to the Plaintiffs' wharf no. 8. Damages to wharf no.8 have been particularised at $16.15 million.

3 The Defendants have denied liability in respect of the collision damage. In the alternative, the Defendants have pleaded limitation of liability under section 136 of the MSA as a defence to the Plaintiffs' claim for damage to wharf no.8 and consequential losses. According to the Defendants' calculations, tonnage limitation is $607,927.68.

4 It is worthwhile setting out the relevant provisions of section 136:

> "(1) The owner of a ship shall not, where all or any of the following occurrences take place without his actual fault or privity:
>
> ….

(b) where any damage or loss is caused to any goods, merchandise or other things whatsoever on board the ship;

…..

(d) where any loss or damage is caused to any property (other than any property mentioned in paragraph (b)) or any right is infringed through the act or omission of any person (whether on board the ship or not) in the navigation or management of the ship, ….or through any other act or omission of any person on board the ship,

be liable to damages beyond the following amounts . . .

(ii) in respect of such loss, damage or infringement as is mentioned in paragraphs (b) and (d), ….an aggregate amount not exceeding in the currency of Singapore the equivalent of 1,000 gold francs for each ton of the ship's tonnage."

5 It is not seriously disputed that the collision damage was due to (i) an act of a person on board the *Seaway* or (ii) act in the navigation or management of the *Seaway*. In fact, the Plaintiffs' case is that the collision was caused solely by the negligence of the Defendants, their servants or agents in the navigation and management of the *Seaway*. The primary issue is whether the Defendants could limit their liability on the basis that the loss or damage was caused to property other than any property mentioned in section 136(1)(b). Alternatively, the Defendants say they are entitled to rely on the second limb of section 136(1)(d) as rights have been infringed through the act or omission of any person in the navigation or management of the *Seaway*. This alternative argument is raised for the first time on appeal.

6 Briefly, Mr. S. Mohan on behalf of the Defendants submits that the Plaintiffs' claim for damage to wharf no.8 and for consequential losses is an occurrence that is subject to section 136(1)(d). Taking the provision at face value, the word "property" in sub-paragraph (d) is clear and unambiguous and given its ordinary and natural meaning, the Plaintiffs' wharf would fall within the meaning of "property." Section 136(1)(d) refers to "any property other than any property mentioned in paragraph (b)" and section 136(1)(b) refers to "goods, merchandise or other things whatsoever on board the ship" of the owner who is seeking to limit his liability. Apart from that, no other distinction is drawn between the different types of property by the section. It has been pointed out that paragraph (d) does not list "harbour works, basins or navigable waterway" together with the words in parenthesis namely "other than any property mentioned in paragraph (b)…". The court must take the provision as it finds it and hence the interpretation ascribed by Mr. Mohan ought to be adopted.

7 Mr. Mohan referred me to *The Arcadia Spirit* [1988] SLR 244 and *Caltex Singapore Pte Ltd v BP Shipping Ltd* [1996] 1 Lloyd's Rep. 286. I do not see how these two cases support Mr. Mohan's contention that it is settled law and practice for more than twenty years that damage done to a privately owned quay or other shore installation by a ship in circumstances of a collision is within the operation of the statutory provision on limitation of liability.

8 In both those cases, the court was not required to decide whether or not damage to a shore installation was within the ambit of section 136(1)(d) that is under discussion here. Ordinarily, a court

which has construed a statutory provision that appears to be identical to the provision the construction of which is at issue in the present case, the decision of that court would be considered as a persuasive authority. That proposition is inapplicable to this case. There was no issue between the parties in *The Arcadia Spirit* and *Caltex Singapore Pte Ltd v BP Shipping* that damage done to a privately owned quay or other shore installation by a ship in circumstances of a collision is within the operation of the statutory provision on limitation of liability. The issue in *The Arcadia Spirit* was about the power of the court, if any, to order release of a vessel from arrest against the provision of a P& I Club letter of guarantee. It was not a limitation of liability situation although in that case damage was done by the ship *Arcadia Spirit* to the plaintiff's oil loading berth at Pulau Ayer Chawan Refinery. In *Caltex Singapore Pte Ltd v BP Shipping Ltd*, it was assumed that Singapore limits applied for the purpose of the stay application on grounds of forum non conveniens. In that case, the vessel "*British Skill*" collided with Caltex's jetty causing considerable damage.

