

[Title]

Scope of Claims Subject to Limitation of Vessel Owner's Liability

[Deciding Court]

Supreme Court

[Date of Decision]

26 April 1985

[Case No.]

Case No. 1210 (o) of 1982

[Case Name]

Claim for Damages

[Source]

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[Party Names]

Final Appellant           X       Heung-A Shipping Co., Ltd.

Vs.

Final Appellee            Y       Mukose Fishery Company

[Summary of Facts]

On 22 April 1979, Vessel M owned by Company X and Vessel N owned by Company Y1 collided at the quarantine anchorage in Wakkanai Port due to negligence in steering on the part of Y2, the Master of Vessel N, and Vessel M sank. Y1, in accordance with Article 17 of the *Act on Limited Liability of Vessel Owners* (prior to amendment by Act No. 54 of 1982; hereinafter referred to as the "Act"), petitioned in the Asahikawa District Court for the commencement of proceedings to limit liability, with respect to claims for damages incurred as a result of the relevant accident, with Y2 as a beneficiary obligor. A ruling was made to commence proceedings to limit liability on 29 October 1979 and the ruling became final and binding. X was ordered to remove the sunken Vessel M by the Harbor Master of Wakkanai Port in accordance with Article 26 of the *Act on Harbor Rules*, as well as from the Mayor of Wakkanai, who was the head of the administrators of Wakkanai Port, in accordance with Article 12(1) of the *Harbors Act* and Article 8 of the *Wakkanai Harbor Administration Regulations*. Accordingly, X contracted with a salvage company, had the sunken vessel described above removed from the scene of the accident, and incurred losses including the 39 million yen (39,000,000 yen) cost of removal.

X claimed compensation for the losses described above from Y1 and Y2 in the principal action. YY asserted, however, that X's claim was a claim subject to limited liability. The lower court ruled that X's claim was based on losses incurred as a result of the infringement of other rights prescribed in Article 3(1)(ii) of the *Act on Limited Liability*, and ruled it to be subject to limited liability. X filed a final appeal.

[Summary of Decision]

Final appeal dismissed.

“When a vessel has sunk as a result of a collision with another vessel, and the owner of the sunken vessel has been obligated by laws and regulations to remove the sunken vessel, the losses that were incurred as a result of the performance of the obligation have a close causal relationship with the accident. It is therefore, proper to understand that claims for compensation that the owner of the sunken vessel has against the owner or the Master of the other vessel are claims based on losses incurred as a result of the loss of or damage to things listed under Article 3(1)(i) of the *Act on Limited Liability of Vessel Owners* (prior to amendment by Act No. 54 of 1982; hereinafter referred to as the “*Act*”) or things other than the vessel, prescribed in Article 3(1)(ii) of the *Act*. Accordingly, the owner or the Master of the other vessel is able to limit liability with respect to the claim for damages.”

2. (Article 1(1) of the *Treaty*) “The obligations or responsibilities imposed by legislation with respect to the removal of a wreck prescribed in (c) refer to the situation where the owner of the vessel, who can limit his or her own liability, is the subject of the obligations or responsibilities. When someone other than an owner or Master of the vessel who can limit his or her own liability, is burdened with obligations or responsibilities to remove a wreck under legislation, and incurs losses as a result of the performance of the obligations, the claim for compensation of such losses against the owner of the vessel is not a claim that arises as a result of the obligations or responsibilities imposed by legislation with respect to the removal of a wreck under (c) above. Rather, among the claims in respect of which the owner of the vessel is able to limit liability under Article 1(1) of the *Treaty*, it is proper to understand it as falling under the claims incurred as a result of loss or damage of property other than property listed under (a), as prescribed in (b). Moreover, the main reason why Japan reserved the right to exclude the application of the provisions under Article 1(1)(c) of the *Treaty* at the time of ratification, and the *Act* did not make the claim arising out of the obligations or responsibilities imposed on the owner by legislation regarding the removal of a wreck a limited claim, was that, if it were a limited claim, the subrogated costs of removing the wrecked vessel would be a limited claim. That would make it beneficial for the vessel owner to not remove the vessel voluntarily, and likely result in the disturbance of the smooth performance of the obligations or responsibilities.

“In light of such details of the provisions of the *Treaty*, the reasons for the reservation of the right described above, as well as legislative considerations, when someone other than an owner or the Master of a vessel who can limit his own liability, is burdened with obligations or responsibilities to remove the vessel’s wreck under legislation, and incurs losses as a result of the performance of the obligations, pursuant to the reservation above, the claim for compensation of such losses against the owner of the vessel does not fall under the claims that the *Act* does not limit.”