



The Educator



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Traveling to St. Vincent for the 20th Annual Insurance Education Conference of the AIIC – November 6th to 8th 2019?

What happens when there is a collision at sea en route to mainland Saint Vincent?

Section 136 and section 350 of the ***Shipping Act of Saint Vincent and the Grenadines*** provides that liability for damage caused as a result of a collision should be apportioned according to the degree of fault of each ship involved in the collision. The Act also says that where it is impossible to ascertain the degree of fault of each vessel the liability must be apportioned equally.

Collision at sea

Let us look at the recent decision of the High Court of Saint Vincent and The Grenadines in ***Shellene Mc. Neil v. Clifford Young and Jerry Lewis*** (2019) [Released August 9, 2019].

On 12th April 2009, the claimant, Shellene Mc. Neil was a passenger on Clifford Young's vessel that was returning from Bequia to mainland Saint Vincent. Young's vessel was travelling along the port side of the MV Jaden T, which was operated by captain Elvis Gooding, who was a licensed boat captain with 35 years of experience in that industry.

The evidence suggests that there were a number of vessels in the area at the time. Mr. Young, during the course of his journey, crossed the bow of the Jaden T from one side to the other. Jerry Lewis was operating his vessel along the starboard side of the Jaden T. He too was passing the bow of the Jaden T at the same time as Mr. Young. They were all travelling in the same direction. It is during this maneuver that the vessels collided.

The 2nd defendant, Jerry Lewis insists, given that he was on the starboard side of the Jaden T, and essentially also that of Mr. Young. Mr. Lewis argued that it was Mr. Young's duty, in keeping with Rule 15 of the International Regulations for Preventing Collisions at Sea, which is applicable in Saint Vincent and the Grenadines by virtue of the Shipping Act of 2004, to give way.

The Rule states:

“when two power driven vessels are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel.”

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The claimant brought an action in negligence for special and general damages as a result of injuries sustained. The 1st defendant, on whose vessel the claimant was a passenger, although having initially filed a defence, has admitted liability. The main issue for consideration in this case was whether the 2nd defendant was also liable and, if so, to what degree did he contribute to this collision.

The Referee

On 27th February, 2014 the parties agreed to refer this matter to a referee, with knowledge of the Rules of the sea, for his consideration. After a protracted period, and numerous adjournments, the referee was finally able to conduct his hearing and submitted a report for the court's consideration on 2nd April, 2019.

The Rules

The referee, in his report and under oath, points to section 6 of the regulations which requires vessels to be operated at a "safe speed and to take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions."

Section 6 also mandates that vessel operators consider the state of visibility, the traffic density and maneuverability of the vessel as factors which should determine the level of speed at which to proceed.

Regulations 7 and 8 also address the issue of risks of collision and actions necessary to avoid a collision. In short, according to the referee, "right of way" does not absolve a vessel operator from the general duties of safety, including speed, the need for a proper lookout and the ability to avoid a collision if it is apparent that one may take place.

Mitigation

The referee remained adamant that the area was very busy on that day with a number of vessels at sea. When coupled with the speed at which the vessels were operating, he formed the view that neither defendant had complied with rule 5.

"Mr. Lewis made a good and prudent decision in attempting to mitigate the collision impact, in the absence of tangible evidence, he put his two motors in reverse. The fact remains by his own admissions that there was a lot of other vessels that were in the area of which he was unable to give a number of and which the rule 6 states, every vessel shall at all times proceed in a safe speed so that she can take proper and effective action to avoid a collision and be stopped within a distance appropriate to the prevailing circumstances and conditions. In determining a safe speed the following factors shall be among those taken into account: the traffic density including concentrations of fishing vessels or any other vessel given the circumstances to include visibility. Rule 5 requires consideration of the prevailing circumstances and conditions. Danger can approach from any directions for unforeseen reasons. The risk of collision is always present."

The referee accepted that there was some attempt by the Mr. Lewis to avoid the collision, despite Mr. Gooding's assertion. However, what the referee did appear to accept, and underscored in court under oath, was that the Mr. Lewis operated the vessel with too much speed in the prevailing circumstances.

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Contributory negligence

The referee went on to make certain findings of fact, one of which was that Mr. Lewis was moving with too much speed in the prevailing circumstances. He found, based on the evidence of all witnesses before him, that the area was particularly busy on that day, with a number of vessels operating at the time. The Jaden T was itself operating on a tour and moving at a slow pace. Mr. Elvis Gooding, who was operating the Jaden T and who was a licensed boat captain of 35 years' experience, testified that none of the vessels involved in the collision took any evasive action in order to avoid the collision. In fact, in his view, the vessels were both operated at a speed which would have made it difficult to avoid this collision.

The referee also considered the requirement under section 5 of the Rules of the Sea for each vessel to maintain a proper look out by sight and hearing and any appropriate means in the prevailing circumstances. He accepted that this does not mean that the captain cannot operate as the "look-out" himself and that there is no requirement for a 2nd person to be appointed for that purpose. He however underscored that what must be considered is the prevailing circumstances at the time.

In light of the Rules and the circumstances of the loss, the referee had little difficulty in concluding that the Young was the main cause of the collision. However, what appears to trouble the mind of counsel for Lewis was the finding that Mr. Lewis was also negligent. This referee essentially found that both defendants contributed to the collision and, when posed with the question as to his own views the referee recommended a 70%-30% apportionment of liability with the Mr. Young bearing the greater burden.

The Court

Master Ermin Moise accepted the report of the referee and ordered that the 1st defendant shall be responsible for 70% of all damages and costs awarded to the claimant and the 2nd defendant shall be responsible for 30% of all damages and costs awarded to the claimant. An assessment of damages is set for 20th September 2019.

Strange but true

In ***Shellene Mc. Neil v. Clifford Young and Jerry Lewis*** (2019), Master Ermin Moise said:

I am mindful that this accident occurred over ten years ago now and the case has been lodged in the system for in excess of seven years. Whilst I would not seek to place blame on anyone, I would only mention that the issue of delay continues to be a most vexing issue for the system we seek to administer. It continues to undermine public confidence in the justice system and we must all do our part to correct this issue. An individual who has suffered an injury of this nature, in a case which is not particularly complex, should not have to wait for such a long period of time to have matters brought to an end. There must be finality to litigation within reasonable time.

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“ Rethinking and Repositioning to reap
Financial Success ”

▶ **SAVE THE DATE** | 
November 6th - 8th, 2019

▶ **What will be discussed?**
Trending topics affecting the financial sector.

▶ **Who should attend?**
Managers, Middle Manager, Leaders & Future Leaders
in the Financial Sector.

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