9 Counsel for the Plaintiffs, Mr. Steven Chong S.C., agrees that as a matter of language jetty and wharf may be variously described as "harbour works" which in turn is a species of property. Equally, "harbour works" as a matter of language would fall within the generic meaning of "property". However, he contends that as a matter of statutory interpretation, the Plaintiffs' claim for damage to their wharf is outside the ambit of section 136(1)(d). Damage to the Plaintiffs' wharf is no longer an occurrence for which the Defendants are entitled to claim limits of liability in the absence of faulty or privity. This is because of a 1981 amendment to section 295(4) of the Merchant Shipping Act (Cap.172) which had the effect of removing "harbour works' from the meaning of "property" in section 295(1)(d).

10 Prior to 1981, shipowners were entitled to limit their liability for damage to harbour works under section 295(4). By the Merchant Shipping (Amendment) Act 1981, section 295(4) was deleted in its entirety. The amendment was to give effect to the reservation made by Singapore in 1977 to exclude the application of Article 1(1)(c) of the International Convention Relating to the Limitation of Liability of Owners of Sea-Going Ships, 1957 ("1957 Convention"). It is common ground that the UK acceded to the Convention on behalf of Singapore on 17 April 1963 and it attained binding force on 31 May 1968. However, prior to that, section 340 of the Merchant Shipping Ordinance ("MSO") was amended by the Merchant Shipping (Amendment No.2) Ordinance 1959 to give effect to Article 1 (1) of the 1957 Convention. In 1970, the MSO was renamed the Merchant Shipping Act (Cap. 172) and section 340 became section 295(4) of the new Act.

11 Since the text of both provisions was identical, I need only set out below the text of subsections 295(4) and (8). For the text of paragraphs (b) and (d) of subsection (1), they are the same as section 136(1) of the MSA which I have reproduced earlier.

> " (4) For the purposes of subsection (1) of this section, where any obligation or liability arises –
>
> > (a) in connection with the raising, removal or destruction of any ship which is sunk, stranded or abandoned or of anything on board such a ship; or
> >
> > (b) in respect of any damage (however caused) to harbour works, basins or navigable waterways,
>
> the occurrence giving rise to the obligation or liability shall be treated as one of the occurrences mentioned in paragraphs (b) and (d) of that subsection, and the obligation or liability as a liability to damages.
>
> ….

(8) The Minister may by order to be published in the *Gazette* make provision for the setting up and management of a fund, to be used for the making to the harbour or conservancy authority of payments needed to compensate it for the reduction in accordance with paragraph (a) of subsection (4) of this section, of amounts recoverable by it in respect of the obligations and liabilities mentioned in that paragraph and to be maintained by contributions from the harbour or conservancy authority raised and collected by it in respect of vessels in like manner as other sums so raised by it; any such order may contain such incidental and supplementary provisions as appear to the Minister to be necessary or expedient."

12 It is undeniable that one ought to be able to rely upon what one reads in an Act of Parliament as the source of the intentions of Parliament without being required to search through all that had happened before and in the course of the legislative process in order to see whether there was anything to be found from which it could be inferred the meaning of the words used. This stems from the need for legal certainty which is one of the fundamental elements of the rule of law. See generally the speech of Lord Nicholls of Birkenhead in *R v Environment Secretary, Ex p Spath Holme Ltd* [2001] 2 WLR 15 at 38. It is thus tempting to approach the preliminary issue in the way advanced by Mr. Mohan if section 136(1)(d) of the MSA has an obvious meaning which can easily be determined by looking solely at the language in question in its context within the statute. After all as a matter of general principle, it is an appropriate starting point to statutory interpretation that the language is to be taken to bear its ordinary meaning in the general context of the statute.

