Solomon's Justice in Maritime China

The maritime court structure of China as we know it today was first set up in 1984 and over the relatively short period since then, the ten main maritime courts have established a further 39 branch courts up and down the coast and the Yangtze, surely the largest maritime court structure worldwide. Together they determine matters according to the Chinese Maritime Code of 1993.

Leaving aside the sheer number of cases (there were upwards of 16,000 filed in 2015), one useful way to look critically at the quality of justice being dispensed by China's maritime courts is to read the judgments both at first instance and on appeal to the local High Court or occasionally on petition to the Supreme Court in Beijing. Several of the 10 main courts maintain their own websites; a recent hearing of a salvage case by the Supreme Court in Beijing was televised.

One decision worth reviewing as an example was a cargo claim heard in the Shanghai Maritime Court, which went on appeal to the Shanghai's High Court, whose decision was handed down on 12 November 2015. In translation, the combined judgments run to almost 100 pages.

There were a number of parties to the dispute including some well known names: Zurich General Insurance (China), Ping An and Murmansk Shipping Co. The claim arose from damage to a shipment of crawler cranes (built and shipped by Zoom Lion) onboard the "Yuriy Arshenevskiy", a roro break bulker, en route from Tianjin and Shanghai bound for Mundra and Mumbai.

Trouble began when the vessel encountered Typhoon Muifa shortly after leaving Shanghai. Once landed in India, the cargo was found to be more or less a total loss and was shipped back to Shanghai where it was sold as scrap.

The cause of the cargo damage was put down to a mixture of improper lashing and the effects of the typhoon, exacerbated by negligence in the navigation of the vessel. Both maritime courts decided on the facts that the improper lashing was 20% to blame for the loss, the level at which the carrier had to compensate the cargo interests. The carrier was exempt in the normal way from the remaining 80% liability caused by the combination of the excepted perils of typhoon and negligence in navigation.

The principles being applied under the Chinese Maritime Code in this case were very much the same as those that would be applied under English law. Applying a ratio of blame to the loss might raise a question among maritime lawyers generally: how can a court decide that improper lashing contributed only 20% to the damage? Should it not be black and white: fully to blame or not?

The fact is that most cargo claims are settled and very often the level of settlement is based on an assessment of the risk that the owners will be found liable. That process of finding a

reasonable settlement is not very different from the approach taken by the judges in this case. A touch of Solomon's justice.

A final point to note is that the Murmansk Shipping Co as the so-called "actual carrier" had no liability. That rested with the last in the charter chain, a Shanghai based company. There is one certainty: the maritime courts in China will be dealing with an increasing number of complex and novel disputes and at times evolving new ways to determine them.

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