

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(ADMIRALTY JURISDICTION)

**ADMIRALTY SUIT NO. 06 of 2010.**

**IN THE MATTER OF:**

City General Insurance Co. Ltd.  
... Plaintiff.

**VERSUS**

**M.V. PRINCE OF MADHUR KHOLA**  
*and* others.  
... Defendants.

Mr. Hasan Kabir Shahin, Adv.  
...For the plaintiff.  
Mr. Muhammad Ohiullah, Adv. with  
Mr. Md. Abu Bakar Siddique, Adv.  
.... For the defendant No. 4.

**Heard on: 21.01.2026**

**And**

**Judgment on: The 16<sup>th</sup> February, 2026**

**Present:**

Justice Sikder Mahmudur Razi

1. The instant admiralty suit has been instituted by the plaintiff for recovery of damage and compensation.
2. The plaintiff 's case, in substance, is that it is a private limited company engaged in the business of manufacturing cement and, for that purpose, imported cement clinker from abroad. In connection with such import, the plaintiff opened a letter of credit dated 21.06.2009 for importing 7150 MTs of cement clinker and, pursuant thereto, a consignment of cement clinker was shipped by the mother vessel *M.V. SARWAR JAHAN*. Out of the said consignment, 990 metric tons of cement clinker were transhipped and loaded on board the lighter vessel

*M.V. PRINCE OF MADHUR KHOLA* for carriage from Chittagong to Noapara, Jessore.

It is the further case of the plaintiff that on 09.08.2009, while the said lighter vessel was on its voyage, the vessel, due to sheer negligence, unseaworthiness, incompetence of the master and crew, and absence of proper navigational and lighting equipment, went off the navigational route and struck a char area near Doarika Bridge, Babuganj, Barisal, as a result whereof the vessel sank with the entire cargo on board. The plaintiff alleges that no effective steps were taken by the master or crew to save either the vessel or the cargo and that the loss was directly attributable to the negligence and misrepresentation of the defendants regarding the condition and fitness of the vessel.

The plaintiff further states that a General Diary was lodged with the local police station and that the insurer was duly informed. According to the plaintiff, the cargo has become a total loss and even after long lapse of time the defendants did not take any initiative to salvage the cargo, and even if any part of the cargo were recovered, the same would be commercially unusable. The plaintiff claims to have suffered losses amounting to Tk.52,48,001.00, particulars whereof have been detailed in the plaint, and asserts that the claim constitutes a maritime lien enforceable against the vessel and the principal defendants under the Admiralty jurisdiction of this Court. On such assertions, the plaintiff

seeks decree for compensation, arrest and sale of the vessel, and other ancillary reliefs

**3.** Defendant nos. 4 and 5 filed separate written statements in the instant suit.

**3.1** The defendant No. 4 has contested the suit raising, inter alia, objections as to maintainability, jurisdiction, *locus standi*, and mis-joinder and non-joinder of parties. It specifically denies that it is the agent of the vessel owner and asserts that it was merely appointed as a carrying contractor, whose role was confined to liaison with the Water Transport Cell and supervision of loading operations, and that it had no control over navigation, seaworthiness, or operation of the vessel.

Defendant No. 4 denies all allegations of negligence, fraud, or misrepresentation. It contends that the accident occurred due to strong river current and adverse weather conditions, which were wholly beyond its control, and that it bears no liability whatsoever for the alleged loss. It further asserts that the plaintiff's claim does not constitute a maritime lien and prays for dismissal of the suit against it with costs.

**3.2** The defendant No. 5, the insurer, has also filed a written statement, contending that the same is not maintainable against it and that no cause of action has arisen in favour of the plaintiff. While admitting that the cargo was insured, it denies liability as claimed. The defendant No. 5 states that a joint final survey report was duly prepared and submitted and

that, in terms of the insurance policy, it has already paid Tk. 18,13,950.00, representing its share of the insured amount, by cheque dated 19.09.2010, thereby discharging its contractual obligation.

The defendant No. 5 further denies allegations of negligence, fraud, and total loss as pleaded and contends that the accident occurred due to circumstances beyond its control. It asserts that it has no further liability and prays for dismissal of the suit against it with costs.