13 Concise and attractive as his argument appears to be at first sight, in this particular case I cannot accept it. When interpreting statutory language, courts have to strike a balance in respect of what Lord Nicholls has identified as the tension between the need for legal certainty and the need to give effect to the purpose of the legislation. To confine the court to looking solely at the language in question in its context within the statute could be too restrictive. While the text of the statute is of pre-eminent importance, it cannot be understood in a vacuum. Lord Nicholls in *R v Environment Secretary, Ex p Spath Holme Ltd* at p 38 said: "No legislation is enacted in a vacuum. Regard may also be had to extraneous material, such as the setting in which the legislation was enacted." The same point was made very much earlier by Lord Blackburn in *River Wear Commissioners v Adamson* [1877] 2AC 743 at 763. He stated:

"I shall…state as precisely as I can what I understand from the decided cases to be the principles on which the Courts of Law act in construing instruments in writing; and a statute is an instrument of writing. In all cases the object is to see what is the intention expressed by the words used. But, from the imperfection of language, it is impossible to know what that intention is without inquiring farther, and seeing what the circumstances were with reference to which the words were used, and what was the object, appearing from those circumstances, which the person using them had in view; for the meaning of words varies according to the circumstances with respect to which they were used."

14 As the interpretative process requires judges to make informed choices, external aids such as the background to the statute and its legislative history may be employed. An earlier provision or predecessor statute may be considered even if the provision to be interpreted is not ambiguous. See *R v Environment Secretary Ex parte Spath Holme Ltd* at p 28. Similarly, it is not necessary that there should be any ambiguity or inconsistency before a purposive approach is adopted. See *Planmarine AG v Maritime and Port of Authority of Singapore* [1999] 2 SLR 1; *Yusen Air & Sea Services (S) Pte Ltd v Changi International Airport Services (S) Pte Ltd* [1999] 4 SLR 135. In adopting a purposive approach to the interpretation of a statute, courts seek to identify and give effect to the purpose of the legislation. The use of non-statutory materials as an aid to interpretation is not new. It is recognised and given statutory recognition in section 9A of the Interpretation Act

(Cap.1). As illustration, Explanatory Statement relating to the Bill, which led to or preceded legislation may be considered as an aid to interpretation for it is part of the setting of a statute. It helps to explain the background of the statute.

15 In this particular case, it is necessary to refer to the legislative history as an aid in construction. The background to the legislation on limitation of liability is important as the dispute concerns an international convention i.e. 1957 Convention and the Singapore Government's reservation of the right to exclude paragraph 1(c) of Article 1 of the 1957 Convention from its national law. The Protocol of Signature of the Convention permits any State at the time of signing, ratifying or acceding to the Convention to make certain reservations. They include the right to exclude paragraph 1(c) of Article 1.

16 The Singapore Government in a note dated 6 September 1977 to the Belgian Government as the depository of instruments of ratification and accession confirmed that it considers itself bound by the 1957 Convention with effect from 31 May 1968. At the same time, it made two reservations: (i) the right to exclude the application of paragraph 1(c) and (ii) to regulate specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons. See *The Ratification of Maritime Conventions* (LLP 1990 ed) pages 1.2-79 and 1.2-84. This appeal concerns the first reservation.

