

The "Teng He"
[2000] SGHC 51

Case Number : Adm in Rem 696/1998
Decision Date : 31 March 2000
Tribunal/Court : High Court
Coram : G P Selvam J
Counsel Name(s) : Jude Benny, S Durai and Tan Hui Tsing (Joseph Tan Jude Benny) for the plaintiffs; Steven Chong SC and Chua Choon King (Rajah & Tann) for the defendants
Parties : —

Admiralty and Shipping – Collision – Collision between vessel and cables extended from stern of another ship – Severance of cables – Claim in negligence – Contributory negligence

Admiralty and Shipping – Collision – Regulations – Rules of caution for navigation in low visibility conditions

Civil Procedure – Pleadings – Cases of collisions at sea between ships – Replacing pleadings replaced by preliminary acts – Function and use of preliminary acts – O 70 r 17 Rules of Court 1997

Tort – Negligence – Collision at sea causing severance of cables

: Introduction

This is an uncommon case of collision at sea. It is unusual because it was not a collision between two ships. The damage was done to seismic cables by the defendants' ship Tai He. The cables were extended from the stern of the plaintiffs' ship Nordic Explorer. It happened in the afternoon of 18 September 1998 at about 1600 hours. The plaintiffs, as owners of the cables, claim damages from the owners of the Chinese ship Teng He which was at the relevant time in the same ownership as the Tai He.

The weather at the time, according to an admission in the preliminary act of the defendants, was 'cloudy and hazy. Visibility was less than 1 mile due to fog.' The poor visibility is the most significant feature of this case.

The Nordic Explorer was 81.8m in length, 14.5m in breadth. She measured 3,861 tonnes gross register. She was custom-built to carry out seismic exploration for undersea oil. At the time of the time of the incident in all seven seismic streamer cables of 3.6 kilometres each were connected to her. The full length of the cables was in excess of 4 kilometres. At the relevant time the full length had not been run out. At the far end of each cable, a tail buoy was attached to each cable. Each buoy was 3 metres in length, 0.8m in breadth and weighed 350 kg. To the human eyes the buoys were not anything resembling fishing vessels. One would expect the buoys to display the bright end of VIBGYOR - that is yellow, orange or red. In this case they were painted bright yellow.

At the relevant time the seismic operations were being carried out in Bo Hai Gulf, China.

Plaintiffs' pleaded case

The plaintiffs' case stated in their preliminary act was as follows.

At all material times, the plaintiffs were carrying out seismographic research activities within Bo Hai Gulf, People's Republic of China. On 18 September 1998, the Nordic Explorer was towing the seven seismic streamer cables and making way at about 4 to 4.5 knots on the true course of 132 degrees at latitude 38 degrees 34.15 minutes North and longitude 120 degrees 21.61 minutes East. Each tail buoy was fitted with a radar reflector and a GPS beacon showing the position of the tail buoys.

In accordance with the International Regulations for Preventing Collisions at Sea 1972, the Nordic Explorer exhibited three all-round lights in a vertical line in a red-white-red order, together with three shapes of ball-diamond-ball in a vertical line, as prescribed by r 27(b) for vessels restricted in their ability to manoeuvre. Additionally, the Nordic Explorer also executed the sound signal prescribed in r 35(c) of a prolonged blast followed by two short blasts of the ship's horn. This was to indicate that she was towing another vessel in restricted visibility.

In addition, those on board the Nordic Explorer made continuous radio broadcasts via VHF International Safety Calling Frequency Channel 16 (VHF Channel 16) of the position and operations of the Nordic Explorer every half hourly in the English language, followed by a Chinese translation as follows:

Securite Securite Securite. This is survey vessel Nordic Explorer, at position xx, yy, speed & heading. We are towing seven submerged high voltage steel cables. All shipping is advised to give Nordic Explorer minimum 3NM clearance for safety reasons.

The plaintiffs also deployed six chaseboats to protect and chase away any on-coming vessels in the vicinity of the Nordic Explorer and the seismic streamer cables towed by her.

The Tai He was a container ship built in 1989. At all material times, the Tai He was making a course of about 100 degrees from Xingang to Dalian at about 14 to 15 knots.

