SHANGHAI MARITIME COURT OF THE PEOPLE'S REPUBLIC OF CHINA (CIVIL JUDGMENT)

1 August 2018

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KOREA TUMANGANG SHIPPING CO
v
CS MARINE CO LTD

[2017] H72 MC No.844

Before Presiding Judge: Jia Zhenkun,
Judge: Zhu Xialing,
Judge: Zhang Shanshan and
Clerk: He Zikang

Collision — Liability — Compensation for losses and expenses — COLREGs — Safe speed and lookout — Unreasonable claim — Apportionment of liability.

This was Korea Tumangang Shipping Co's claim for compensation for losses and expenses resulting from a vessel collision between Korea Tumangang's vessel *Turubong3* and CS Marine's *Highny*.

The North Korean vessel MV *Turubong3* collided with the South Korean vessel MV *Highny* in the waters off the east coast of North Korea, causing damage to MV *Turubong3*. Korea Tumangang contended that MV *Highny* was responsible for a series of faults, including not using safe speed, not keeping a cautious lookout, and failure to take timely measures to avoid the collision, and it should assume full liability for the collision accident.

Korea Tumangang brought a lawsuit claiming that CS Marine should assume all liability for the collision involved, and compensate Korea Tumangang for the total losses and expenses suffered due to the collision. CS Marine argued that MV *Turubong3* breached provisions of the International Regulations for Preventing Collisions at Sea 1972 concerning lookout and collision avoidance, and should therefore bear the larger proportion of liability. Further, CS Marine claimed that part of the losses claimed were unreasonable, as they were not allowed to be claimed against in a vessel collision case.

———*Held*, by Shanghai Maritime Court of the People's Republic of China (Presiding Judge: Jia Zhenkun) that CS Marine should assume 80 per cent of the compensation liability of RMB1,300,971.07 plus interest.

(1) According to article 18 para 1 of the COLREGs, power-driven vessels should give way to vessels that are out of control, that are restricted in ability to manoeuvre as well as vessels engaged in fishing and sailing. As such, MV *Highny* should have given way to MV *Turubong3*.

(2) MV *Highny* never observed MV *Turubong3* during its voyage, nor was it aware of the collision. Instead, it only discovered that there was a collision mark on the starboard bow of the vessel after arriving at the port of destination, which is a breach of articles 5 and 7, article 8 para 1 and article 18 para 1 of the COLREGs.

(3) MV *Turubong3* failed to take the most appropriate actions to avoid the collision, and so it should bear corresponding responsibility for the accident.

(4) According to the circumstances at the time of the accident and the degree of fault of both parties, MV *Highny* should take 80 per cent of the responsibility for the accident, and MV *Turubong3* should take 20 per cent of the responsibility.

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The plaintiff, Korea Tumangang Shipping Co, was domiciled at No 2, Rengu, Qingyan District, North Hamgyong, Democratic People's Republic of Korea. The defendant, CS Marine Co Ltd, was domiciled at F8 (4th Street, Zhongyan, Ocean Building), 63-1, 5th Street, Zhongzhongchang Avenue, Busan Gwangyeoksi, Republic of Korea.

With respect to this case arising from a dispute over liability or collision damage between the plaintiff, Korea Tumangang Shipping Co, and the defendant, CS Marine Co Ltd, the plaintiff brought a lawsuit before the court on 22 May 2017. The court accepted the case on the same day, and formed a collegiate trial panel and applied the ordinary procedure to try the case according to law. On 19 July 2017 the court organised the exchange of evidence between the parties. On 28 November the court held a hearing in public. The trial of the case has now been concluded.

[Editors' note: this judgment is translated by Judge Assistant Lin Qin, proofread by Judge Assistant Han Yunfei, and directed by Judge Zhang Shanshan, who are members of Shanghai Maritime Court Youth Translator Team.]

Wednesday, 1 August 2018

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JUDGMENT

SHANGHAI MARITIME COURT OF THE PEOPLE'S REPUBLIC OF CHINA:

I. The plaintiff's claims and the defendant's defence

The plaintiff claimed as follows.

1. On 1 October 2015 the North Korean vessel MV *Turubong3* owned by the plaintiff collided with the South Korean vessel MV *Highny* in the waters off the east coast of North Korea, which led to heavy losses of MV *Turubong3*. The plaintiff contended that MV *Highny* was responsible for a series of faults, including not using safe speed, not keeping a cautious lookout, and failure to take timely measures to avoid the collision, and it should assume full liability for the collision accident.

2. The plaintiff brought a lawsuit before the Shanghai Maritime Court in accordance with a jurisdiction agreement reached with the defendant, namely the owner of MV *Highny*, claiming that the defendant should assume all the liabilities for the collision involved, and compensate the plaintiff for the total losses and expenses suffered due to the collision in aggregate amount of US$382,185 (the payment should be paid according to the US$ to RMB exchange rate on the day of the accident, 1:6.36, equivalent to RMB2,430,696.60).