17 The reservation made in 1977 was given effect in 1981 when Parliament passed the Merchant Shipping Amendment Act. In these circumstances, the plain language rule is inapt when the language of the statute applied literally to the dispute before me would result in an outcome seemingly at odds with the legislature's purpose for enacting the 1981 amendment to the statute in the first place. Thus, to read the word "property" in its plain and ordinary language as argued for would be to read it in vacuum. To say that the 1981 amendment achieved nothing is unsound. As Yong CJ said in *Comfort Management Pte Ltd v PP* [2003] 2 SLR 67, where the literal reading would not promote the statutory purpose, then some other secondary reading which promotes the statutory purpose should be chosen. In the same vein the point was put another way by Lord Simon in *Nokes v Doncaster Amalgamated Collieries Ltd* [1940] AC 1014 at p 1022: "If the choice is between two interpretations the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

18 I am therefore unable to agree with the Assistant Registrar Tai Wei Shyong that the 1981 amendment achieved nothing in that shipowners continued to enjoy the right of limitation in respect of damage to all harbour works including "publicly owned" harbour works until 1986 when section 26 of Port of Singapore Authority Act ("PSA Act") was amended.

19 For a long time, the right of a shipowner to limit liability for wreck removal expenses and damage to harbour works remained in our statute. It is appropriate at this juncture to look at the legal position before 1981 to see what it encompassed and the effect the 1981 amendment had on that position.

20 The Defendants' view is that the amendment did not change the position where damage is done to privately owned jetty or other shore installations. Section 295(4) only refers to the claims of port authority like the Port of Singapore Authority ("PSA") and now the Maritime and Port of Singapore Authority ("MPA"). In other words, it applies only to publicly owned or operated harbour works. Mr. Mohan relies on what he termed contextual evidence in support of his view. The contextual evidence he refers to is firstly, the deeming provision in section 295(4) and secondly,

section 295(8).

21 Section 295(4) (similarly section 340(4) of MSO) deemed a claim for wreck removal expenses or damage to harbour works as an occurrence mentioned in paragraph (b) and (d) of subsection (1) and it also deemed such obligation or liability as a liability to damages. A claim by the port authority namely PSA for damage to its harbour works is a claim for a statutory debt. The claim would have to be deemed as damages if it is to fit into the limitation regime under the Merchant Shipping Ordinance or Merchant Shipping Act. For this reason, the Defendants submit that section 295(4) (also 340(4) of the MSO) applied only to damage to harbour works owned by PSA and now the MPA. If it were otherwise, there would be no need to deem claims for damage to "harbour works" as claims for damages. The other deeming provision was not to deem "harbour works" as "property". The deeming provision was to qualify the nature of the liability rather than the nature of the "property".

22 Mr. Chong's point is that damage to "harbour works" and damage to "property" were governed by a separate and mutually exclusive provision under Article 1 of the 1957 Convention. It follows from the fact of the deeming provision that "harbour works" was not within the meaning of "property" in the first place; otherwise the deeming provision would not have been necessary. The effect of subsection (4) was to deem "harbour works" as "property" within paragraph (d) of subsection (1). With the amendment in 1981, "harbour works" was removed from the meaning of "property" in paragraph (d) of subsection (1). The Defendants' position presupposes that "private harbour works" is already covered by section 295(1)(d) and Article 1(1)(b) whilst harbour works owned by port authorities are governed by section 295(4) and Article 1(1)(c). Neither the language of the 1957 Convention, the Merchant Shipping Ordinance or Merchant Shipping Act support this contention.

23 Mr. Chong disagrees with the Defendants' submission which he says is misconceived because when section 340(4) of MSO was enacted, a claim for damage to harbour works even by the port authority in Singapore was not a claim for a statutory debt. If section 295(4) prior to its deletion was indeed for a limited purpose, the only way the Defendants could support such a limited purpose is to demonstrate that claims by PSA for damage to harbour works was statutory debt in 1959. There was no such obligation then. That was achieved in 1986 with the amendment of section 26 of Port of Singapore Authority Act. On the Defendants' own case that there was no strict liability for damage to harbour works in 1959. Mr. Chong submits that the provision deeming the obligation or liability as liability to damages was to cater for the strict liability regime then existing in the UK. It is irrelevant that there was no strict liability regime in Singapore until 1971 or at the latest 1986.