At approximately 1535 hours, the Tai He was checked as a target on the radar of chaseboat No 201 at a distance of about 3 nautical miles. At the given course, a collision by Tai He with the seismic streamer cables towed by the Nordic Explorer was imminent and the chaseboat No 201 proceeded immediately at full speed to the midship of the Tai He to warn her of the presence and operations of Nordic Explorer. The crew of chaseboat No 201 fired 5 red flares to attract the attention of the crew on board the Tai He and using a loud speaker, also warned the Tai He of the seismic streamer cables ahead and advised the Tai He to change her course immediately to 180 degrees starboard. Chaseboat No 201 also sounded several long blasts of the ship's whistle. The crew on board chaseboat No 201 made repeated attempts to make contact with Tai He via VHF Channel 16 to warn them of the imminent collision. However, the crew on board Tai He failed to respond.

At about the same time, the First Officer on board Nordic Explorer fired several green flares from the mid-ship section of Nordic Explorer into the air for a duration of 5 minutes to warn Tai He of the danger ahead. Each flare burned in the sky for approximately 40 seconds before fading.

In spite of the above attempts the crew on board the Tai He refused and/or neglected and/or failed to respond.

Instead the Tai He kept her course towards the starboard quarter of the Nordic Explorer and at approximately 1606 hours ship's time, steamed across and severed all seven seismic streamer cables towed by the Nordic Explorer. By ignoring and failing to respond to the repeated warnings given by

the plaintiffs, the defendants, their servants and/or their agents were negligent in their navigation and/or management of the Tai He.

The plaintiffs gave the following particulars of negligence:

- (i) failed to keep a proper lookout;
- (ii) failed to make proper and timely use of their radar, and/or failed to observe and/or act upon its indications in due time and/or with proper or seamanlike skill and care or at all;
- (iii) failed to heed the repeated warnings broadcasted over the VHF of the operations and position of Nordic Explorer and/or taking any steps or measures to prevent and/or avoid Nordic Explorer.
- (iv) failed to keep clear of Nordic Explorer;
- (v) failed to appreciate the imminence of a collision and/or heed the repeated warnings broadcasted over the VHF channel 16 of the imminence of a collision and/or acting upon such indications so as to prevent and/or avoid a collision.
- (vi) failed to notice the red and green flares fired in its direction to warn the Tai He of the presence of the Nordic Explorer and the seismic streamer cables;
- (vii) proceeded at an excessive speed;
- (viii) failed to ease, stop or reverse their engines in due time or at all;
- (ix) failed to alter course to avoid a collision with the plaintiffs` seismic streamer cables; and/or
- (x) failed to comply with rr 2, 5, 6, 7, 8, 15, 16, 18, 19 and 34 of the International Regulations for Preventing Collisions at Sea 1972 as amended.

The defendants` pleaded case

The Tai He`s pleaded case was as follows. There was no collision between the Tai He and the Nordic Explorer and/or her seismic cables as alleged by the plaintiffs or at all. Accordingly the plaintiffs had no cause of action against the defendants.

The defendants had no knowledge of the alleged contact between their vessel the Tai He and the seismic cables of the Nordic Explorer. Further or in the alternative, if there was such contact as alleged or at all, which was denied, the plaintiffs were nevertheless solely to be blamed for the contact.

The defendants made the following counter-charges against the plaintiffs:

- (a) At all material times, the plaintiffs and/or their servants or agents failed to issue and/or cause to be issued any or adequate navigational warnings to alert the traffic in the vicinity of the Bo Hai Gulf including the Tai He that the Nordic Explorer was carrying out seismographic research activities within Penglai-14 concession in the Bo Hai Gulf, China.
- (b) The plaintiffs and/or their servants or agents knew or ought to have known that the navigational warnings in respect of their seismographic activities were not being reported in the Notices to

Mariners or via Navtext from the time the Nordic Explorer commenced their seismographic activities on or about 30 July 1998 to the time of the alleged incident on 18 September 1998.

(c) The Nordic Explorer failed to take any or sufficient steps to cause her seismic cables to be submerged to such a depth and/or to remain at such a depth so as to avert any possible contact with oncoming vessels including but not limited to the Tai He.

