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Ruling on liability for damage to a sea cable, and the shipowner's right to limit liability under the provisions of Chapter 9 of the Danish Maritime Act

BS-53565/2022-SHR – The Maritime and Commercial High Court's ruling of 4 July 2025

1. Background of the Case

On 4 July 2025, the Maritime and Commercial High Court delivered a ruling in a case concerning a shipping company's right to limit its liability under Chapter 9 of the Danish Maritime Act (on global limitation of liability) for damage caused to an electricity transmission cable between Sweden and Bornholm.

The damage occurred on 26 February 2022, when the chemical and oil tanker Samus Swan lost its anchor during severe weather conditions, causing damage to the cable and resulting in a power outage on Bornholm.

By order of 2 December 2022, the Maritime and Commercial High Court established a limitation fund at the request of the shipowner of Samus Swan. The amount of the limitation fund was set by order of 10 February 2023 at SDR 2,921,657.29, equivalent to DKK 27,254,095.70.

The owner of the cable, Energinet A/S, argued that the shipowner, by failing to investigate the cause of the vessel's loss of propulsion, had acted with gross negligence to such an extent that the shipowner was not entitled to limit its liability under Section 174 of the Danish Maritime Act.

The shipowner contended that it could limit its liability pursuant to Section 171, cf. Section 172(1) of the Act, and that there were no grounds for breaking the limitation of liability under Section 174.

Accordingly, the issue of whether the shipowner was entitled to invoke the limitation of liability provision in Section 171 of the Danish Maritime Act was separated for a distinct ruling.

2. Facts of the Case

The case concerned damage to a sea cable that occurred during a voyage from Ventspils, Latvia, to Rotterdam, the Netherlands. The vessel departed from Ventspils in the afternoon of 24 February 2022. This departure occurred notwithstanding previously reported malfunctions of a thermostat in the vessel's engine

Nevertheless, the court – based on the expert witness's testimony – found that the vessel was seaworthy at the time of departure. The court further found that the ship's anchor chain was new and certified. According to the court, the fact that two crew members had mentioned previous issues with the anchor in the shipowner's internal report did not lead to a different conclusion.

According to the shipowner's report of 1 April 2022, the wind at 14:05 on 24 February was from the south/southwest at 35 knots, corresponding to a gale. The severe weather continued through the night of 25 February.

The court found that there had been severe weather conditions on 24 and 25 February 2022.

The ship's speed dropped from 6.6 knots to 2.8 knots between 04:00 and 05:00, and further to 0 knots at 14:01 that same day. There were no crew members were on the deck on 25 February, as the master had assessed that it was unsafe for the crew due to the severe weather.

The expert assessed that at 14:45 on 25 February 2022, the crew could have conducted an inspection on the deck. According to the expert's simulation, seawater would still have been washing over the deck; however, movement on deck would have been feasible. Consequently, the crew would have been able to detect that the anchor had fallen out.

Based on the sequence of events, the court found that it must be presumed that the vessel's anchor had fallen out at some point due to the severe weather, although the court accepted that the anchor had been properly secured upon departure from Ventspils.

The vessel's speed increased again to 6 knots at around 16:35 on 25 February 2022, which according to the expert was likely because a stone that had become lodged in the anchor came loose from the seabed.

From the afternoon of 25 February 2022 until 08:25 on 26 February 2022, when it was discovered that the vessel's anchor was out, the ship had been in contact with the vessel's Technical Superintendent (hereinafter "TSI") from the shipowner's company and with MAN regarding the ship's engine.

It was undisputed in the case that the damage to the sea cable occurred because the anchor had caught onto the cable, and that the damage occurred at approximately 06:17 on 26 February 2022.

The vessel's crew discovered at around 08:25 on 26 February 2022 that the anchor was out. According to the expert's assessment, by that time the ship had been sailing with the anchor deployed for approximately 31 hours.