**4.** On 17.01.2011 the following issues were framed in the instant suit:

1. Is the suit maintainable under Admiralty Jurisdiction in its present form?
2. Does the plaintiff have any cause of action against defendant no. 4 for filing the instant Admiralty Suit?
3. Is the suit bad for mis-joinder and non-joinder of parties?
4. Is the suit barred under principles of estoppel, waiver and acquiescence?
5. Has the plaintiff suffered any losses or damage as alleged?

**4.1** It is to be noted that the following issue also ought to have been framed in the instant suit.

Whether for the alleged loss the plaintiff is entitled to get any decree against the defendant nos. 1-3?

**4.2** Accordingly, the said issue is hereby framed as issue no. 6 for proper adjudication of the instant suit.

**5.** It further appears from record that, defendant No. 5, namely City General Insurance Company Ltd., filed an application for transposition as

a co-plaintiff in the instant Admiralty Suit, which was allowed by an order dated 13.11.2012. Subsequently, by order dated 25.02.2018 the name of the plaintiff *i.e.* Noapara Cement Mills Limited was struck down from the plaint and City General Insurance Company Limited remains as the sole plaintiff in the instant suit.

6. During trial the Co-Plaintiff namely City General Insurance Company Ltd. examined its Deputy Managing Director namely Md. Mukbul Hossain as PW-1 and produced some documents which were marked as Exhibit-1 to Exhibit 12. The said witness was cross-examined by the defendant no. 4. On the other hand, defendant no. 4 *i.e.* Atlas Navigation Company Limited examined its Junior Assistant Manager, Commercial as DW-1 and produced some documents which were marked as Exhibit-A to Q. However, the plaintiff informed the court that they are not going to cross-examine the said DW-1. Accordingly, the matter was posted for argument hearing and on the fixed date Mr. Muhammad Ohiullah, learned advocate along with Mr. Abu Bakar Siddique placed their argument before the court. But no one appears on behalf of the plaintiff on that date or on the subsequent fixed date for argument hearing and accordingly, the suit has been posted for judgment.

7. At the very outset it requires to identify whether the suit is maintainable under Admiralty Court Act, 2000. In the instant case, the plaintiff alleges that:

- (i) the lighter vessel was unseaworthy;
- (ii) the master and crew were incompetent and negligent;
- (iii) the vessel lacked proper navigational and lighting equipment;

(iv) the vessel deviated from the navigational route and sank; and

(v) the entire cargo was lost due to such negligence and lack of effective steps by the master or crew to save either the vessel or the cargo.

Therefore, the facts of the suit attract section 3(2)(g) of the Act, 2000 and thus the suit is maintainable under the Admiralty Jurisdiction.

8. Mr. Muhammad Ohiullah, learned advocate appearing on behalf of defendant no. 4 drawing attention of this court to the examination-in-chief and cross-examination of the PW-1 submitted that at no point of time PW-1 in his chief prayed for any relief against the defendant no.4 or attribute any direct liability to defendant no. 4. The learned advocate further submitted that during cross-examination of PW-1 in response to the question, “*Do you have any claim against Defendant No. 4 Atlas Navigation Company Ltd*” the said witness candidly answered that, “*No. We do not have any claim against Defendant No. 4*”. The learned advocate further submitted that the main responsibility of defendant no. 4 was to maintain liaison with Water Transport Cell (WTC) for arrangement of the lighter vessel for carrying the cargo of the plaintiff and Defendant No. 4’s further responsibility was to oversee loading of the cargo from mother vessel to the lighter vessel for onward delivery of the cargo to the factory site of the importer.

The learned advocate further submitted that evidence on record discloses that the lighter vessel *M.V. Prince of Madhur Kholā* was duly allocated by the Water Transport Cell to the plaintiff for carriage of

cement clinker in bulk from the mother vessel *M.V. Sarwar Jahan*. The lighter vessel arrived alongside the mother vessel at 1100 hours on 08.08.2009, completed loading at 2000 hours, and cast off at 2010 hours on the same day, followed by completion of survey formalities. While proceeding from Chattogram to Noapara, Jessore, the lighter vessel met with an accident on 10.08.2009 by colliding near Babuganj, as evidenced by contemporaneous letters dated 10.08.2009 marked as Exhibits-C to H. At the material time, there was strong river current accompanied by gusty wind, and as a result of the collision the front hatch bottom was damaged, causing the vessel to sink. The occurrence was beyond the control of Defendant No.4, who had no role in navigation or vessel management. Accordingly, Defendant No.4 cannot be held liable for the alleged loss.