3. The plaintiff's claims included:

(1) the temporary vessel repair cost of US$28,955;

(2) the complete vessel repair cost of US$28,500;

(3) the overdue payment of the temporary vessel repair cost of US$3,981;

(4) the overdue payment of the complete vessel repair cost of US$2,850;

(5) navigation and berthing equipment cost of US$9,900;

(6) rent loss of US$43,000;

(7) crew medical treatment cost of US$15,032;

(8) crew income loss of US$2,470;

(9) compensation for charterer's loss of US$247,499;

(10) interest calculated at the rate of US$ loan interest as published by the Bank of China during the same period from the date of accident (1 October 2015) to the date when the defendant paid all due compensation; and

(11) the court acceptance fee.

The defendant argued as follows.

4. The plaintiff's vessel only discovered the opponent's vessel when it was about to collide, and only sounded the alarm and failed to take reasonable measures to avoid the collision, which violated articles 5 and 8 of the International Regulations for Preventing Collisions at Sea 1972 concerning lookout and collision avoidance, and so it should bear 70 per cent of the collision liability.

5. The plaintiff's vessel was neither an anchored vessel nor a fishing vessel, and so should be viewed as an underway power-driven vessel. It was unreasonable for the plaintiff to claim its compensation in US dollars and it should be settled in the domestic currency of China. Part of the losses claimed by the plaintiff was unreasonable, and part of the compensation sought concerned non-compensable items in ship collision cases.

II. Evidence of the parties

Regarding the facts of the case and the evidence of the parties, the court confirms as follows.

Facts about the jurisdiction of the case

6. The plaintiff submitted the jurisdiction agreement to prove that both the plaintiff and the defendant agreed to submit the dispute arising from the collision to the jurisdiction of the Shanghai Maritime Court. The defendant had no objection to this matter and the court thus confirms the legal effect of the jurisdiction agreement.

Facts about the colliding vessel and the collision accident

7. The plaintiff submitted the following evidence.

(1) Ship registration certificate, to prove that the plaintiff was the shipowner of MV *Turubong3* at the time of the collision accident.

(2) Ship classification certificate, Korean classification society confirmation letter, cargo refrigeration equipment classification certificate, ship's specification, international tonnage certificate, cargo ship safety certificate and equipment records, safety management certificate, minimum manning certificate, machinery and equipment classification certificate, international loadline certificate, to prove that MV *Turubong3* was seaworthy when the collision accident occurred.

(3) Crew list, seafarer's passport and competency certificate, to prove that crews were well equipped and competent when the collision accident occurred.

The defendant had no objection to the authenticity, relevancy and legality of the above-mentioned items 1 to 3. The court confirms the effect and probative value of proof.

(4) Deck log book, engine log book, station log, sea protest, statement of fact of the captain, crews and witness on the collision accident,

inspection reports, sampling records, maritime accident investigation form, and news reports about the collision accident on the Korean MBN news website, to prove the fact that on 1 October 2015, MV *Turubong3* collided with MV *Highny* in the waters off the east coast of North Korea; MV *Highny*'s fault in the collision accident, including failure to use safe speed, failure to maintain cautious lookout, failure to perform the duty of giving way as the give-way vessel, and failure to take timely measures to avoid collision in response to the collision risk, which violated the International Regulations for Preventing Collisions at Sea 1972 (COLREGs); in the knowledge of the collision accident, instead of stopping the vessel to assist in rescue, it left the scene and did not accept any accident investigation; therefore it should assume full liability for the occurrence of the collision.

8. The defendant argued as follows.

(1) The qualification of the subject issuing the inspection report had not been notarised, and it therefore objected to the authenticity of the inspection report.

(2) It had no objection to the authenticity of other evidence, but the relevancy of the evidence was disputed, because it showed that the facts were different to those claimed by the plaintiff. MV *Turubong3* dropped the sea anchor, yet it was not an anchored vessel and the collision site was not a place for anchorage; the maritime accident investigation form filled by the plaintiff also stated that sea anchor was dropped; MV *Turubong3* was a refrigerated transport power-driven underway vessel, not a fishing vessel, and the real fishing vessels were two vessels following the MV *Turubong3*.

(3) MV *Turubong3* demonstrated gross negligence in lookout procedures, and the witness statement provided by the plaintiff proved that the crew on duty on MV *Turubong3* sounded the alarm only when the two vessels were 150 m apart.

9. The court is of the view that although the news report in evidence no (4) is not notarized, the defendant did not object to its authenticity; the other evidence formed overseas was all notarized; the evidence could be mutually corroborated, and the defendant also did not make any substantive challenge to the authenticity of such evidence. Therefore the court confirms the legal effect of evidence no (4). The court will make a comprehensive decision on the probative value of evidence in combination with other evidence and the facts as found in the hearing.

