Pakistan Court Rules on the Trickery of Adding Tort Claims to Charterparty Disputes – in the Recent Case of *Sucres et Denres SA v. MV Beluga A*

Author: Faisal Daudpota

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Pakistan Court Rules on the Trickery of Adding Tort Claims to Charterparty Disputes – in the Recent Case of *Sucres et Denres SA v. MV Beluga A*

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Part 1 - Introduction

The global maritime legal landscape is undergoing a sophisticated recalibration, driven by the emergence of novel technical disputes, geopolitical volatility, and a judicial push toward the harmonization of commercial remedies. At the heart of this evolution is the traditional action in rem, a procedural mechanism that has historically provided claimants with a unique form of security through ship arrest. However, as maritime commerce becomes increasingly complex, involving intricate layers of charterparties, technical certifications, and liquidated damages provisions, the High Courts of common law jurisdictions are being forced to delineate more precisely the thresholds between breach of contract and tortious negligence.

A recurring theme in common law courts is the effort to maintain the balance between tort and contract law. This is most evident in the application of the "Economic Loss Rule," which seeks to prevent parties from using tort law to recover losses that are essentially the result of a failed commercial bargain.

This article examines the recent jurisprudence from the High Court of Sindh in Pakistan, which illustrates a shifting paradigm where the sanctity of contract is prioritized to prevent the "drowning" of commercial law in a sea of tort.

Part 2 - Issues in Sucres et Denres SA v. MV Beluga A

The adjudication in recent case of *Sucres et Denres SA v. MV Beluga A* (Admiralty Suit No. 13 of 2025 before the High Court of Sindh) represents a seminal first impression ruling in the Pakistani context, particularly regarding the interplay between technical certification, waiver, and the thresholds for negligence. The case involved a Sugar Charter Party for the transport of 25,000 metric tons of sugar from Brazil to Pakistan. The plaintiff sought the arrest of the vessel based on two primary contentions: a breach of an express term regarding gear certification and a breach of a duty of care (negligence) due to crane failures that delayed loading.

The court was presented with a technical conflict: Clause 42 of the charterparty required a gear certificate attesting that the vessel's cranes had been tested within one year prior to the Notice of Readiness. The vessel provided certificates showing that while the "Annual Thorough Surveys" were valid through 2026, the last "load test" had been conducted in November 2021—nearly four years prior to the voyage. The plaintiff accepted these documents at the start of the voyage but subsequently sought to rely on the non-conformity as a ground for arrest following loading delays.

The High Court's reasoning focused on the doctrine of waiver. By accepting the non-conforming technical documents and proceeding with the charter, the plaintiff was deemed to have waived their right to later assert a breach of that specific term. This highlights a critical issue: the extent to which a commercial party is bound by its initial acceptance of technical risks. The court signaled that in the absence of fraud, the formal acceptance of certificates—even if they do not strictly meet the contract's requirements—bars subsequent claims for breach of those terms.

Claim Head (Sucres et Denres SA v. MV Beluga A)	Basis of Calculation	Amount (USD)
Itajai Port Costs	FDA minus Plaintiff PDA share	93,201.81
Additional Costs	Shippers' charges for crane breakdowns	127,520.83
Despatch Earned	Laytime calculations	44,875.00
Loading Costs (3,721 MT)	Labour, cranes, and admin taxes	114,360.00
Reloading Costs	Extra freight on MV Northgate	112,500.00
Storage Cost (3,721 MT)	Warehouse storage until October 2025	15,000.00
Finance Costs	Interest on left-behind cargo	5,000.00
Hedging Losses	Price fluctuations on 3,721 MT discrepancy	200,000.00
Total Claim Value	**Aggregate Recovery Sought**	**712,457.64**

The court's analysis of the weather-related delays further underscored the complexity of causation in these disputes. The Loading Statement of Facts (SOF) indicated that approximately 321 hours (over 13 days) were lost solely due to rain and fog, which were categorized as laytime-interrupting events under the charterparty.

