Recent victories for shipowners in the Egyptian courts

By Ashraf El Swefy, El Swefy Law Firm, Egypt A review of three recent welcome decisions from the Egyptian courts in favour of shipowners. Two are from the Appeal court and the third involves a claim against the Suez Canal Authority.

Published 02 September 2024

Contributory negligence by terminal owner relieves tanker owner of strict liability

In 2009 Sumed, the owners of the oil pipeline/terminal from Sohkna, south of Suez up to Sidi Kerrir, west of Alexandria, commenced legal proceedings in Egypt against the owners of a tanker for damages arising out of an incident at the Sidi Kerrir terminal. The tanker had been loading crude oil but was unable to vacate the berth due to a sudden deterioration in weather conditions. As a result, the de-ballasting line of the single buoy mooring (SBM) was damaged and a quantity of oil was spilled.

The first instance court referred the case to a committee of court experts. They found that the damage was mainly caused by defects in the SBM system - as the weather deteriorated, the SBM was unable to resist any tension. Therefore the court rejected Sumed's claim.

Sumed appealed on the basis that the terminal regulations provided for:

- strict liability on the side of the loading ship
- the loading ship to vacate the berth once a deterioration in the weather conditions was observed.

The court of appeal reaffirmed the judgment of the lower court. Under Egyptian law, the tanker owner could not escape strict liability unless it could break the chain of causation by either proving force majeure (not relevant in this case) or contributory negligence by Sumed.

The appeal court rejected Sumed's expert's report which concluded that fault on the part of the ship was established by its very presence at the SBM during bad weather conditions. The court found that the SBM should be able to withstand bad weather conditions as well as good. Particular weight was given to the fact that there are international standards for SBMs, which set out the minimum requirements for an internationally acceptable standard of safety for loading buoys. Therefore, SBMs must be properly maintained to cope with sudden weather deterioration, which was not the case here.

It is reassuring for ship owners and operators that the court of appeal applied the contributory negligence test to relieve the tanker owner of strict liability.

Resurrection of the *customary loss allowance* for shortage claims?

For many years, Egyptian courts accepted a defence under the Hague Rules for liability for cargo shortages - a carrier shall not be liable for "wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods" (Article IV 2 (m)). However, the Hamburg Rules came into force in Egypt in 1992, the possibility of raising such defence came into question because the Hamburg rules (implemented in the domestic Maritime Code in Egypt) did not contain a similar provision relieving the carrier from liability because of the specific nature of the cargo.

A test case was taken to court concerning a shipment of sunflower oil which suffered a shortage falling within the *customary loss allowance*. The court of first instance did not accept the ship owner's defence based on *customary loss allowance* and ruled in favour of cargo interests allowing them the full amount of their claim.

On appeal, the court referred the case to a committee of court experts. Their report concluded that the shortage fell within the *custom of the trade* allowance as evidenced by a certificate from the Chamber of Shipping in Egypt. The court of appeal accepted the experts' findings and reversed the judgment of the lower court, rejecting the shortage claim in favour of the owner.

This decision may re-open the door for ship owners to challenge shortage claims when the shortage falls within the limits of the *customary loss allowance* when the trade allowance can be supported through an institution like, e.g. a Chamber of Shipping.

Suez Canal Authority ordered to refund vessel owners for unproved pollution claim

The Suez Canal Authority (SCA) presented a clean-up claim to the owners of a tug boat, accusing them of causing pollution in the canal. The tug boat owners denied any pollution and asked the SCA to withdraw its claim. As a result, the SCA deducted the clean-up expenses from the tug boat agents' account with the SCA and the owners commenced legal proceedings against the SCA, claiming a refund of the deduction.

The case was heard by the Court of Ismailiah (where the SCA has its head office). It found in favour of the tug owners, ruling that the SCA failed to prove that the pollution was caused by the tug boat and ordered the SCA to refund the deduction.

It is expected that the SCA will appeal.

Our thanks to El Swefy Law Firm for providing the information for this article. Further details about the cases can be obtained from El Swefy.

Any comments concerning this Gard Insight article can be e-mailed to the Gard Editorial Team.