10. The defendant submitted the maritime accident investigation form, certificate of nationality, certificate of classification, certificate of ship safety management, certificate of ship safety manning, and the crew list. The plaintiff argued that the defendant's maritime accident investigation form was formed overseas without notarization, which was then considered a witness testimony and the witness should appear in court to be questioned by the court and the parties. All other evidence was copied and formed overseas without notarization. Therefore, the authenticity, relevancy and legality of the defendant's evidence should not be recognised.

11. The court is of the view that the maritime accident investigation form in the above-mentioned evidence is the original and is the defendant's statement of the basic facts of the vessel collision, so the court confirms the authenticity and legality of the same and its probative value will be comprehensively considered based on the combination of other evidence and the facts found in the hearing. Other evidence is copied and formed overseas without notarization, so the court does not confirm the effect and probative value of it. However, the court accepts the evidence containing vessel registration information and related facts about MV *Highny*, which can be mutually corroborated with other valid evidence involved and the parties' statements.

Facts about the loss caused by the collision

12. The plaintiff submitted the following evidence:

(1) Loss list and final loss list, to prove that the plaintiff suffered economic losses in the aggregate amount of US$382,185 as a result of the collision accident.

(2) Vessel repair contract, equipment lease contract, labour employment contract, vessel repair log and vessel repair cost application, to prove the plaintiff entrusted Chongjin Port to conduct a temporary repair on MV *Turubong3* from 14 October to 14 November 2015, the cost of which was US$28,955.

(3) Vessel repair contract, vessel repair operation log, vessel repair cost payment application and Korean classification society inspection report, to prove the plaintiff entrusted Chongjin Port to conduct a complete repair on MV *Turubong3* from 15 January to 3 February 2015, the complete repair cost of which was US$28,500.

(4) Payment vouchers for repair cost and overdue fee, and receipts for confirmation of payment, to prove that the plaintiff suffered significant economic losses due to the collision accident, and the plaintiff failed to pay the vessel temporary repair cost and the complete repair cost in time, resulting in an overdue fee of US$3,981

and US$2,850 respectively; the plaintiff paid all repair costs and overdue fees in the aggregate amount of US$64,286 on 3 February 2017, and Chongjin Port confirmed the receipt of the above remittance on 4 February 2017.

(5) Payment vouchers and receipts confirming receipts for the purchase of nautical and berthing equipment, to prove that the plaintiff paid US$9,900 for the purchase of equipment from Chongjin Port's foreign vessel supply store on 13 November 2015, and Chongjin Port's foreign vessel supply store confirmed receipt of the above remittance on 14 November 2015.

(6) Confirmation of medical treatment costs for injured crew, payment vouchers for treatment costs, confirmation receipts and salary calculation tables, to prove that five crewmembers of MV *Turubong3* were injured and received medical treatment; the plaintiff assumed the treatment fee and the loss of crew income in the aggregate amount of US$17,502 as the employer; the plaintiff paid US$15,032 for crew medical treatment to the People's Hospital of North Hamgyong Province on 3 February 2017, which was confirmed by the People's Hospital of North Hamgyong on 4 February 2017.

(7) The charterparty, to prove that when the collision occurred, Xianfeng Laiyuan Office (hereinafter referred to as "Xianfeng") was the charterer of MV *Turubong3*, and the vessel usage fee was US$1,000 per day; due to the collision, the plaintiff suffered loss of rent from the date of collision to the completion of repair (from 1 October 2015 to 14 November 2015) in the aggregate amount of US$43,000.

(8) Xianfeng's request for compensation and its basis of calculation, to prove that the plaintiff was unable to perform the charterparty with Xianfeng due to the collision, and Xianfeng suffered losses in the aggregate amount of US$247,499 in fish, fishing tools and net profit.

(9) The charterparty supplementary agreement, to prove that on 25 September 2015, the plaintiff and the charterer Xianfeng concluded a supplementary agreement, stipulating that the plaintiff would guarantee the charterer use of MV *Turubong3* during the period agreed in the charterparty, otherwise it should compensate the loss of charterer.

(10) Operation log of Xianfeng, to prove that the quality of the dried squid caught by MV *Turubong3* was of grade K and A at the time of the collision; after the accident, MV *Turubong3* could not continue to catch fish; the loss of fish stored in the fish drying platform was 1,380 kg; according to the fishing volume from 21 September to 30 September, the daily fishing output in October was expected to be 1,295 kg; as a result of the collision accident, it could not continue operations during the remaining 30 days of October, and the fish lost in October was 38,850 kg; in summary, the total amount of current and expected fish lost caused by collision was 40,230 kg.

(11) Aquatic product price confirmation letter, to prove that according to the "Raseon Economic and Trade Zone Price Regulation", the price of dried squid caught by MV *Turubong3* was at least US$8/kg; the gross profit loss of fishing was US$321,840, namely 40,230 kg x US$8/kg.