Date	Event Description	Delay Duration (Hours/Min)
23.08.2025	Fog - No work	1 hour
25.08.2025	Rain - No work	24 hours
06.09.2025	Rain - No work	24 hours
09.09.2025	Rain - No work	13 hours
10.09.2025	Heavy fog - No work	9 hours
Total Weather Delay	**Cumulative interruption**	**13 Days, 9 hrs, 25 min**

The judicial refusal to attribute these weather delays to the defendant's negligence, even when the cranes were simultaneously inoperative, reflects a robust application of the principle that "pure economic loss" resulting from external environmental factors cannot be recovered in tort if it falls within the risk allocation of the contract.

Part 3 - Breach of Contract v. Tort

The distinction between contract and tort in ship arrest cases is summarized by the "Form and Substance" of the injury:

1. **Nature of the Breach:** In contract, the focus is on the failure to fulfill a specific promise (e.g., providing a gear certificate). In tort, the focus is on a failure to meet a societal standard of care (negligence).

2. **Damages Available:** Tort claims allow for "foreseeable" damages at the time of the act, whereas contract damages are limited to what was "reasonably foreseeable" at the time the agreement was signed.

3. **Remedy Caps:** As seen in *Beluga A*, contractual relationships often involve pre-negotiated caps (e.g., the $80,000 Disbursement Account cap). Courts are generally unwilling to allow "pure economic loss" claims in tort to bypass these caps unless the tort is independent of the contract.

Distinction Factor	Breach of Contract	Maritime Tort (Negligence)
Origin of Duty	Voluntary Agreement	Imposed by Law / Society
Primary Remedy	Expectation Damages	Compensatory / Punitive
Proof Required	Breach of agreed terms	Duty, Breach, Causation, Damage
Privity Requirement	Yes (generally)	No
Foreseeability Timeline	At contract formation	Prior to the wrongful act

Part 4 - Warranty of Seaworthiness and Technical Waivers

The obligation to provide a seaworthy vessel is a "core" component of any contract for the carriage of goods by sea. Historically, at common law, this duty was absolute: the shipowner warranted that the vessel was "tight and fit" for the purpose, and ignorance of a defect was no defense.

Part 5 - Due Diligence, and Doctrine of Stages

Most modern maritime disputes are governed by statutes like the Carriage of Goods by Sea Act (COGSA), which replaces the absolute warranty with an obligation to "exercise due diligence" to make the ship seaworthy before and at the beginning of the voyage. In *Beluga A* litigation, the court had to decide if the breakdown of two out of four cranes constituted a breach of this duty. The court's conclusion—that the provision of valid (though non-conforming) certifications, combined with the plaintiff's acceptance of them, discharged any duty of care—suggests that "due diligence" is increasingly measured against the standard of technical documentation accepted by the parties at the outset.

This introduces a significant first impression issue in domestic jurisprudence regarding the **Doctrine of Stages**. Under common law, a vessel must be seaworthy at the beginning of each distinct stage of the adventure. If a vessel is fit for harbor but not for the open sea, the warranty is satisfied if the vessel is made seaworthy before "breaking ground" for the next stage. However, in the *Beluga A* context, the court held that because the plaintiff chose not to repudiate the contract when the non-conforming gear certificates were presented *before* loading, they were barred from asserting unseaworthiness after the "loading stage" had commenced. This creates a high threshold for claimants: a failure to object to technical deficiencies at the earliest possible stage may be construed as a permanent waiver of the seaworthiness warranty for that specific defect.

Part 6 - Future Outlook: Resilience of Admiralty Law

The issues identified in *Beluga A* —particularly the finality of technical waivers and the exclusivity of demurrage—suggest a judicial trend toward protecting the autonomy of commercial parties to define their own risks. Simultaneously, the "cutting edge" challenges of autonomous shipping and geopolitical trade bans will require courts to develop more "pro-arbitration" and "pro-enforcement" schemes to maintain the efficiency of global trade.

The High Court of Sindh’s recent dismissal of the *Beluga A* arrest application provides a definitive roadmap: where a dispute arises from a sophisticated commercial agreement, the court will prioritize the "certainty and clarity" of that agreement over the "indeterminate liability" of tort. This approach ensures that the action in rem remains a powerful but disciplined tool for maritime justice, rather than a mechanism for commercial disruption in an already volatile global environment.