24 It is common ground that the 1957 Convention was adopted in the United Kingdom by the Merchant Shipping (Liability of Shipowners and Others) Act 1958, by means of amendments to the 1894 Merchant Shipping Act. I would point out that Article 1 of the 1957 Convention did not adopt the phrase "liable to damages" from section 503 of the 1894 Merchant Shipping Act. Article 1(1) of the 1957 Convention relevantly provided:

> "(1) The owner of a sea-going ship may limit his liability in accordance with Article 3 of this Convention in respect of claims arising from any of the following occurrences, unless the occurrence giving rise to the claim resulted from the actual fault or privity of the owner ..." .

25 What then followed are the occasions causing loss of life, personal injury, damage to property and then wreck removal and damage to harbour works. There was introduced in the 1957 Convention, a special class of claims in Article 1(1)(c) distinct from the property claims which are in two groups namely those on board the ship and those that were not on board the ship. Thomas J in *The Tiruna* [1986] 2 Lloyd's Rep. 536 at 545 was of the view that the scheme of Article 1 was that the three

sub-paragraphs were to be read exclusive of each other. The appellate court agreed with Thomas J. Kelly J and McPherson J agreed that Article 1(1)(c) covers the category of cases which do not come within sub-paragraph (b). The two sub-paragraphs should be regarded as being mutually exclusive and not overlapping.

26 As I see it, the deeming provisions were needed as the Merchant Shipping (Liability of Shipowners and Others) Act 1958 [our s340 of the MSO] retained the phrase "liable to damages". Article 1(1)(c) is unqualified by the requirement that damage must be due to the act, neglect or default of the master, pilot etc. Otherwise, the sub-paragraphs are mutually exclusive. Each sub-paragraph is to have its own meaning and coverage.

27 For the purpose of limitation in subsection (1), what the draftsman did was to provide for the matters stated in section 340(4)(a) and (b) as coming within the provisions of section 340(1)(b) and (d). The word "and" is to be read disjunctively. Where there is damage to harbour works which could be "however caused", for the purpose of limitation under subsection (1), it is treated as "the act or omission of any person (whether on board the ship or not) in the navigation or management of the ship…. or through any other act or omission of any person on board the ship". In my view, damage to harbour works still exists nonetheless as a separate class of property outside of paragraph (d).

28 Mr. Mohan says the phrase "however caused" was intended to refer to strict liability obligation and is referable to a claim by port authority. Hence the section only applies to a publicly owned wharf. He further submitted that it was necessary to have regard to the state of the law in England at the time the 1957 Convention was signed. Under section 74 of the Harbour, Docks and Piers Clauses Act 1847, which provided that if a vessel damaged a dock, pier or any work connected therewith, the owner of the vessel was liable to make good the damage. The liability was absolute and no negligence is needed. See *The Mostyn* [1928] AC 57. In *The Stonedale* [1956] AC 1, it was held that public authorities claims for removal of wrecks was recoverable as debts, and not damages. It was therefore outside the limitation regime which is founded on a claim that sounds in damages. It was to deal with the decision of *The Stonedale* and with the no-fault concept in *The Mostyn* that the provision that deemed the obligation or liability as a liability to damages was enacted.

29 I agree with Mr. Chong that the words "however caused" is much wider and the expression would cover claims in negligence as well as those caused without negligence. The scope of section 340(4) was wider in terms and scope than the law in England at the time the 1957 Convention was signed. It altered previous English decisions where the right to limit did not appear to extend to liabilities in the nature of statutory debts not based on actionable fault. In my judgment, regardless of ownership of the harbour works, damage to harbour works however caused is within the ambit of the subsection.

30 In my view, it is clear from section 295(4), that there are no words expressly referring to a port authority in the two sub-paragraphs (a) and (b). In addition, there are no words which expressly or by implication would suggest that there was any exception to the operation of the sub-section in that it applies solely to a port authority. The same observations apply to the language of Article 1(1). It would be illogical or unreasonable to read claims in respect of damage to a publicly owned shore installations as coming under section 295(4) and claims in respect of damage to privately owned shore installations as coming under section 295(1)(d). There is no rationale distinction for such a dichotomy. Claims for damage to shore installation regardless of ownership must come under section 295(4). If Article 1(1)(c) is excluded through the mechanism of the reservation of a State and the reservation is to be given effect, it would be wrong to include "harbour works" in the definition of "property" in Article 1(1)(b). To do so would be to defeat the objective of a reservation. See

McPherson J in *The Tiruna* at p 688.