(12) Fuel consumption log and fuel price confirmation of MV *Turubong3*, to prove that the daily fuel consumption of main engine on MV *Turubong3* was 120 kg/hour. The vessel stopped in the waters involved to fish and the daily run time of the main engine was about two hours. During operation, an auxiliary engine was used for lighting and drying operations, and the daily fuel consumption of the auxiliary engine was 5 kg/hour. The daily lighting time was about 11 hours, and the drying operation was about nine hours. The amount of fuel saved by the charterer of MV *Turubong3* due to the collision was 10,200 kg. During August to December 2015, the price of diesel oil in the Raseon Economic and Trade Zone was US$600/ton. In summary, the fuel cost of MV *Turubong3* that the charterer saved due to the collision was US$6,120, namely 10,200 kg x US$0.6/kg.

(13) Labour service fee payment calculation sheet, to prove that the labour cost paid by the charterer of MV *Turubong3* for the production and processing of aquatic products was US$1,000/ton of dried squid products, and the daily average production volume was 1.3 ton. The labour cost saved by the charterer of MV *Turubong3* was US$39,000, namely US$1,000/ton x 1.3 ton/day x 30 days.

(14) Payment voucher for the loss claim of Xianfeng and the confirmation receipt, to prove that the plaintiff paid the liquidated damage of US$247,499 to the charterer of MV *Turubong3*, Xianfeng, and Xianfeng confirmed the receipt of the above remittance on 9 February 2017.

(15) Bank confirmation, to prove that the plaintiff's bank paid the repair cost and overdue cost, the purchase fee of navigation and anchorage equipment, the treatment cost of the injured crews, and the charterer's damages as per the instructions of the plaintiff.

13. The defendant argued that it had no objection to the authenticity of the above-mentioned evidence, but had objection to the relevancy of some evidence. Regarding the repair cost, the defendant

argued that the plaintiff should provide a third-party inspection report to prove that the repair items were all caused by the accident; the overdue fee of vessel repair was caused by the plaintiff and was not compensable in ship collision cases; the injured crew's loss of income could not be corroborated by money transfer records; rent losses should deduct costs; in the compensation of loss to the charterer, except for the loss of 1,280 kg of fish which was covered in the compensation scope, there was no evidence for the loss of fishing tools; the profit loss of charterer was a remote and unpredictable loss, which was not compensable as stipulated in the judicial interpretation of the Supreme People's Court; it was unreasonable for the plaintiff to use US dollars for claims, instead of domestic currency, because the plaintiff was in North Korea, and so the defendant raised an objection regarding whether the bank payment was real or only for bookkeeping.

14. The court holds that the above-mentioned evidence provided by the plaintiff was original and it went through notarization formalities. The evidence could be mutually corroborated and the defendant had no objection to the authenticity, so the court confirms the authenticity and legality of the above-mentioned evidence. The probative value of the evidence should be comprehensively considered based on the combination of the facts found in the case, and the provisions of laws and judicial interpretations of the Supreme People's Court.

15. The defendant did not provide evidence on the facts about the loss caused by the collision.

III. Court's finding of facts

The court finds the facts of this case as follows.

16. Facts relating to the colliding vessels and collision accident.

(1) The home port of MV *Turubong3* was Chongjin Port, North Korea. MV *Turubong3*'s particulars were: gross tonnage 299 tons, net tonnage 90 tons, total length 41.28 m, moulded breadth 8.10 m, moulded depth 9.75 m, vessel's call sign HMYU, IMO number 8891871, built in 1970. MV *Turubong3* was a refrigerated cargo vessel and the shipowner was the plaintiff.

(2) The home port of MV *Highny* was Jeju, South Korea. MV *Highny*'s particulars were: gross tonnage 23,312 tons, net tonnage 13,714 tons, total length 180.73 m, moulded breadth 29.60 m, moulded depth 15.50 m, vessel's call sign JJR-078867 (DSPA8), IMO number 8606068, built in August 1986. MV *Highny* was a steel bulk carrier and the shipowner was the defendant.

(3) Since 21 September 2015, according to the charterparty with Xianfeng, MV *Turubong3* was engaged in fishing processing operations in the eastern waters of the Korean Peninsula as an auxiliary vessel. On 1 October 2015 MV *Turubong3* dropped anchor and was moored at 131°31.26' east longitude and 39°12.56' north latitude. MV *Turubong3*'s mooring lights and fishing signal lights were displayed on the bow and stern, and 12 working lights were being used to attract squid. At that time, the weather in the water involved was: south-west wind, with a wind speed of 7 to 10 m per second, and a wave height of 1 to 1.5 m, and the sea visibility was good. At about 00.45 Beijing time (the following times are Beijing time), the crew on duty saw that the port-side vessel MV *Highny* was approaching and thought that MV *Highny* could see their lights and avoid them. But nearly five minutes later MV *Highny* had not changed its course, but instead got closer and closer. The crew on duty on MV *Turubong3* then reported to the captain and sounded the alarm. The captain ordered immediate activation of the main engine and yelled loudly to warn the fishermen on the deck. A few minutes later, at 00.55, MV *Highny* crashed into the port side of MV *Turubong3*.