Appendix - Copy of the Decision Dated 8 December 2025 in - *Sucres et Denres SA v. MV Beluga A* (Admiralty Suit No. 13 of 2025 before the High Court of Sindh)

Please the following pages for actual text of the decision.

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Adm. Suit No. 13 of 2025

Date	Order with signature of Judge

For hearing of CMA No.573/2025.

Plaintiff	:	Through Dr. Adeel Abid, Advocate.
Defendant	:	Through Mr. Ishrat Zahid Alvi, Advocate
Dated of Hearing	:	3 December 2025.
Dated of Decision	:	8 December 2025.

ORDER

MOHAMMAD ABDUR RAHMAN, J.- This Order will decide CMA No.573 of 2025 being an application maintained by the Plaintiff, under Rule 713 of the Sindh Chief Court Rules, seeking the arrest of the Defendant the "MV Belagua A" which is currently located within Pakistani waters. The Defendant was arrested by an order dated 29 November 2025 passed in this Suit.

A. ***Facts***

2. The Plaintiff on 25 July 2025 entered into a Sugar Charter Party with the Defendant for a voyage from Itajai, Brazil to Karachi, Pakistan for the transportation of 25,000 metric tons of sugar. The terms of the Sugar Charter Party that are relevant to this Dispute are as hereinunder:

(i) Sugar Charter Party 1999

" ... 2. ...

Gear (including vessel's union purchase capacity): ... 4 cranes x SWL 30 T

19. At each loading port, even if loading commences earlier, laytime for loading to begin at 1400 hours if written/cabled/telexed notice of readiness to load is tendered to Agents before noon and at 0800 hour's next working days if written/cabled/telexed notice of readiness is tendered to Agents afternoon. Notice of readiness to be rendered to Agents in ordinary office hours, Saturday afternoon, Sundays (or local equivalents) and holidays excepted, whether in berth or not. Any time

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lost in obtaining free pratique and/or customs clearance due to problems with vessel and/or crew not to count as laytime.

Laydays at the average rate of……… 1,500………metric tons, calculated on gross weight provided vessel can receive at this rate, per weather working day of 24 consecutive hours or pro rata, time from noon Saturdays to 0800 hours Mondays (or local equivalents) and from 1700 hours day preceding a holiday until 0800 hours next working day excepted, even if used, shall be allowed to the said Charterers, for loading and waiting for orders. Time employed in shifting anchorages and/or loading places within the same port or its jurisdiction not to count as laytime, and shifting expenses to be four Owners account.

It is understood and agreed between parties that laytime demurrage, if any, at loading port stops once the cargo is loaded onboard the vessel.

At loading port(s) in the event of congestion Master has the right to tender notice of readiness at the customary waiting place in ordinary office hours by cable/telex to Agents whether in berth or not, whether in port or not, whether in free pratique or not, whether customs cleared or not. Time proceeding from customary waiting place to loading berth/anchorage not to count as laytime. If the loadport surveyor is unable to attend the vessel at the customary waiting place and after vessel's arrival at loading berth/anchorage the vessel fails her survey, laytime/demurrage shall cease from such failure until the vessel's holds are passed accordingly.

(ii) Additional Clauses to the C/P Of M/V "Beluga "A" Dated Piraeus, 25th July 2025

" … 42. *At loading port, together with Notice of Readiness, valid Gear Certificate of vessel must be presented attesting that vessel's gear has been tested not more than one year prior to vessel's readiness to load under this charter party.*

48. Vessel's holds cleanliness: With reference to clauses 17 and 19 of the governing charterparty, Charterers have the option in case vessel is failing 3 (three) time the holds cleanliness survey to cancel the charter party without any liability whatsoever to Charterers. Charterers will give strict Instructions to Shippers/vessel's agents, in order no loading will take place until cleanliness survey passed positively for all vessel's holds concerned."

(iii) Rider

" … 4…

- at loadport(s): full D/As to be for Owners account at load port(s) provided same do not exceed usd 80.000. Any around exceeding usd 80,000 to be for Charterers' acc.