31 In my judgment, prior to 1981 a shipowner is entitled under section 295(4) of the Merchant Shipping Act to limit his liability imposed on him by statute or common law for wreck raising expenses as well as his liability for damage of various specified kinds. It is important to note that section 295(4) does not create any liability for damages. It contemplates that persons (be it port authority or owners of privately owned shore installations) would first have claims justifiable at law, whether based upon the general law or upon statutory provision.

32 Mr. Mohan also contends that "harbour works, basins and navigable works" and the raising of wrecks are all activities associated with the port authority. The phrase "harbour works" should be read in context with the words following it. Whilst he concedes that the term "harbour works" and "basins" could be referable to those privately owned, nonetheless at the time section 340 of the MSO was enacted, there were no shipyards in Singapore with their own basins to speak of. He argues that the court has to look at the statute with "1959 eyes". I am not persuaded by his contention that the statutory provision has to be looked at with "1959 eyes". Except where a statute reveals a contrary intention, every statute must be interpreted as an "always speaking statute". The rationale of this principle is that a statute is usually intended to endure for a long time in a changing world. This principle embodies the proposition that courts must interpret and apply a statute of any vintage not only to the world as it exists today but also in the light of the legal system as it exists today. That is the basis of the decision of the House of Lords in *R v Ireland* [1998] AC 147 at 158 where 'bodily harm" in a Victorian statute governing assaults was held to cover psychiatric injury.

33 Another illustration is the case of *Keane & Anor v The Commissioner of Irish Lights* [1997] 1 IR 184 cited in *Universal Studios Incorporated v Mulligan (no 1)* [1999] 3 IR 381. In *Universal Studios Incorporated,* video technology we know today was not in the contemplation by the draftsman of either the UK 1956 legislation when defining the expression "cinematograph film". How then does one approach the construction of the definition. The Judge referred to *Keane & Anor v The Commissioner of Irish Lights* in which the issue was whether a Loran-C mast came within the definition of "beacon" in the Merchant Shipping Act, 1894. In his judgment, with which Blayney J and Barrington J agreed, Hamilton CJ approved the following passage from the judgment of Murphy J:

> "I have no difficulty in accepting the desirability and in general, the necessity for giving to legislation an "up-dating construction". Where terminology used in legislation is wide enough to capture subsequent invention, there is no reason to exclude it from the ambit of the legislation. But a distinction must be made between giving an up-dated construction to the general scheme of legislation and altering the meaning of particular words used therein."

34 On the topic of an "updating" versus a narrow interpretation of an Act, Barrington J in his judgment stated: "Had the 1894 Act simply entrusted to the Commissioners of Irish Lights the management of aids to navigation, I would be happy to conclude that the Loran-C system of navigation was an aid to navigation within the meaning of the 1894 Act even though the system had not been invented when the 1894 Act was passed. But the trouble is that the draftsman of 1894 Act appears to have used terms which tie the Act to the technology of the times."

35 In the present case, the draftsman did not tie the Act to "harbour works" and "basins" in existence at the time of the MSO or to those owned only by a port authority. The same language was used for a long time until 1981 when section 295(4) was deleted by the Merchant Shipping Amendment Act. The same wording was retained through the passage of each renumbering. From section 340 of the Merchant Shipping Ordinance, it was renumbered section 295 of the Merchant Shipping Act and then renumbered again as section 272 before its current form in section 136.