(4) After the collision, the captain of MV *Turubong3* called MV *Highny* via VHF to acknowledge the collision situation between two vessels, but received no response. According to the maritime statement of facts signed by the captain of MV *Turubong3* after the collision and the plaintiff's statement in the court hearing, the actual location of the collision was 132°31.4' east longitude and 39°12.9' north latitude. The indemnity insurer's claim-handling department in North Korea conducted an inspection of the damage of MV *Turubong3* on 8 October 2015, and issued a preliminary inspection report. The inspection report stated that: due to serious injuries, five crew members were treated in hospital; 20-m of the port-side bow board was damaged; 3-m of the port stern bulwark was damaged; 1.2-m of the bow was bent; the port side ceiling of the bridge, navigation lights, working lights and navigation equipment antennas were damaged; 20-m of the port bow fire pipe was bent; and the bow cable machine was damaged. Due to personal injuries and damage to the hull, equipment and fishing facility, MV *Turubong3* returned to Chongjin Port with other fishing vessels after the collision.

(5) On 28 September 2015 MV *Highny* transported coal from Hormuz Port, Russia to Kaohsiung Port, Taiwan, China. The defendant stated that at the time of the accident on 1 October 2015, the second officer was on duty. The radar was on, and the speed had been maintained at about 10 knots. The crew on duty did not find

any vessel and was not aware of the collision. At 01.00 on 1 October 2015 the crew on duty received the VHF contact call by MV *Turubong3*, claiming that there was a collision and asked to speak with the captain of MV *Highny*. The crew on duty decided to continue sailing because they could not confirm the collision. After the vessel arrived at Kaohsiung port, the crew found new traces of peeling paint on the starboard bow of the vessel.

(6) On 14 March 2016 South Korea's MBN News website reported that: according to the maritime police investigation, the Jeju-registered cargo vessel *Highny* was on the high seas near the North Korean side on the morning of 1 October of last year (190 nm north-east of Jeongdongjin, Gangneung City, Gangwon-do); this vessel collided with the North Korean fishing vessel MV *Turubong3* and sailed to the south. The coastguard also learned from the captain that "the accident was caused by the negligence of a second-class navigator on duty. At the time of the accident, since it was midnight, the captain did not realise that there was a collision accident at that time".

(7) Afterwards, the plaintiff and the defendant failed to negotiate the disputes involved. The plaintiff and the defendant reached a jurisdiction agreement on 20 March 2017, agreeing that all disputes arising from or related to the collision of the vessels involved should be placed under the jurisdiction of the Shanghai Maritime Court.

17. Facts related to losses.

(1) After the accident, the plaintiff entrusted Chongjin Port to conduct a temporary repair to MV *Turubong3* from 14 October to 14 November 2015, and conduct a complete repair on MV *Turubong3* from 15 January to 3 February 2016. The plaintiff incurred the aggregate cost of US$28,955 for the temporary repair and US$28,500 for the complete repair. Since the plaintiff failed to pay the temporary repair cost and the complete repair cost in time, an aggregate amount of overdue fees of US$3,981 and US$2,850 were incurred. The plaintiff paid the repair costs and the overdue fee in the aggregate amount of US$64,286 on 3 February 2017. The plaintiff paid US$9,900 for the purchase of navigation and berthing equipment to the Chongjin Port foreign vessel supply store on 13 November 2015, and the store confirmed receipt of the above remittance on 14 November 2015. As a result of the collision accident, five crew members of MV *Turubong3* were injured and received medical treatment; the plaintiff, as the employer, bore the treatment fee of US$15,032 and paid the above treatment fee to the People's Hospital of North Hamgyong, North Korea on 3 February 2017. According to the calculation by the plaintiff, the five injured crew members suffered income losses of US$2,470 during the treatment period based on their normal living expenses.

(2) On 20 September 2015 the plaintiff concluded a charterparty with Xianfeng concerning MV *Turubong3*, stipulating that the shipowner was the plaintiff and the charterer was Xianfeng. The charter period was from 20 September 2015 to 31 October 2015 and the vessel usage fee (charter hire) was US$1,000 per day. On 25 September 2015 the two parties concluded a supplementary agreement for the performance of the contract, stipulating that the plaintiff would guarantee the use of MV *Turubong3* by the charterer, Xianfeng, during the period agreed in the charterparty and be responsible for all accidents that occurred during the contract period (except force majeure), and compensate for the losses the charterer suffered thereby. During the contract period, the charterer should use the vessel specified in the contract and could not charter another vessel, and should pay the charter hire on time. If there was any violation, the plaintiff should be compensated for the losses caused thereby.