According to the expert, a reasonable suspicion of mechanical problems with the engine had led to the following situation:

"There was a blind focus on the assumption that the fault had to be caused by a defect in the main engine, and no other possibilities were discussed or considered. This tunnel vision was reinforced by the chief engineer's communications with the vessel's Technical Superintendent (TSI), which concerned only the symptoms of the engine problems. Consequently, the TSI's attention was also directed exclusively toward solving the load problem and did not include any consideration of investigating other possible causes of the operational difficulties." (Translated)

On this basis, the expert assessed that it was not surprising that no alternative causes of the load problem were considered.

In the expert report, the expert concluded the following regarding the vessel's efforts to identify the cause of the loss of propulsion:

"During the period from 14:01 to 16:25 on February 25, 2022, I assess that the ship's management should have investigated all conceivable causes of the vessel's lack of propulsion, including those outside the engine room. They did not. It is incomprehensible why the ship's management continued with such high engine revolutions for two hours and twenty-four minutes without checking the propeller wash or the anchors. The anchors are the ship's only brake and should have been the first thing the master considered as a possible cause of the propulsion problem.

The master's actions were severely inadequate and did not reflect the competence or professionalism one would expect from a person with so many years of experience in senior maritime positions. It was a mistake that he did not listen to his crew when they suggested letting the anchors go.

The company's TSI should also have looked beyond the ship's machinery as the sole possible cause of the vessel's lack of propulsion. The TSI could and should have sought help and advice from colleagues both in the technical department and in other company divisions to resolve Samus Swan's propulsion problem." (Translated)

However, the expert's explanation during the main hearing was more cautious, as he stated that it would have involved a certain degree of risk to send the crew out onto the deck.

The expert further explained that the TSI *"provided what he could from his position and based on the information he received."* (Translated)

3. Legal Basis

The principal liability provision for a shipowner under Danish law is found in Section 151 of the Danish Maritime Act, which states that the shipowner is liable *"...for damage caused by fault or negligence in the service of the master, crew, pilot, or others performing work in the service of the ship."* (Translated)

By Act No. 625 of 8 December 1982, the 1976 London Convention on the Limitation of Liability was incorporated into the Maritime Act's then Chapter 10, which included Section 151 (formerly Section 233) as well as Sections 171–182 (formerly Sections 234–243a). The provisions on limitation of liability under the London Convention are now found in Chapter 9 of the Maritime Act.

According to Section 171(1), first sentence, of the Maritime Act, the shipowner may limit his liability under the rules in Chapter 9. The right to limitation of liability exists regardless of the basis of liability, cf. Section 172, unless the conditions for loss of the right of limitation in Section 174 of the Maritime Act are met.

According to Section 174 of the Danish Maritime Act, the person liable cannot limit their liability if it is proven that the loss or damage was caused intentionally or through gross negligence on their part, with the awareness that such loss or damage was likely to occur.

The requirement that the damaging act must have been committed by the liable party himself does not, according to the wording of the provision, address the question of identification — specifically, whether a culpable act carried out by an employee can be considered as having been committed by the shipowner himself.

In this context, the Court refers to the preparatory works for Act No. 625 of 8 December 1982 regarding the proposed Section 237 (which corresponds to the current Section 174) (Folketingstidende 1982–83, Supplement A, Bill No. L 19, pp. 283 ff.), from which the following, is set out:

" However, Article 4 of the 1976 Convention and the proposed Section 237 differ from the provisions just mentioned by establishing a formally somewhat stricter requirement of causation; the term 'such damage' is specifically used here.

The requirement that the act causing the damage must have been committed by the liable party himself, cf. the 1976 Convention's wording 'personal act or omission,' does not address the identification issue—that is, whether a culpable act carried out by an employee can be regarded as having been committed by the shipowner personally. The term should be understood in accordance with Article 4(5)(e) of the Visby Protocol and Article 13 of the 1974 Convention, even though these conventions do not include the word 'personal.' As noted in Report No. 642/1972, pp. 22 and 49, the shipowner's senior employees who have independent management responsibility should be equated with the owner himself. However, the shipowner cannot be identified with the master in this context, as the master's authority to bind the company is normally limited to the areas specified in Chapter 4 of the Maritime Act.