(d) The Nordic Explorer having caused her seismic cables to be submerged to a depth of 17 metres at 1538 hours were negligent in causing the said seismic cables to return to the operating depth of 7 metres at 1556 hours (just a few minutes before the alleged contact) when they were aware or ought to have been aware of the presence of oncoming vessels including but not limited to the Tai He.

(e) Those on board the Nordic Explorer failed to keep any or proper lookout and/or failed to make proper use of their radar to appreciate and/or determine in proper time the presence of the Tai He and that those on board the Tai He was navigating in such a manner as to indicate that they were unaware that the Nordic Explorer was towing seven seismic cables of 3,600 metres in length and 600 metres in breadth.

(f) Those on board the Nordic Explorer failed to effectively co-ordinate and/or deploy the six chaseboats in such a manner which would have prevented the Tai He from entering the area where the seismographic activities were being carried out.

(g) The Tai He was at all material times proceeding on the eastbound lane of the Traffic Separation Scheme for transportation vessels on the Northern Coastal Waters as prescribed by the Chinese Ministry of Transport. The Nordic Explorer was at all material times cutting across the Traffic Separation Scheme at a fine angle and in so doing failed to keep clear of the Tai He which was proceeding in the correct eastbound lane.

The defendants` navigation

The defendants made the following admissions in their preliminary act: At about 1545 hours the Tai He was steering a course of 94[ordm] G at a speed of about 17.5 knots when a cluster of echoes were observed. The distance of the targets was 5 to 6 miles bearing less than 1 point on the port bow. None of the plaintiffs` vessels was visually sighted at that time. Further, in relation to the plaintiffs` vessels, the Tai He altered course to 117[ordm] G. At about 1605 hours the Tai He altered course by 5[ordm] to port to return to the course of 094[ordm] G. However, before her heading had reverted to 094[ordm] G the Tai He changed course by 15[ordm] to starboard at about 1607 hours to bring her course to 113[ordm] G. After passing and clearing all the vessels in the cluster at about 1612 hours, the Tai He resumed course to 094[ordm] G.

The Chief Officer of the Tai He, the navigating officer at the relevant time in his evidence gave these additional particulars. At about 1602 hours he observed on the ARPA that the Tai He passed a small target on the port side at a distance of 1 to 1.5 miles. This small target was proceeding in the opposite direction at a very slow speed. It was not possible to observe the vessel visually. At about 1605 hours, he observed again on the ARPA that the Tai He had passed a cluster of targets on his port side at a passing distance of less than 1 mile. Owing to poor visibility it was not possible to ascertain the nature of the targets. As he was able to pass the targets by a safe distance, it was not necessary to determine what type of boats they were although he suspected that they were fishing boats.

In court the Chief Officer was given a paper showing the actual course traversed by the Tai He according to her course recorder from 1545 to 1608. On that paper he marked the cluster of vessels at 1555, 1602 and 1605. He also marked the position and direction of another vessel (‘the big white vessel’) at 1602 and 1605. This was marked as exh P4. It is to be noted that according to this paper the distance between the cluster and the Tai He at 1602 was 8 cables. At 1605 the distance was 7 cables. That was the closest distance. According to his marking the distance covered by the cluster between 1555 and 1602 (7 mins) was about 3 cables. From 1602 to 1603 (3 mins) the cluster travelled a distance of about 7 cables. As shown in exh P4 the ‘big white vessel’ passed ahead of the cluster from East to West.

Charges and counter charges

I must now relate an event of 25 September 1998, that is seven days after the collision. On the day of collision the plaintiffs were unable to intercept and halt the Tai He. After the cables were severed the plaintiffs did some detective work and identified the Tai He as the ship which damaged the cables. Consequently one Mr AJ Cunningham boarded the Tai He on behalf of the plaintiffs and met the Master of the Tai He at the Port of Kobe. Mr Cunningham was accompanied by one Mr Megumi Fujisawa, who was the plaintiffs’ shipping agent in Japan. The Master of the Tai He was asked whether he was aware that his ship crossed and severed the seven seismic cables. The Master called his Officers. Mr Cunningham gave him a copy of a segment of the admiralty chart depicting the Nordic Explorer and the satellite boats protecting the operations. According to Mr Cunningham the Master on seeing the chart stated that ‘he would never take his ship through such a congested area’. The Master was of course referring to the community of the plaintiffs’ chase boats and the buoys. According to Mr Cunningham, the officer on seeing his illustration stated that ‘**whilst he heard urgent navigation warnings being issued via VHF radio**, ... he was nowhere near the Nordic Explorer or her equipment.’