(3) According to the plaintiff's statement in the hearing, the specific method of operation of MV *Turubong3* was to go to sea with two operating fishing vessels. The operating fishing vessels used fishing nets to catch squid in a 3 to 4 nm area around MV *Turubong3*. The crew of MV *Turubong3* would use longline hooks to fish at night. The crew would select, weigh, and process the fish caught by MV *Turubong3* and the two fishing vessels during the daytime. The relevant evidence provided by the plaintiff showed that due to the collision accident, the loss amount of fish stored in MV *Turubong3*'s fish drying platform was 1,380 kg, and the economic loss was US$11,040. MV *Turubong3* was unable to continue to operate with two fishing vessels during the remaining 30-day charter period in October, and the estimated fishing loss of the three vessels was 38,850 kg. Deducting the fuel cost of MV *Turubong3* of US$6,120, the fuel cost of two fishing vessels of US$1,296, labour cost of US$39,000, 30-day vessel charter hire (the rental cost of US$30,000), the charterer's net profit loss was US$234,384. The charterer also suffered the loss of fishing tools on the MV *Turubong3*, and the economic loss for this was US$2,075.

(4) On 28 December 2016 Xianfeng sent a request for compensation of damages to the plaintiff, requesting the plaintiff compensate it for fish loss and profit loss of US$247,499

under the charterparty. The plaintiff paid the above payment to Xianfeng on 3 February 2017. Xianfeng confirmed receipt on 9 February 2017.

IV. Reasoning of the court

The court holds as follows.

18. This case is related to a dispute over liability following a vessel collision. Since the collision happened in the eastern waters of the Korean Peninsula, and both the plaintiff and the defendant are foreign legal entities, this case has foreign-related factors. The two parties concluded a jurisdiction agreement before the lawsuit, agreeing to choose the Shanghai Maritime Court to exercise the jurisdiction, and did not raise any objection to jurisdiction during the hearing.

19. Article 8 of the Special Maritime Procedure Law of the People's Republic of China provides:

> "Where all the parties to a maritime dispute are aliens, stateless persons, foreign enterprises or organisations and have agreed in writing to be subject to the jurisdiction of a maritime court of the People's Republic of China, notwithstanding that the place that is actually related to the dispute is not within the territory of the People's Republic of China, the said maritime court of the People's Republic of China shall have jurisdiction of the dispute."

As such, the court confirms the parties' choice court agreement.

20. During the hearing, both parties chose to apply the laws of the People's Republic of China to handle the dispute in this case. The court confirms that the applicable laws for handling the dispute in the case are the laws of the People's Republic of China. The Maritime Code of the People's Republic of China and relevant regulations are special laws that regulate the disputes arising from vessel collision damage and should be applied in priority. Meanwhile, the International Regulations for Preventing Collisions at Sea 1972 should be applied in the determination of the navigation rules applicable in this case.

21. The issues of the dispute involved are the determination of the proportion of liability in the collision accident and the amount of loss.

22. Regarding the proportion of liability of the collision accident:

(1) During the hearing, the two parties had no objection to the fact that the accident was a collision of vessels in sight of one another, and the rules applying to "conduct of vessels in sight of one another" should be applied. The defendant's vessel MV *Highny* was a motor vessel underway. The plaintiff's vessel MV *Turubong3* dropped anchor in the waters where the collision happened, and it was engaging in related fishing and processing operations at sea as an auxiliary vessel for fishing vessels, and should be deemed as a fishing vessel.

(2) According to article 18 para 1 of the International Regulations for Preventing Collisions at Sea 1972, power-driven vessels should give way to vessels that are out of control, that are restricted in ability to manoeuvre as well as vessels engaged in fishing and sailing. As such, MV *Highny* should have given way to MV *Turubong3*.

(3) According to articles 5 and 7, article 8 para 1 and article 34 para 4 of the International Regulations for Preventing Collisions at Sea 1972, every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision; shall use all available means appropriate to the prevailing circumstances and conditions to determine if a risk of collision exists, including that assumptions shall not be made on the basis of scant information, especially scant radar information; any action taken to avoid collision shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship; when vessels in sight of one another are approaching each other and from any cause either vessel fails to understand the intentions or actions of the other, or is in doubt whether sufficient action is being taken by the other to avoid collision, the vessel in doubt shall immediately indicate such doubt by giving at least five short and rapid blasts on the whistle, such signal may be supplemented by a light signal of at least five short and rapid flashes.

(4) According to the defendant's statement, MV *Highny* never observed MV *Turubong3* during its voyage, nor was it aware of the collision. Instead, it only discovered that there was a collision mark on the starboard bow of the vessel after arriving at the port of destination, which was an obvious violation of articles 5 and 7, article 8 para 1 and article 18 para 1 of the International Regulations for Preventing Collisions at Sea, 1972, and it should be mainly responsible for the occurrence of the accident.