If employees with whom the owner, according to the above, should not be identified, have caused the damage in the manner described in the provision, this does not affect the owner's right to limit

liability, but the employee responsible for the damage will in such a case not be entitled to limit their own liability" (Translated)

The Court subsequently held that, as a general rule, conventions must be interpreted in accordance with both their wording and purpose. Accordingly, the Court referred to the text and preparatory works of Article 4 of the 1976 London Convention on the Limitation of Liability for Maritime Claims, as well as the subsequent 1996 Protocol amending it.

The Court then referred to the "IMO Resolution on the Interpretation of Article 4 of the LLMC 1976," which, among other things, provides guidance regarding the interpretation of Article 4 of the London Convention:

"...

1 AFFIRM that the test for breaking the right to limit liability as contained in article 4 of the 1976 LLMC Convention is to be interpreted:

a) as virtually unbreakable in nature, i.e. breakable only in very limited circumstances and based on the principle of unbreakability;"

4. The Court's Decision

The majority, comprising two expert judges, found that the master's conduct amounted to significant negligence. However, the conduct did not entail an obvious risk that a sea cable would be severed. Accordingly, the master could not be considered to have caused the damage to Energinet's electricity transmission cable to Bornholm by gross negligence, within the meaning of Section 174 of the Danish Maritime Act.

For this reason alone, the majority held that the claims by the shipowner and its insurers for limitation of liability had to be upheld.

It is observed that the majority emphasized that the expert's statement of that the master should have done more to investigate the cause of the ship's lack of propulsion constituted a retrospective assessment.

The minority, comprising of the legally trained judge, found that the master's failure to ensure that the relevant investigations were carried out under the circumstances was subject to severe criticism and contrary to good seamanship. The minority further found that the master's conduct, as the ship's commanding authority under the circumstances, entailed such an obvious risk that damage in the form of a severed sea cable would result, and that the master had acted with gross negligence.

According to the minority, however, the master's gross negligence could not, by itself, be attributed to the shipowner in a manner that would preclude the owner from invoking the limitation of liability under Chapter 9 of the Maritime Act.

Energinet A/S argued in the case that the shipowner's TSI had acted with gross negligence and that the TSI should be identified with the shipowner's management. The minority noted that the TSI could not have determined that the ship's anchor was deployed based on the information available to him. Since the specific navigational circumstances were outside the TSI's area of responsibility, the minority held that the TSI could not be considered to have acted with gross negligence.

Finally, the minority found that it had not been established that the shipowner's management had committed any errors at an organizational or systemic level.

On this basis, the minority concluded that it had not been proven that the shipowner had caused the damage through gross negligence with the understanding that such damage would likely occur.

5. Comments on the Ruling

It appears from the ruling that the majority of the court, in contrast to the minority, did not find that the master, by failing to verify whether the vessel's anchor had been released from the ship and was being dragged behind it, had exhibited such a degree of negligence that the right to limitation of liability could be deemed forfeited. It is noted that no claim for damages had been brought against the master by the cable owner. The minority of the Maritime and Commercial Court concluded that the master must be regarded as having caused the damage through gross negligence but further found, in accordance with prevailing legal literature, that the master's actions could not be considered acts committed by the shipowner and that the shipowner's right to limitation of liability could therefore not be deemed forfeited as a result thereof.

In its decision, the minority of the Maritime and Commercial Court also addressed whether a technical superintendent, whom the master had consulted in order to clarify the cause of the propulsion problems, could be regarded as having committed such errors that the right to limitation of liability might be deemed forfeited as a consequence. The minority found that the technical superintendent in question could not be considered to "*have had insight into the specific nautical circumstances [which must be deemed to] fall outside [his] area of responsibility*", and that, consequently, it was not grossly negligent that he did not discover that the cause of the vessel's reduced speed was that its anchor was being dragged behind it. The court therefore did not address the principal question of whether an error committed by a technical superintendent may be regarded as an error attributable to the shipowner's management, such that the right to limitation of liability might thereby be forfeited.