It would be helpful to set out in full the report prepared by Mr Cunningham on the same day:

At 10.30am Friday 25 September the author of this memo boarded M/V Tai He in order to confront the Captain of the vessel regarding the streamer incident that is the basis of PGS incident report ‘Incident Investigation - M/V Nordic Explorer - 18.9.98’.

The visit was brief in order that the Captain could manage his duties as required to conduct his port call in Kobe according to the vessels planned schedule.

Mr Megumi Fujisawa of Mitsubishi Logistics, who acts as PGS freight and shipping agent in Japan, accompanied the author during this visit to the M/V Tai He.

The aforesaid made the following statement:

‘Captain, are you aware that at 1606 hrs Local Tme 18 September 1998 that your vessel crossed and severed 7 seismic cables belonging to our Survey Vessel M/V Nordic Explorer whilst you were transiting between Xingang and Dalian. The position of the incident was approximately 38 deg 35 min N 120 deg 20 min E.’

At this point the Captain called the Officer who was on watch at the time. The Officer brought with him the chart used for the purpose of navigation during

that leg of their voyage.

The author presented a copy of a chart depicting the Nordic Explorer and the Chase/Guard boat protecting the operation. The Captain compared his chart with ours and both parties agreed that the Nordic Explorer and the M/V Tai He were within close proximity at that place, at that time and on that day. Although the Captain's standpoint at that time was not to confirm that his vessel had been the ship that caused the damage. However it was evident to all parties present that we were less than a few miles apart at 1600 hrs on that same day.

The Captain stated that his 16:00 hrs position was approximately 38 deg 36.5 min N 120 deg 18 min E. Whereas our 16:06 position where the cables were cut was approximately 38 deg 35 min N 120 deg 20 min E.

*The Officer who was on watch then stated that whilst **he heard urgent Navigation Warnings being issued via VHF radio, that he was nowhere near the Nordic Explorer or her equipment**.*

*The Captain, on seeing the authors' chart stated that he **would never take his ship through such a congested area*** (referring of course to our community of chase boats).

The PGS agent observed and listened to the reactions of all crew present at the meeting and clearly heard the statements made by the Captain.

Those on board the Tai He prepared their own report in Chinese. The following is the translation of the report.

M/V Tai He V157E moored at Kobe, Japan on 25 September 1998 at 0915. Two persons came onto the vessel. They said they were from PGS Company (see attached photocopies of their name cards) and asked for the Captain. They made representations to the Captain and said: on 18 September at 1605L, Tai He, in the midst of the XIN-DAL voyage, in the Bo Hai Gulf crossed astern of the scientific seismic exploration vessel Nordic Explorer and cut 7 cables that were towed by the vessel. Each cable was 3,500 m long, and about 1,000 m was cut. The seismic exploration vessel was 3,500 GT and there were six small Chinese boats protecting the seismic vessel. The two persons said that the seismic exploration vessel was on a course of 132[ordm], speed was 5 knots. Visibility was about 1 mile. The seismic exploration vessel and the surrounding small boats discovered Tai He and had tried by VHF to call Tai He and fired flares. However, Tai He did not take avoidance action and caused the severance of the cables.

I immediately called the second officer Mei Ya Dong, Chief Officer Qu Jian Ping, assistant navigator Miao Jianqing in order to understand the situation. All 3 of them said: the visibility at the time was 4-5 miles, Tai He was on a course of 094[ordm], speed 17.5 knots.