The learned advocate finally submitted that the suit against Defendant No.4 is liable to be dismissed for the following reasons:

**Firstly**, the plaint discloses no cause of action against Defendant No.4. No specific act of negligence, breach of duty, or contractual obligation has been pleaded or proved. Mere description of Defendant No.4 as an “agent” without particulars does not create liability in admiralty law.

**Secondly**, Defendant No.4 is neither the owner, charterer, operator, nor master of the vessel, nor the employer of the crew or the issuer of the bill of lading. Liability for loss arising from navigation, unseaworthiness,

or sinking attaches to the vessel and those who own or control it, not to Defendant No.4.

**Thirdly**, PW-1 made a clear and unequivocal admission that no claim lies against Defendant No.4. Such admission is binding and dispenses with further proof, thereby completely exonerating Defendant No.4.

**Fourthly**, no maritime lien or admiralty claim lies against Defendant No.4 under the Admiralty Court Act, 2000, as it bears no responsibility for navigation or seaworthiness and does not fall within any recognized category of persons liable *in rem* or *in personam*.

**Lastly**, the co-plaintiff insurer, being subrogated to the rights of the insured, cannot claim against a party against whom the insured itself had no enforceable right. Any remedy, if available, lies against the vessel, its owner, or under the insurance contract, and not against Defendant No.4.

With these submissions, the learned advocate prays for dismissal of the suit against defendant no. 4.

9. There is no denial that PW-1 made a clear and unequivocal admission that no claim lies against Defendant No.4. Therefore, such admission is binding and dispenses with further proof, thereby completely exonerating Defendant No.4. However, to further evaluate the role of the defendant no. 4 as a carrying contractor this court considers it pertinent to examine the Exhibit- B which is a "Deed of Agreement" entered into

between WTC as 1<sup>st</sup> party and Atlas Navigation Company Ltd., i.e. defendant no. 4 as 2<sup>nd</sup> party. In the agreement the 2<sup>nd</sup> party has been described as follows:

মেসার্স এটলাস নেভিগেশন কোম্পানী লিঃ, পরিচালক-ওয়াসিউর রহমান চৌধুরী, এটলাস হাউজ, ৭ শেখ মুজিব রোড, আত্রাবাদ বা/এ, চট্টগ্রাম। অতঃপর এই চুক্তিপত্রে পণ্যের এজেন্ট হিসাবে কথিত জাহাজ ব্যবহারকারী-

---দ্বিতীয় পক্ষ।

(*underline supplied by me*)

The recital of the said agreement and some important clauses of the same runs as follows:

Recital of the agreement-

প্রথম পক্ষ, চট্টগ্রাম ও চট্টগ্রাম বন্দর হইতে নৌপথে পণ্য পরিবহন করিবার জন্য লাইটার জাহাজ সরবরাহ করিবার সমন্বয়কারী প্রতিষ্ঠান এবং চট্টগ্রামে তাহাদের নিজস্ব অফিস হইতে জাহাজ সরবরাহ করিয়া আসিতেছেন এবং যেহেতু, দ্বিতীয় পক্ষ, চট্টগ্রাম ও চট্টগ্রাম বন্দর এলাকা হইতে নৌপথে দেশের বিভিন্ন গন্তব্যে পরিবহনের নিমিত্তে বৈধ পণ্য পরিবহনের সমন্বয়কারী প্রতিষ্ঠান এবং বর্তমানে তাহারা এই কাজ করিয়া আসিতেছেন এবং প্রথম পক্ষের নিকট হইতে জাহাজ ভাড়া করিয়া পণ্য পরিবহনের ইচ্ছা প্রকাশ করিয়াছেন; এবং যেহেতু চট্টগ্রাম হইতে দেশের বিভিন্ন গন্তব্যে বৈধ পণ্য পরিবহনে উভয় পক্ষের স্বার্থই জড়িত এবং তদীয় স্বার্থে দুই পক্ষই আগ্রহী, সেহেতু, নিম্নলিখিত শর্তসমূহের ভিত্তিতে এই চুক্তিনামা উভয় পক্ষের মধ্যে সম্পাদিত হইলঃ