D/As to be for owners accnt all ends -- except any amount exceeding usd 80,000 at load port(s) and except WAF and Somalla where d/as to be for Charts accnt.

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2. It seems that pursuant to the Sugar Charter Party at the time when a Notice of Readiness was to be given by the Defendant to the Plaintiff, a Gear Certificate was also to be provided by the Defendant to the Plaintiff.

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It is not in dispute that the Gear Certificate provided by the Defendant to the Plaintiff did not comply with Clause 42 of the Additional Clauses to the Charterparty Agreement inasmuch as the Gear of the MV Belagu A had not been tested within a period of one year prior to the issuance of the Notice of Readiness as required under that term. To clarify, while the "Annual Thorough Surveys" for all cranes of the MV Beluga A were carried out on 27 March 2025 and which were valid up to 26 March 2026, however admittedly, the last load test that had been performed on the Cranes on board the MV Belagu A were performed on 11 November 2021 and which was to remain valid until 10 November 2026. These certificates were provided by the Defendant to the Plaintiff and who after having provided the document did not terminate the Sugar Charter Party and proceeded with the Voyage.

3. The Defendant reached the Port of Itajai, Brazil on 17 August 2025 and r on 17 August 2025 tendered a Notice of Readiness. This was followed by an inspection being carried out by the Surveyors of the Plaintiff who gave their approval for loading to commence on 19 August 2025 at 10:30 am and whereafter loading was immediately commenced.

4. It seems that on account of incremental weather the following delays admittedly occurred in the loading of the Defendant as are detailed hereinbelow:

SR NO.	DATE	TIME	EVENT	DELAY
1.	23.08.2025	08:15 - 09:15	Fog- no work	1 hour
2.	24.08.2025	08:00 - 09:00	Rain - no work	1 hour
3.	24.08.2025	11:25 - 24:00	Rain - no work	21 hours 35 min
4.	25.08.2025	00:00 - 24:00	Rain - no work	24 hours
5.	26.08.2025	00:00 - 24:00	Rain - no work	24 hours
6.	27.08.2025	00:00 - 19:00	Rain - no work	19 hours
7.	28.08.2025	01:15 - 02:50	Rain - no work	1 hour 35 min
8.	28.08.2025	06:15 - 07:00	Rain - no work	45 min
9.	28.08.2025	22:15 - 22:50	Rain - no work	35 min
10.	29.08.2025	01:15 - 01:50	Rain - no work	35 min
11.	29.08.2025	04:40 - 07:00	Rain - no work	2 hours 20 min
12	29.08.2025	07:15 - 10:00	Rain - no work	2 hours 45 min
13.	29.08.2025	10:30 - 13:00	Rain - no work	2 hours 30 min
14.	29.08.2025	17:15 - 19:00	Heavy Fog - no work	1 hour 45min
15.	30.08.2025	01:00 - 07:00	Rain - no work	6 hours
16.	30.08.2025	22:25 - 23:30	Rain - no work	1 hour 5 min
17.	31.08.2025	01:15 - 07:00	Rain - no work	5 hours 45min
18.	31.08.2025	13:00 - 24:00	Gang ordered -Rain, no work	11 hours