(5) MV *Turubong3* observed the incoming vessel MV *Highny* about 10 minutes before the collision and watched MV *Highny*'s progress, but did not make a reasonable analysis and estimation, did not pay enough attention to the danger of collision, and did not use the whistle to warn the incoming vessel as required. As such, MV *Turubong3* also showed negligence. After

allowing a close-quarters situation, namely, when it discovered that MV *Highny* had obviously not taken appropriate actions, MV *Turubong3* failed to take the most appropriate actions to avoid the collision, which violated articles 5 and 7, article 8 para 1 and article 34 para 4 of the International Regulations for Preventing Collisions at Sea 1972, and so it should bear corresponding responsibilities.

(6) According to the circumstances at the time of the accident and the degree of fault of both parties, MV *Highny* should take 80 per cent of the responsibility for the accident, and MV *Turubong3* should take 20 per cent of the responsibility.

23. Regarding determination of the amount of loss.

(1) With regard to the determination of the plaintiff's loss caused by the collision accident involved, article 1 of the Provisions of the Supreme People's Court on Issues concerning the Trial of Property Damages Compensation for Vessel Collision and Touching Cases (hereinafter referred to as "Provisions on Compensation for Collision Damages") stipulates that: "the claimant may claim compensation for the property damage caused by the collision or touching of vessels, and relevant expenses and losses that occurred subsequently after collision or touching, reasonable expenses and loss incurred for avoiding or reducing damage, and the loss of expected benefits. No compensation shall be paid for the loss or the enlarged loss caused by the fault of the claimant". Articles 3 and 4 of the Provisions on Compensation for Collision Damages stipulate the specific scope of compensation for vessel damage and loss of property on board.

(2) On this basis, the court holds as follows.

(a) Regarding the claim of the plaintiff for the temporary repair cost of US$28,955, the complete repair cost of US$28,500, and the purchase of navigation and berthing equipment cost of US$9,000, they are all losses directly caused by the collision accident involved and the plaintiff has proved the relevancy between the loss and the collision accident. Although the defendant raised objection to the reasonableness of the repair costs, it was insufficient to refute the plaintiff's proof. Therefore the court admits the plaintiff's aforementioned losses.

(b) Regarding the plaintiff's claim on the overdue fee of repair cost of US$6,831. This was caused by the plaintiff's failure to pay the repair cost in time and this loss was enlarged by the plaintiff's fault, and should be borne by the plaintiff itself.

(c) Regarding the plaintiff's claim on rent loss (loss of hire) of US$43,000, which was calculated from the date of the collision, that is, from 1 October 2015 to the completion date of temporary repair of 14 November. Based on the charterparty rent hire of US$1,000 per day, such loss should be supported by corresponding evidence. Although the charter period agreed in the charterparty was from 20 September to 31 October 2015, there would be a corresponding rent loss before completion of the temporary repair of MV *Turubong3* and resumption of fishery production and processing. As such, it should be reasonable to claim that the rent loss should be calculated to the date when the temporary repair is completed. This is a kind of loss of expected benefit and the court supports it. Meanwhile, under the charterparty involved, the cost of crew salaries, materials, insurance premiums, etc, that the plaintiff should provide or pay could not be saved or reduced during off-hire. As such, the court rejects the defendant's defence that these costs should be deducted from its claim for rent loss, and upholds the rent loss US$43,000.

(d) Regarding the plaintiff's claim of US$15,032 for the treatment of the injured crew members, the plaintiff actually paid it and the defendant had no objection to this, and therefore the court recognises the plaintiff's loss. However, the plaintiff did not provide evidence to prove the reasonableness and basis for claiming the income loss of US$2,470 of the injured crew during the treatment period, so the court does not support this claim.

(e) Regarding compensation for charterer's damages, including compensation for loss of fish of US$11,040, compensation for loss of fishing tools of US$2,075, and compensation for loss of profits of US$234,384, in the aggregate amount of US$247,499, it is the plaintiff's claim for compensation of the loss to the third party in the collision and the plaintiff already paid this. The defendant had no objection to the compensation sum of US$11,040 for the loss of fish and the court recognises this. The loss of fishing tools includes the loss of the boxes to contain the fish and fishing operation lights, which were damaged by the collision. It has a causal relationship with the collision accident, and can be mutually corroborated with the inspection report provided by the plaintiff, so the court recognises it.

(f) Regarding the charterer's claim of US$234,384 for loss of profit, the court holds that based on the valid evidence in the case, the plaintiff was unable to actually perform the

charterparty with Xianfeng due to the accident, so the plaintiff should assume corresponding liability for breach of contract for the resulting fishing production and operation loss. The plaintiff already paid compensation (to the charterer), which has a contractual and factual basis and is not inappropriate. The loss suffered due to the compensation should be the actual loss of the plaintiff, so it is entitled to claim compensation from the defendant. Regarding the reasonable amount of compensation, the plaintiff provided the charterer's operation log, aquatic product price confirmation, fuel engine log of MV *Turubong3*, fuel price confirmation, and labour service fee payment calculations, to prove the charterer's actual losses and the reasonableness of the plaintiff's compensation.