Clause 2.4

৪) প্রথম পক্ষ তাহাদের চট্টগ্রাম অফিস হইতে দ্বিতীয় পক্ষের চাহিদা অনুযায়ী লাইটারের প্রাপ্যতা সাপেক্ষে ছাড়পত্রের মাধ্যমে জাহাজ সরবরাহ করিবে। এই ক্ষেত্রে দ্বিতীয় পক্ষ তৎকালীন সময়ে তাহাদের পুরা কনসাইনমেন্টের পরিমাণ উল্লেখ করিয়া কমপক্ষে ২৪ ঘণ্টার অগ্রীম নোটিশে প্রথম পক্ষের অফিসে জমা করিবে।

Clause 2.11

১১) লাইটারের বোঝাইকৃত পণ্যের বীমা (Insurance) সংশ্লিষ্ট এজেন্ট/আমদানীকারককে করিতে হইবে। কোন প্রাকৃতিক দুর্যোগ/দৈব-দূর্বিপাক (Act of God) কবলিত হইয়া পণ্যের ক্ষতি হইলে জাহাজের ষ্টাফ বা জাহাজ মালিক দায়ী থাকিবে না। এই ক্ষেত্রে পণ্যের Partial Loss বা Total Loss যাহাই হোক না কেন উভয় অবস্থায় পণ্যের মালিক ও জাহাজ মালিকের দ্বারা নিয়োগকৃত ইনস্যুরেন্স সার্ভেয়ার এবং জেনারেল সার্ভেয়ার দ্বারা অবশ্যই সার্ভে করিতে হইবে। দুর্ঘটনার ক্ষেত্রে জাহাজ মাষ্টার প্রয়োজনে কার্গো Jettison করিতে পারিবে। কিন্তু এই ক্ষেত্রে পরবর্তীতে জেনারেল/শিপ/কার্গো ইন্স্যুরেন্স সার্ভেয়ার দ্বারা ইহার প্রয়োজনীয়তা প্রমাণ করিতে হইবে। Total Loss সংক্রান্ত দুর্ঘটনার ক্ষেত্রে প্রচলিত আইন অনুযায়ী জাহাজের রেজিস্ট্রেশন, সার্ভে, মাষ্টার-ড্রাইভারের সনদ, দুর্ঘটনা সংক্রান্ত সাধারণ ডায়েরী ইত্যাদি কাগজপত্র থাকিতে হইবে। অন্যথায়, জাহাজ মালিক দায়ী থাকিবে। প্রাকৃতিক দুর্যোগ/দৈব-দূর্বিপাক ব্যতীত জাহাজের ত্রুটির কারণে দুর্ঘটনা হইলে পণ্যের আংশিক ক্ষতি হলে জাহাজ মালিক ও পণ্যের আমদানীকারক/এজেন্টের উপস্থিতিতে ১ম পক্ষের নেতৃত্বে শালিস বৈঠকের মাধ্যমে যথাযথ সিদ্ধান্ত গ্রহণ করা হবে। পণ্যের Inherent Vice (যেমন: আদ্র আবহওয়ায় লবণ/চিনি গলিয়া যাওয়া, গমে পোকা ধরা ইত্যাদি) কারণে জাহাজের কোন পণ্যের ক্ষতি হইলে জাহাজ মালিক দায়ী থাকিবে না। তবে এরূপ ক্ষেত্রে জেনারেল/কার্গো/ইন্স্যুরেন্স সার্ভেয়ার দ্বারা ক্ষতিগ্রস্ত পণ্যের ক্ষতি হওয়ার প্রকৃত কারণ নিশ্চিত করিতে হইবে।

Therefore, it appears that WTC acted as a co-coordinator in supplying the lighter vessel upon the requisition of defendant no. 4, who, in turn, acted as the coordinator for transporting cargo/goods from the Chattogram Port to different parts of the country. In that view of the matter, defendant no. 4, in fact, acted as the agent of the plaintiff and not of the vessel owner. Clause 2.11 of the agreement renders this position more manifest and explicit.