36 Mr. Chong drew my attention to Lord Diplock's reminder in *Fothergill v Monarch Airlines* [1981] AC 251 at p 282. In construing the language of an international convention, it should be interpreted unrestrained by technical rules of English law, or English legal precedent, but on broad principles of general acceptability. It is meant to be understood in the same sense by the courts of all those states which ratify or accede to the Convention. It is addressed to a much wider and more varied judicial audience than is an Act of Parliament. It follows that "harbour works", "basins" and "navigable waters" should not be interpreted to cover only "harbour works" and "basins" owned by the port authority or operated by the latter. I agree with Mr. Chong that no distinction has been made in Article 1(1)(c) and section 295(4) between private and public harbour works. Article 1(1)(c) covers all harbour works.

37 In my judgment, it would defeat the manifest intention of Parliament to read section 136(1)(d) in isolation or in vacuum without regard to the amendments to section 295 in 1981. The literal interpretation argued for by Mr. Mohan would not accomplish the purpose of the legislature. After the 1981 amendment, the policy behind the legislation is still the same: to limit the right of an injured party to recover the compensation to which he would otherwise be entitled. The burden is on the wrongdoer (shipowner) to bring himself within its terms as amended.

38 The other contextual evidence Mr. Mohan relies on in support of his contention is section 295(8). I accept Mr. Chong's submission that just because section 340(8) or section 295(8) dealt with claims by the port authority for unrecovered wreck removal expenses does not automatically mean that section 340(4) dealt exclusively with claims by port authority. Further, section 340(8) does not deal with claims for unrecovered expenses arising from damage to harbour works. I ought to mention that Mr. Mohan's argument does not take into account the fact that section 2(2)(a) of the 1958 Act [our section 340(4)(a)] was never brought into force in the United Kingdom. Section 2(5) provided that section 2(2)(a) would not come into force in the United Kingdom until such day as the Secretary of State might appoint by statutory instrument. Counsel did not address me on whether or not a fund was set up in Singapore, thereby diluting whatever force his argument might have had.

39 Mr. Mohan said that the Minister's speech in 1981 introducing the amendment to section 295, reinforces his point that section 295(4) relates to harbour works owned by the port authority. The Minister was there referring to PSA's property and not private owned shore installation.

40 The late Mr. Ong Teng Cheong who was the then Minister of Communications and Minister of Labour in introducing the bill to amend the Merchant Shipping Act on 6 March 1981 explained:

> " The amendment to the section on Limitation of Liability is to make shipowners wholly liable for the cost of wreck-removal and of repairs to facilities at the Port of Singapore Authority whenever there is an accident in its waters. Without the amendment, shipowners can limit their liability to such damages if they can prove that the accident occurred without their fault or privity, as provided for in the International Convention Relating to the Limitation of Liability of Owners of Sea-Going Ships, 1957. When we acceded to the Convention, we made the reservation that a shipowner should not be entitled to limit his liability in this way. But this reservation is not reflected in the existing legislation and the amendment is, therefore, necessary."

41 It is not disputed that the Minister's speech made reference to PSA. He did not refer to facilities owned by PSA. According to Mr. Chong, reference to "facilities *at* the [PSA]", connotes geographical location i.e. all harbour works geographically located within the port limits of Singapore regardless of ownership. This included the Plaintiffs' wharf at Pulau Bukom which is within the waters administered by PSA and now the MPA. Section 9 of the PSA Act sets out the wide duties of the PSA and the duties extend to all facilities in the port and are not confined to facilities owned by PSA. The

Schedule to PSA Act provides that the authority of the PSA extends to all piers jetties and wharves in Singapore.

42 The Explanatory Statement to the Merchant Shipping (Amendment) Bill (Bill no. 2 of 1981) states that the Bill seeks to amend the Merchant Shipping Act (Cap. 172) for purpose of "deleting subsections (4) and (8) of section 295 of the Act, being provisions which allow shipowners to limit their liability arising from or in connection with the raising, removal or destruction of any ship which is sunk, stranded or abandoned, and any obligation or liability arising out of damage caused to harbour works, basins and navigable waterways."