The second officer said: At a distance of about 6 miles, he observed on the radar the echo of a big vessel (port side about 8[ordm]) and the echoes of

some small boats (port side about 5[ordm]). At a distance of about 4-5 miles, he used the binoculars and observed the big vessel and the small vessel (small dark shadows). The big vessel was behind the small boats (northwest). At 1555L, the second officer handed over the watch to the Chief Officer, and said that there was a big vessel and some small boats on the port side at a distance of 3 to 4 miles. The Chief Officer observed the radar, and then observed with a pair of binoculars. At 1554L, the Chief Officer ordered starboard 15 to the helmsman in order to give way on the right. At about 1606L, the vessel gave way to the big and small vessels. The CPA of the big vessel was more than 1 nautical mile and the CPA of the small vessel was about 0.8 nautical mile. No call was heard on the VHF and no signal flare was seen.

The Chief Officer and the assistant navigator said: at 1552L, the echo of a big vessel and some boats were seen on the radar. Immediately after that they used the binoculars and observed the vessels. The big vessel (white colour) was behind all the boats (orange colour), and it was not that the six boats surrounded the big vessel, as shown in the other party`s map. At 1555L, the Chief Officer order starboard 15[ordm ] to the helmsman until the ship`s heading was 117[ordm], and then he ordered to steady the heading, and gave way to all the vessels on the port side of the Tai He. The CPA of the big vessel was at least 1 nautical mile, and the CPA of the small boats was at least 0.5 mile. No call was heard and no signal was seen. At 1606L, he ordered to go back to the original course. At 1608L, in order to give way to a crossing vessel which was 45[ordm] on the port side 2 miles away and proceeding in a southwesterly direction. Tai He again altered course to starboard until GC113[ordm]. When there was no danger of collision, Tai He returned to the original course of 094[ordm].

We are of the view that the map of the other party was forged, and it was a sheer slanderous accusation. All their vessel and boats passed and was passed clear on the port side of Tai He Our vessel was moored again at a Chinese port. Why didn`t they come to look for us there?

The three navigators and the AB on duty all guarantee with their moral integrity that Tai He gave way to their investigation vessel and the boats on the left, there was no contact at all, and the CPA was more than 0.5 miles.

I hasten to add that all these matters by themselves are not helpful in deciding the issue of liability. They, however, show that the recollection of the officer of the Tai He one week after the incident was very different from their pleaded case and the subsequent evidence of the Chief. They demonstrated that the Chief Officer of the Tai He did not know what was happening and his propensity to fabricate in order to exculpate himself.

An objective analysis of all the evidence shows that the Chief Officer was not aware of the presence of the tail buoys in the vicinity. It is now necessary to look again at exh P4. The position of the `small boats orange` (in fact they were bright yellow) as marked by the Chief Officer of the Tai He in relation to his own vessel at 1602 hours measures a distance of one mile. At this distance he could not see the buoys because visibility was poor due to fog. He has already said that `owing to poor visibility it was not possible to ascertain the nature of the targets`. How then does he know that they were small orange boats. The situation at 1605 hours as illustrated by him would not have been any better. The next paragraph will show that this was a contrived version.

It is now necessary to look at exh P3 which was prepared by experts on my direction. It is to be observed at 1604 hours the Tai He is actually 3 cables distant from the nearest buoy. From 1601 hours the Tai He was on a converging course with the buoys. This was a mindless thing and no one aware of the moving buoys would do such a thing. The Chief Officer said that he assumed that they were fishing vessels. Fishing vessels are not small orange boats. Further, radar reflectors of the buoys would have echoed such strong images that they cannot be mistaken for fishing vessels. This leads me to conclude that the Chief Officer of the Tai He at no time was aware of the presence of buoys as such or as fishing vessels. He was merely navigating in response to the `big white vessel` as he visually observed her based on the estimate of a visibility of 4 to 5 miles mentioned in the report of 25 September 1998. That is the only rational and probable explanation for the manner of his navigation - at 1555 hours he alters course to starboard and once he gains a safe distance from the `big white vessel` he altered course to resume his original direction. That vessel (a Korean ship) was much farther away from the Tai He at that time. He would not have done so had he known that certain objects were on a converging course.

Preliminary points of procedure

It is now necessary to make certain observations on the rules of pleadings. The normal rules relating to pleadings as stipulated in O 18 of the Rules of Court do not apply to cases of collisions at sea between ships. In their stead the parties file documents called Preliminary Acts in accordance with O 70 r 17 of the Rules of Court. Preliminary acts take the place of pleadings.