**9.1** In view of the above, the instant admiralty suit against defendant no. 4 is a misconceived one and therefore, issue no. 2 is hereby decided against the plaintiff and in favour of defendant no. 4 and accordingly, the suit is dismissed against the said defendant no. 4.

**10.** Now, let us examine whether the plaintiff has been able to prove the case against defendant nos. 1-3.

**10.1** It is the case of the plaintiff that on 09.08.2009, while the defendant no. 1- lighter vessel was on its voyage, the vessel, due to sheer negligence, unseaworthiness, incompetence of the master and crew, and absence of proper navigational and lighting equipment, went off the navigational route and struck a char area near Doarika Bridge, Babuganj, Barisal as a result whereof the vessel sank with the entire cargo on board. The plaintiff alleges that no effective steps were taken by the master or crew to save either the vessel or the cargo and that the loss was directly attributable to the negligence and misrepresentation of the defendants regarding the condition and fitness of the vessel.

**10.2** To substantiate its case, the plaintiff produced a General Diary dated 11.08.2009, which was marked as Exhibit-7. The said General Diary was lodged by one of the staff members of the plaintiff, namely Ranajit Sarkar. It was stated therein that the vessel suddenly collided with a submerged strip of land in the river Sugandha, near the house of Mozammel Mollah, and that as a result of such collision, the hull/bottom of the vessel was damaged, causing loss to the cement clinker.

From Exhibit-8, it appears that M/s Youth Energetic Surveyors and M/s Quality Survey & Inspection Services were appointed by City General Insurance Company Ltd., as joint surveyors to survey and assess the loss or damage to the cement clinker. Exhibit-9 shows that the joint

surveyors submitted their preliminary report on 16.08.2009, wherein it was stated that the vessel collided with a submerged strip of land in the river, resulting in cracks to the bottom side of the vessel and consequent damage to the clinker. It further appears from the said report that the findings of the surveyors were based solely on the verbal statements of the master of the lighter vessel and the representative of the plaintiff.

From Exhibit-11, it transpires that the Joint Final Survey Report was submitted on 21.06.2010, wherein, under clause 'G' titled "Loss", it was stated that *"as per our findings/calculation, the loss suffered by the consignee is about 870 metric tons of cement clinker, the value of which comes to Tk. 30,23,250.00 in proportion to the insured amount under the marine policy."*

Subsequently, when City General Insurance Company Ltd. filed an application for transposition, it stated that on 24.09.2011 it had settled the claim of the plaintiff to its full satisfaction, and in support thereof filed a Loss Voucher dated 07.07.2010 for an amount of Tk.18,13,950.00, which was produced by way of a list of documents being Entry No. 5035 dated 11.11.2012. However, during trial, the said insurer produced a Letter of Subrogation dated 24.09.2011, marked as Exhibit-5, which relates altogether to a different transaction.

In the said Letter of Subrogation, the insurance policy is shown as Policy No. SLI/NOA/MP-83/07/2008 (Co-Ins) dated 29.07.2008, whereas the shipment in question is admittedly covered by Insurance Policy No.

CGIC/HO/NOA/MP-30/07/2009 (Co-Ins). Moreover, the particulars relating to the interest, invoice and date, name of the vessel, and bill of lading number and date are all different, thereby rendering the said Letter of Subrogation irrelevant to the present transaction.

**10.3** Furthermore, the carriage of goods and passengers by vessels ordinarily plying on the inland waters of Bangladesh is regulated by the Inland Shipping Ordinance, 1976, and the following provisions thereof deserve consideration in adjudicating the instant suit, which has been filed primarily for recovery of damages for loss of goods arising out of a casualty suffered by the defendant vessel.

