

[Title]

Tort Liability of Stevedore

[Deciding Court]

Supreme Court

[Date of Decision]

17 October 1969

[Case No.]

Case No. 58 (o) of 1968

[Case Name]

Claim for Damages

[Source]

*Hanrei Jiho* No. 575: 71

[Party Names]

Final Appellant            Y            Nippon Express Co., Ltd.

Vs.

Final Appellee            X            Nippon Fire and Marine Insurance Co., Ltd.

[Summary of Facts]

The consignor, A, entered into a contract for carriage by sea with a shipping company, B, with A himself as the consignee, to transport white synthetic resins from Houston to Yokohama, and also entered into a marine insurance contract covering the transported goods with the Plaintiff insurance provider, X, with A himself as the insured. At the time the vessel entered Yokohama Port, B had Y, the Defendant, who was in the business of stevedoring for vessels at the port, discharge the transported goods to a barge. Due to the fact that C, an employee of Y, who supervised the discharge, discharged separate transported goods comprising 'carbon black' to windward on the same side of the vessel at the same time, the relevant transported goods were soiled by particles of 'carbon black'. A, who suffered losses as a result, received compensation from X. X filed this subrogated insurance claim seeking damages in tort from Y.

The court at first instance adopted a 'compromise' theory with regard to the conflict between the claim arising from contractual default and the claim in tort, and ruled that, when no liability in tort was found on the part of B, tortious liability would not be found on the part of a person B hired to provide transportation services. The court at first instance dismissed X's claim. The court of second instance, however, adopted a 'conflicting claims' theory. Ruling that Article 14 of the *International Carriage of Goods by Sea Act* did not apply to claims for damages in tort, the court of second instance allowed Y's liability with regard to the relevant claim, which was filed after one year had passed from the date of delivery of the transported goods. Y's grounds for final appeal were that the decision by the court of second instance was contrary to judicial precedent, and erroneous in its interpretation of Article 14 of the *International Carriage of Goods by Sea Act*.

[Summary of Decision]  
Final appeal dismissed.

(1) The prior decision that was cited as the grounds for final appeal (Supreme Court decision, 5 November 1963, *Minshu* Vol. 17: 1510) ruled that “ ‘With regard to liability on the part of a shipping agent or carrier, it was the purport of a decision by the Imperial Supreme Court (... 23 February 1926, *Minshu* Vol. 5: 108) to acknowledge the conflict between a claim for damages due to default under a shipping contract or contract for carriage, and a claim for damages in tort, and the Supreme Court has also agreed with that decision.’ The Supreme Court affirmed the inherent conflict between these claims. As was argued, the establishment of liability in tort is not limited to situations that are unexpected in the usual course of handling transported goods and go far outside the original scope of the contractual purpose.

Moreover, Y, who was in the stevedoring business, was not a party to the contract of carriage, and so was not directly liable to the carrier. The issue of whether or not the carrier was liable for damages due to default under the transport contract cannot be said to directly affect the above issue of liability for damages in tort on the part of the stevedore. It follows, with respect to this case, that the decision by the lower court, which took the same view and hence acknowledged the establishment of conflicting claims and allowed X’s claim, was correct, and Y’s arguments were groundless.

The provisions in Article 14 of the *International Carriage of Goods by Sea Act* prescribe carriers’ liability arising from default under a transport contract, in the same way that the *Commercial Code* prescribes liability on the part of carriers. The decision by the lower court, which ruled that the relevant provisions were not applicable to a claim for damages in tort against a carrier or a stevedore, was correct.”