The preliminary act consist of two parts. In the first part, the party sets out by way of answers standard but important information as stipulated in O 70 r 17(2) Part One of the Rules of Court. In Part Two, the party sets out any additional facts he relies on and `all allegations of negligence or other fault which the party filing the preliminary act makes`. One party does not sight the preliminary act of the other before he files his own preliminary act. Order 70 r 17 requires each preliminary act to be sealed by the court.

The preliminary acts serve three essential functions: First, they force the parties to state their version of the facts while they are fresh in their recollection; secondly, they force the parties to `plead blind` so as to `prevent them from shaping their case to meet the facts put forward by the other party`; thirdly, `statements in a preliminary act are admissions of fact, binding the party making them as strongly as any admission can.` See ***The Admiralty Practice*** by Kenneth C McGuffie para 673, ***The Frankland*** (1872) LR 3 A&E 511, ***The Vortigern*** [1859] Sw 518, ***The Lady Belle*** [1933] P 275[1933] 46 Lloyd LR 342.

In collision cases, more important than the preliminary acts are contemporaneous documentary evidence like the course recorder, the time log, the log books. Advances in technology enable the minutely detailed recording and reproduction of non-human events relating to collision. These documents facilitate an easy and accurate investigation of collisions. Further, these documents make it impossible for witnesses to fabricate or tailor their evidence to present a false case. In determining the issues before me I shall place great reliance on these documents and exh P3 which was prepared on the basis of information obtained from these documents.

Now I come to the most important practice of the admiralty court in collision cases. Although the contents of a preliminary act as admissions are binding on the party filing it, the court is not necessarily bound by them. The court must always ascertain the truth and act on it. This is the first philosophy of judicial process. The court cannot set its face against truth when it stares in front. The words of Lord Normand in ***The Geo W McKnight*** [1947] 80 Lloyd LR 419 at 423 eloquently express the

practice of the court: `The court is not bound by the pleadings of parties and must proceed upon the evidence which it deems to be most accurate and trustworthy.` `Pleadings` here include preliminary acts.

Thus in **The Lady Belle** [1933] P 275[1933] 46 Lloyd LR 342 the plaintiffs called no evidence and merely relied on the preliminary act of the defendants and their log books. The defendants submitted that they had no case to answer. The court held that their preliminary act was evidence and in any event their logs constituted indisputable evidence. Laughton J said that the preliminary acts `have the highest evidential value, are admissions and can be rightly used by the other side as admissions against the parties making them. The point was not perhaps of very great importance, because the same admissions and in the logs, and no one disputes for a moment that the logs are evidence.` Again in **The Geo W McKnight** the court ignored the contents of a preliminary act and preferred to act on a letter written by the ship`s master to her owners because `there was no evidence more accurate and trustworthy than that letter`.

Some uncontroverted facts

It is appropriate now to record the following matters:

(i) After the cables were severed, the plaintiffs retrieved the buoy-end of the severed cables. Measurement of the cut-off portion of the cables was taken. This gives the distance of the Tai He from each of the tail buoy when the cable was severed. This also gives the angle at which the Tai He slit through the water in relation to the line formed by the seven buoys. They did not form a cluster as alleged by the Chief Officer of the Tai He. This gives a distance of 4 cables from the first tail buoy and a distance of 8 cables from the last tail buoy.

(ii) The GPS recorder of the Nordic Explorer recorded its positions at the relevant times. From this information the speed and course of the Nordic Explorer and the buoys can be accurately deduced.

(iii) From the course recorder of the Tai He, the speed and course traced by it can be accurately ascertained.

Next, uncontroverted evidence from the plaintiffs established that there was a Korean vessel which approached the Nordic Explorers` community of vessels from her port side. The plaintiffs managed to divert that vessel. That vessel first altered course to starboard and then to port and passed astern of the 7 tail buoys. As a precautionary mean the streamer cables were dived to a depth of 17 metres. After the Korean vessel was no longer a threat to the cables and the buoys, the Nordic Explorer raised the cables. This was shortly before the Tai He slit through the water in front of the 7 buoys.