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19.	01.09.2025	00:00 – 07:00	Gang ordered -Rain, no work	7 hours
20.	01.09.2025	07:00 – 13:00	Gang ordered – Drizzly, no work	6 hours
21.	01.09.2025	16:58 – 17:44	Rain - no work	46 min
22.	02.09.2025	07:15 – 08:00	Rain - no work	45 min
23.	02.09.2025	09:00 – 09:50	Rain - no work	50 min
24.	02.09.2025	11:00 – 13:00	Rain - no work	2 hours
25.	03.09.2025	01:15 – 03:30	Rain - no work	2 hours 15 min
26.	03.09.2025	07:15 – 08:18	Rain - no work	1 hour 1 min
27.	03.09.2025	08:38 – 09:00	Rain - no work	22 min
28.	03.09.2025	09:00 – 09:26	Rain - no work	26 min
29.	03.09.2025	16:28 – 17:14	Rain - no work	46 min
30.	04.09.2025	05:10 – 07:00	Drizzling – no work	1 hour 50 min
31.	04.09.2025	08:15 – 08:44	Rain - no work	29 min
32.	04.09.2025	22:15 – 24:00	Rain - no work	1 hour 45 min
33.	05.09.2025	00:00 – 01:00	Rain - no work	1 hour
34.	05.09.2025	01:15 – 02:30	Rain - no work	1 hour 15 min
35.	05.09.2025	02:45 – 07:00	Rain - no work	4 hours 15 min
36.	05.09.2025	07:00 – 19:00	Gang ordered -Rain, no work	12 hours
37.	05.09.2025	19:00 - 24:00	Rain - no work	5 hours
38.	06.09.2025	00:00 – 24:00	Rain - no work	24 hours
39.	07.09.2025	00:00 – 24:00	Rain - no work	24 hours
40.	08.09.2025	00:00 – 24:00	Rain - no work	24 hours
41.	09.09.2025	00:00 – 13:00	Rain - no work	13 hours
42.	09.09.2025	21:10 – 24:00	Heavy fog – no work	2 hours 50 min
43.	10.09.2025	00:00 – 09:00	Heavy fog – no work	9 hours
44.	11.09.2025	04:20 – 07:00	Heavy fog – no work	2 hours 40 min
45.	15.09.2025	21:05 – 24:00	Gang ordered -Rain, no work	2 hours 55 min
46.	16.09.2025	00:00 – 04:30	Gang ordered -Rain, no work	4 hours 30 min
47.	16.09.2025	22:38 – 23:07	Rain - no work	29 min
48.	16.09.2025	23:21 – 24:00	Rain - no work	39 min
49.	17.09.2025	00:00 – 00:11	Rain - no work	11 min
50.	17.09.2025	02:56 – 04:30	Rain - no work	1 hour 34 min
51.	18.09.2025	02:00 – 03:50	Rain - no work	1 hour 50 min
52.	18.09.2025	04:10 – 07:00	Rain - no work	2 hours 50 min
53.	18.09.2025	07:43 – 09:00	Drizzling – no work	1 hour 17 min
54.	19.09.2025	01:00 – 07:00	Rain - no work	6 hours
55.	19.09.2025	10:30 – 11:40	Rain - no work	1 hour 50 min
56.	21.09.2025	12:10 – 13:00	Drizzling – no work	50 min
57.	21.09.2025	13:00 – 24:00	Rain - no work	11 hours
58.	22.09.2025	00:00 – 19:00	Rain - no work	19 hours
			TOTAL IN HOURS	321 hours 25 min
			TOTAL IN DAYS	13 Days 9 hrs 25 min

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In addition, further delays occurred in the loading of the Vessel on account of Stevedores refusing to work, Port Authorities prohibiting work and carrying out inspections and cranes on board the vessel not being operational.

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A. *Contentions on behalf of the Plaintiff*

6. Dr. Adeel Abid entered appearance on behalf of the Plaintiff and contended that:

(i). the Defendant breached an express terms of the Sugar Charter Party inasmuch as it had failed to provide the requisite Gear Certificates as agreed in clause 42 of the *Additional Clauses to the C/P Of M/V "Beluga "A" Dated Piraeus, 25th July 2025* and which term had not been waived by the Plaintiff;

(ii) the Defendant breached an express term of the Sugar Charter Party inasmuch as it had failed to provide a Vessel capable of loading cargo with 4 cranes, each capable of working at a Safe Working Load ("SWL") of 30 mts at all times;

(iii) the Defendant was under an implied contractual obligation to provide a Vessel which was "Seawrothy" and which had been breached; and

(iv) that the failure on the part of the Defendant to provide a vessel that was capable of loading the cargo with 4 cranes, each capable of working at a Safe Working Load ("SWL") of 30 MT at all times was a breach of a duty of care owed by the Defendant to the Plaintiff.