(g) The court holds that in accordance with article 10 of the Provisions on Compensation for Collision Damages, when calculating the loss in fishing season, factors such as the role of the colliding fishing vessel in fishing operations should be considered. In this case, the specific operation method of MV *Turubong3* was to go to sea with two operating fishing vessels. The operating fishing vessels used fishing nets to catch squid at 3 to 4 nm around MV *Turubong3*, the crews of which used longline hooks to fish on the vessel at night, and during the day they selected, weighed and processed the fish caught on the vessel and the two operating fishing vessels. Although the plaintiff stated that after the collision accident, the other two fishing vessels did not go out to fish again, and the charterer could not find a replacement vessel for MV *Turubong3* in a short time, it did not provide corresponding evidence to support this. Therefore the court comprehensively considers the role of MV *Turubong3* in the fishing operations involved, as well as the rent level and the expected profit of MV *Turubong3*, and determines that the reasonable claimable amount for compensating the charterer's loss of use of the vessel should be half of the total profit loss of the two fishing boats and MV *Turubong3* of US$234,384, which is US$117,192.

24. According to article 14 of the Provisions on Compensation for Collision Damages, the currency for calculating damages should be calculated as per the agreement of the parties; if there is no such agreement, the currency used for vessel operation or production and operation should be used. The charterparty involved agreed that US dollars should be used for payment, and the plaintiff also used US dollars for subsequent handling, payment and settlement of the accident. The plaintiff's calculation of its losses in US dollars did not violate the law, nor did it harm the defendant's legal rights. It is not inappropriate for the plaintiff to make a claim against the defendant that the compensation should be calculated at the US dollars to RMB exchange rate 1:6.36 on the day of the accident. The court confirms this.

V. The court's judgment

25. In conclusion, the defendant should assume 80 per cent of the compensation liability to the plaintiff. Accordingly, the plaintiff should be compensated for the cost of vessel repairs of US$45,964, the purchase of navigation and berthing equipment costs of US$7,920, the rent loss of US$34,400, the crews' treatment expenses of US$12,025.60, the charterer's damages of US$104,245.60, in the aggregate amount of US$204,555.20, equivalent to RMB1,300,971.07. According to article 13 of the Provisions on Compensation for Collision Damages, interest should be calculated from the date of loss or the date of expense. The cost of temporary and complete repairs of the vessel, the cost of treatment for the injured crew, and the compensation for the loss of the charterer were paid by the plaintiff on 3 February 2017. The court confirms that the interest of the above costs in the aggregate amount of RMB1,318,15.87 should be calculated from 3 February 2017. For the purchase of nautical and berthing equipment costs, Chongjin Port's foreign vessel supply store confirmed that the plaintiff's purchase payment was received on 14 November 2015; for the rent loss, the date the plaintiff's vessel can be put into fishery production and processing after the temporary repairs was 14 November 2015. The court confirms that the interest of the above two expenses and losses in the aggregate amount of RMB269,155.20 should be calculated from 14 November 2015. Since the currency claimed by the plaintiff is RMB, the court calculates the corresponding interest based on the benchmark RMB loan interest rate as published by the People's Bank of China during the same period.

26. According to article 169 of the Maritime Code of the People's Republic of China, article 5 of the Provisions of the Supreme People's Court on Some Issues about the Trial of Vessel Collision Disputes Cases, and article 1, article 3 paras 2 and 3, articles 4 and 7, article 9 paras 4 and 5, article 11 para 1, article 13 paras 2 and 3, and article 14 paras 1 and 2 of the Provisions of the Supreme People's Court on Issues concerning the Trial of Property Damages Compensation for Vessel Collision and Touching Cases, article 64 para 1 of the Civil Procedure Law of the People's Republic of China, and article 8 of the Special Maritime Procedure Law of the People's Republic of China, the judgment is as follows:

(1) The defendant, CS Marine Co Ltd, should compensate the plaintiff, Korea Tumangang Shipping Company, RMB1,300,971.07 plus interest (including interest on RMB269,155.20 calculated from 14 November 2015, and interest on RMB1,031,815.87 calculated from 3 February 2017, until the actual payment date of the defendant, all calculation to be based on the RMB benchmark loan interest rate as published by the People's Bank of China for the same period).

(2) Korea Tumangang Shipping Co's other claims should be rejected.

27. If the defendant, CS Marine Co Ltd, fails to perform the obligation to pay money according to the period specified in this judgement, it should pay double interest for belated payment of the debt during the period of delay according to article 253 of the Civil Procedure Law of the People's Republic of China.

28. Regarding the court acceptance fee in the amount of RMB26,101, the plaintiff Korea Tumangang Shipping Co shall bear RMB12,131.74, the defendant CS Marine Co Ltd shall bear RMB13,969.26.

29. If being unsatisfied with this judgment, the plaintiff and the defendant may appeal to the Shanghai High People's Court of the People's Republic of China within 30 days from the date of service of the judgment by submitting an appeal submission to this court and providing copies of the appeal submission according to the number of the opposing parties.