43 The Explanatory Statement made no distinction between damage to publicly owned or privately owned harbour works. It did not mention the PSA by name or implication. The Minister's statement should be read in the light of the Explanatory Statement. In my view, the Minister's reference to damage to facilities at PSA was merely illustrative in nature and not intended to be exhaustive in nature and scope. There is nothing to suggest that partial reservation was intended.

44 In any case, preference is given to the Explanatory Statement in the event of any inconsistencies. After all, the "intention of Parliament" is an objective concept, not subjective. Lord Nicholls in *R v Environment Secretary, Ex p Spath Holme Ltd* at p 37 said: "The phrase [intention of Parliament] is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman..".

45 Whilst it is the port authority who has an interest in the reservation to Article 1(1)(c), the fact of the matter is that the whole of section 295(4) was deleted. I have already decided that the subsection was wide enough to also cover the interests of privately owned shore installations. Parliament deleted the whole of section 295(4). It did not change the language to section 295(4) to merely exclude the claims of port authority from limitation of liability.

46 I now turn to the alternative position canvassed by Mr. Mohan. He seeks to rely on the alternative limb in section 136(1)(d) namely "any right is infringed through the act or omission of any person…". The right is that of the Plaintiffs not to have their property damaged. If that right is infringed e.g. when a ship contacts their wharf/jetty, thereby damaging it, the Plaintiffs have a common law right to claim damages, and the corollary is that under section 136(1)(d), a shipowner can limit his liability when that right is infringed.

47 Mr. Chong's response is that the Defendants had not sought to limit liability on the ground that the Plaintiffs' rights have been infringed. It was never their pleaded case in the Defence filed thus far. In addition, *The Arabert* [1963] P 102 which is relied upon by the Defendants was a case decided not under section 2 of the Merchant Shipping (Liability of Shipowners) Act 1958 which was enacted after the UK signed the 1957 Convention. Similarly, at the time *The Putbus* [1969] P 136 was decided, section 2 of the 1958 Act although enacted was not yet in force.

48 The rules on pleadings have no bearing and are extraneous to the preliminary issue. So the pleading point is of no consequence and does not assist the Plaintiffs. If in respect of the same loss, the Defendants are able to bring themselves within the ambit of another limb in section 136(1)(d), they ought to be allowed to do so. In *The Maritime Prudence* [1996] 1 SLR 168, Selvam J held that "infringement of any right" in section 136(1)(d) must be caused by the ship of the owner who is seeking to limit his liability. That ship must be the instrument causing the infringement of any rights. The fault of those whether on board or outside the ship must be linked to or connected with the ship or some part of the ship as a physical entity. The Defendants have no problem satisfying this

requirement. The right that is infringed is the Plaintiffs' proprietary right as legal owner at the time of the loss or damage occurred and it is that proprietary right that has been adversely affected by the negligence of those on board the *Seaway* which resulted in loss or damage. Prior to the collision, the *Seaway* was navigating through the Sinki Fairway en route from Western Jurong Anchorage to the Ramunia Shoals. It is evident that the *Seaway* owes a duty of care to the owners of other ships using the Sinki Fairway to avoid damage to such ships, and a like duty to owners of property bordering on or adjacent the route taken to avoid damage to such property. The Plaintiffs have stated what their title was and what their loss was. Where negligence exists, the liability would be one arising from the fact that "..rights are infringed through the act or omission of any person (whether in board the ship or not) in the navigation or management of the ship or of a person on board".

49 For these reasons, the Defendants are entitled to claim limitation of liability where "rights are infringed through the act or omission of any person (whether on board the ship or not) in the navigation or management of the ship or of a person on board". Consequently this appeal is dismissed. However, broadly speaking, the Defendants lost on the primary question brought on appeal by the Plaintiffs and which dominated the entire appeal. The alternative issue they succeeded on was introduced as a subsidiary point. In the circumstances, it is appropriate to depart from the usual order that costs follow the event. I accordingly award the Plaintiffs' costs of the appeal.