As stated earlier, on my direction the experts produced a vivid illustration of the movements of the two principal vessels and the buoys; see exh P3. This greatly facilitated the ascertainment of the true picture of what happened. It gave a bird`s-eye view of what happened.

A major concession by the defendants

By all accounts the Tai He passed in front of the tail buoys. According to the Chief Officer of the Tai He, there was a distance of some eight cables, that is close to one mile between the buoys and the Tai He. Given the length of the cables (that is 3.6 km), the Tai He by her own admission must have severed the cables unless the cables were sunk well below the draft of the Tai He. The cables were

not so sunk. It is therefore an inevitable conclusion that the Tai He severed the cables.

In view of the above the defendants, at the eleventh hour, controverting their own vociferous assertion that they passed the cables and the survey vessel without contact conceded that the Tai He severed the cables. That concession by itself does not condemn the defendants since the cables being submerged were not visible to the human eye. I must therefore consider other evidence before me and derive my decision on liability. In order to do that I must set out certain rules of safe navigation which must be internalized by every competent navigator.

Rules of caution

At the time in question, the visibility was extremely restricted even though the sun had not set. There was a fog. Visibility was less than one mile. Small objects, tow lines and lights in particular in such condition would be practically inconspicuous. In other words vessels would not be visually in sight of one another. In such circumstance it would be reckless to make way at high speed. Speed must be reduced. Next the engines must be on standby in case of an emergency. Reliance on radar and VHF broadcast is imperative. Even then close-quarters situation and crossing ahead of converging vessels must be avoided at all costs. Certainty of the situation must be primary objective. Optimistic assumptions must be avoided: pessimistic assumptions should be preferred. These are the requirements of the Collision Regulations. These are also common sense rules of caution for the avoidance of collisions at sea. Strict adherence to these rules cannot be overemphasized because of the huge losses non-adherence to them can cause to property and human lives.

Defendants were at fault

Having stated the rules I hold that the defendants' servants were incompetent and indiligent in the navigation of the Tai He. They caused the Tai He to cut the cables because first they were blind to the presence of the cables, the buoys and the plaintiffs' other vessels. They should not have cut across in front of the moving buoys. There was no basis to assume that they were not under tow. Next they were indifferent to the plaintiffs' broadcast on Channel 16. They were also blind to the flares fired by the plaintiffs' vessel. It will be remembered that the master of the Tai He stated to Mr Cunningham on 25 September 1998 that 'he would never take his ship through such a congested area'. Evidence before me showed that his Chief Officer did precisely that foolhardy thing when the situation was fluid and uncertain. In this regard I find that the witnesses of the defendants unreliable, untruthful and unintelligent as I shall now demonstrate.

It is to be remembered that they persisted at all times that the Tai He never severed the cables even though according to their own statements the Tai He passed in front of the tail buoys at a distance of about one mile. The cables were 3.6 km long (about 2.16 miles). In the result the cables must be cut. The Master and Chief Officer were unable to appreciate this simple logic because they were consumed by their own assumed infallibility. In consequence they threw overboard all the rules of caution I have mentioned.

It will be remembered that the Chief Officer, as illustrated in exh P4, at 1602 put the distance between the Tai He and the cluster of boats was 1 mile on his port beam when in fact it was 5 cables on his port bow on a converging course. At 1605 he gave the distance as 8 cables; in fact it was 4 cables. At 1603.5 the first buoy was not even 3 cables; and he never saw it. Obviously he was blind to their presence. He would have had no difficulty in sighting them at that distance with binoculars had he maintained an efficient radar and visual lookout.

According to the Chief Officer, the `big white vessel proceeding in her opposite direction as shown in exh P4 was in front of the tail buoys cutting across the cables. There was uncontradicted evidence that this was entirely untrue because that vessel (according to the plaintiffs a Korean vessel) passed the buoys at the rear and not in front of the buoys about ten minutes earlier.

These factors compel me to conclude that the Chief Officer was completely blind to the presence of the buoys and other vessels belonging to the plaintiff. He concocted the evidence about the cluster of vessel with the help of information provided by Mr Cunningham on 25 September 1998

There is a more likely explanation for the faulty navigation of the Tai He. It is to be noted that on 25 September 1998 those on board the Tai He prepared a report. That report contained the following statements. [Italics added].