***S.44. Shipping casualty and report thereof***

*(1) A shipping casualty shall be deemed to occur when-*

*(a) any inland ship is lost, wrecked, abandoned or materially damaged;*

*(b) any loss of life or property ensues by reason of any casualty happening to or on board any such ship; or*

*(c) any such ship causes loss or material damage to any other inland ship or property or person on board that ship.*

*(2) Every shipping casualty shall forthwith and, if this be not possible, within twenty-four hours of its occurrence, be reported to the officer in charge of the nearest police station by the master of the inland ship and, where, more inland ships than one are involved, by the master of each such ship or other person or persons in charge thereof and, in the absence or physical inability of such master or persons, by any member of the crew of the ship or ships [or by any passenger of the ship or ships or any other person having the knowledge of such casualty].*

*(3) Upon receipt of the report of a shipping casualty under subsection (2) [or upon receipt of any information from any reliable source], the officer in charge of the police station shall, as soon as*

*possible, and in any case not later than [twelve hours] of the occurrence of the casualty, make a report in writing of the facts and circumstances of the casualty to the Government, [Director-General,] the District Magistrate and the '[Upazilla Nirbahi Officer]' within the limits of whose jurisdiction the casualty has occurred.*

**S. 45. Inquiry into shipping casualty**

*(1) Upon the receipt of a report of shipping casualty under section 44, the <sup>45</sup>[Upazilla Nirbahi Officer] shall-*

*(a) forthwith hold or cause to be held an inquiry respecting the shipping casualty, and*

*(b) within seven days, submit to the Government and to the District Magistrate a report stating the facts and circumstances of the casualty together with his observations, if any, as to the reasons of and responsibilities for the casualty.*

*(2) The person holding inquiry under sub-section (1) may-*

*(a) go on board any inland ship or other vessel involved and inspect any part, or any machinery equipment or other article on board, such ship or vessel;*

*(b) enter and inspect any such premises as appear to him to be necessary for the purpose of the inquiry;*

*(c) require the attendance of, and examine, any person who, he has reason to believe, has the knowledge or information relating to the facts and circumstances of the casualty; and*

*(d) require the production of such books, papers and documents as may reasonably appear to him to be necessary for the purpose of the inquiry.*

*(3) Notwithstanding the provisions of sub-section (1), the Government may, upon receipt of a report under sub-section (3) of section 44, cause to be held an inquiry respecting the casualty by such officer as it may appoint in this behalf and the officer shall-*

*(a) submit to the Government a report stating the facts and circumstances of the casualty together with his observation, if any, as to the reasons of and responsibilities for the casualty;*

*(b) have the powers and privileges referred to in sub-section (2).*

*(4) Where an inquiry is held under sub-section (3), no inquiry shall be held under sub-section (1).*

Therefore, when a shipping casualty occurs, the law requires that it be reported immediately, or at the latest within twenty-four hours, to the nearest police station by the master of the vessel or, in his absence, by any crew member, passenger, or other person having knowledge of the incident. The police must then promptly forward a written report, within the prescribed time, to the Government and relevant local authorities, ensuring that the incident is formally brought to administrative notice. Upon receipt of the report, the Upazilla Nirbahi Officer is mandated to conduct an inquiry without delay to ascertain the facts, causes, and responsibility for the casualty, and to submit a reasoned report to the Government and the District Magistrate. Where necessary, the Government may order a separate inquiry by an appointed officer, whose investigation replaces the local inquiry.

On a careful examination of the materials and evidence on record of the instant suit, it appears that no procedure as prescribed under sections 44 and 45 of the Ordinance, 1976 was complied with, except the lodging of a General Diary. The joint survey relied upon by the plaintiff was conducted only for the purpose of quantifying the damage to the cement clinker and not for ascertaining the facts, causes, or responsibility for the alleged casualty. Consequently, it cannot be determined whether the casualty occurred due to an Act of God, a defect in the vessel, or the

negligence of the master or crew. In the absence of such determination, there is no scope to hold the vessel or its owner liable for the loss or damage allegedly sustained by the plaintiff.

**10.4** Therefore, this court is of the view that the plaintiff though suffered loss but has failed to prove that such loss is attributable to the defendant nos. 1-3 and as such, the plaintiff is not entitled to any decree against the said defendants as well.

**11.** In the result, the suit is dismissed on contest against the defendant no. 4 and *ex-parte* against the defendant nos. 1-3.

However, there shall be no order as to costs.

(Sikder Mahmudur Razi, J.)