All three of them said that visibility at that time was 4 to 5 miles.

At 1554 hours, the 2nd Officer handed over to the Chief Officer , informing him that a large ship and small ships, at a distance of 3 to 4 nautical miles were at port side. The Chief Officer observed on the radar and also using binoculars ...

A copy of the course recorder of TAI HE was attached to the report. It contained an indorsement in Chinese which in English read as follows:

*1555L hours on 18/9 record of TAI HE giving way with respect to **the survey vessel.***

The report at the end contained the following: `All 3 officers on watch and the AB have personally guaranteed that Tai He had passed the survey vessel and the small ships on the port side, and did not come into contact with either of the ships, which CPA was more than 0.5 nautical miles.`

The core substance of all these of course contradicted the truth and were in effect abandoned by the defendants. At no time Tai He gave way to the survey vessel. On a balance of probability the Tai He navigated merely in response to the Korean vessel`s movements and acted on extremely poor observation. . This is abundantly clear because those on board the Tai He made the wrong estimate of visibility of 4 to 5 miles. It was this erroneous estimate that was the probable cause of all the subsequent faults. These wrongs were breach of the rules of caution I have mentioned earlier.

The final and more important matter is the indifference of those on board the Tai He to the security broadcast on Channel 16. There was no doubt at all that the broadcast was effected. Further, Mr Cunningham, in the he prepared on 25 September 1998 revealed this vital statement:

*The Officer who was on watch then stated **that whilst he heard urgent Navigation Warnings being issued via VHF radio, that he was nowhere near the NORDIC EXPLORER or her equipment.***

I have no doubt at all that Mr Cunningham recorded the truth. He impressed me as an honest witness. It was the plaintiffs` **coup de grace** against the defendants. The defendants` witnesses, of course,

disowned that admission. They said that they never heard it. I found that the defendants witnesses had a marked propensity to dissemble - to disguise their faults and failures by tailoring their evidence. When all the evidence was analysed it became clear that those on board the Tai He were negligent and incompetent. That was the cause of the stray and negligent navigation of the Tai He. The Tai He ought to have reduced speed and maintained a better radar, visual and auditory watch. Had she done so the fact that the buoys were being towed would have been appreciated. There would have been more to properly assess the situation and the collision would have been averted altogether by a safe margin. The result was that the plaintiffs had made out their case against the defendants.

Contributory negligence

Having concluded that the defendants were negligent I now consider the charges of contributory negligence. I have found that the plaintiffs had made the `securite` broadcasts. It was not the defendants` case that there was no broadcast but that they did not hear them. To me this is unacceptable. I find that the plaintiffs employees made the broadcast and fired the flares. The Tai He crew were indifferent, if not oblivious, to the obvious objects in the vicinity. The Tai He was navigated in a fog area at high speed.

The plaintiffs` had just managed to divert the Korean vessel. The earliest time they could have realized that the Tai He became a threat was shortly after 1555 when she altered course to starboard. Effectively it was at about 1558. Then, unfortunately for them, those on board had another problem. They saw a `ghost` on the starboard bow on their radar. In the meantime before they could take stock of the real situation the Tai He was approaching a congested area at a breakneck speed of 17.5 knots in restricted visibility. It was a difficult situation to cope with - a moment of agony. This explains why the Tai He succeeded in getting away from the scene after severing the cables on 18 September 1998.

All said and done, when faced with a danger, especially when the danger is akin to a rogue elephant, the victim should take some steps for his self-protection. In this case, those on board the Nordic Explorer should have developed a knee jerk reaction of diving the cables as they did when the Korean vessel posed a threat. They should have done this even though the new situation was more complicated. They had sufficient time to do so. They failed to do so imprudently.

I find that the other allegations of contributory negligence were fustian. They lacked substance and the mark of merits.

Conclusion

In the result, after analyzing all the evidence and submissions I came to the conclusion that the defendants had to bear the greater part of the blame. I therefore held that they were to blame 60%. In doing so I deliberately was generous to them.

Outcome:

Order accordingly.