De Adeel Abid further contended that on account of the breach of terms of the Sugar Charter Party, the Plaintiffs had suffered loss and which they quantified as hereinunder:

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S. No.	Head of claim	Basis/Explanation	Amount (USD)
1.	Costs incurred at Itajai Port	FDA 216,632.97 minus Plaintiff PDA share 123,431.16	93,201.81
2.	Additional Costs claimed by Shippers	BRL 677,607,44 = USD 127,520.83 charged due to crane breakdowns	127,520.83
3.	Despatch Earned	Laytime calculation show dispatch earned	44,875.00
4.	Cost of Loading 3,721 MT	Wilsons' calculation for labour, cranes, admin tax	114,360.00
5.	Costs for Reloading 3,721 MT	Extra freight on MV Northgate	112,500.00

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6.	Storage Cost for 3,721 MT	The 3,721 mt left at Itajai is being stored in the warehouse at Itajai until then Final storage costs will become clear one the 3,721 mt has been loaded.	15,000.00
7.	Finance Costs on 3,721 MT	Under the contract terms agreed with Shippers, the full cargo of 25000 mts must be lifted by 31 October 2025	5,000.00
8.	Hedging Losses	The Plaintiff in their capacity as traders of the Cargo have hedged against price fluctuations under their contract of sale with Socar Logistic. They have a discrepancy between the hedging contract and the sale contract equivalent to the 3721 mts left behind.	200,000
			Total Claim = 712,457.64

On this basis, he concluded that a prima facie case has been made for the arrest of the Defendant.

C. ***Contentions on behalf of the Defendant***

7. Mr. Ishrat Zahid Alavi entered appearance on behalf of the Defendant and contended that:

(i) in terms of Article III, Rule 1 of the Hague Rules (incorporated in Pakistan through the Carriage of Goods by Sea Act, 1925), the Defendant's obligation was to exercise due diligence before and at the beginning of the voyage to make the vessel seaworthy, properly manned, equipped, and supplied and which obligation had been complied with by the Defendant;

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(ii) the Defendant had tendered a Notice of Readiness (NOR) together with the vessel's gear certificate, and all requisite operational certifications and which had been accepted by he Plaintiff without any objection and which having been accepted without protest had waived the requirements as contained in clause 42 of the *Additional Clauses to the C/P Of M/V . "Beluga "A" Dated Piraeus, 25th July 2025* and consequently, all allegations regarding unseaworthiness or

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lack of due diligence are misconceived and barred by the Plaintiff's own conduct. Reliance in support of this contentions was placed on decision of a learned Single Judge of this Court reported as ***Province of North-West Frontrier vs S.M. Jaffer and Co***[1] in which it was held that certifications issues by authorities would have to be rebutted through cogent evidence to disturb the assurances made under those certifications;

(iii) in terms of negligence being attributed to the Defendant, the fact that the Defendant held a valid Gear Certificate, demonstrating that all reasonable steps were taken to ensure the Vessel was properly equipped and Seaworthy and which discharged any duty of care that was owed by the Defendant to the Plaintiff;

(iv) the Defendant, in terms of clause (p) of Rule 2 of Article IV of the Hague Visby Rules, could not be held liable for any latent defect i.e., that could not have been discovered or prevented through the exercise of due diligence, In this context he relied on a decision reported as ***Charles Brown & Co vs Nitrate Producers Steamship Company***[2] wherein it was held that a Shipowner would not be liable for defects that were latent in that in spite of careful examination by responsible persons they could not be discovered. He also relied on another decision reported as ***Riverstone Meat Company vs Lancashire Shipping Company***[3] to support the same contention.

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(iv) while there was a delay caused due to the breakdown of the vessels cranes, whenever the same occurred they were rectified and in fact the larger delay, as recorded in the admitted Statement of Facts, was on account of incremental weather and on account of stevedores that were employed by the Plaintiff who refused to work and whose negligent actions also caused the damage to Vessel's Cranes, as evidenced by the Master's Letter of Protest;

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[1] 1997 CLC 447
[2] (1937) 58 Lloyd's Law Reports 188
[3] [1959] 1 Lloyd's Rep 350

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(v) the Sugar Charter party did not contain any express term that either stipulated a timeline for completion of loading nor stipulated a time for the Vessel to depart Itajai for Karachi and in the absence of an express term fixing a loading window or departure time, the only obligation that was on the Defendant was to load and depart within a "reasonable time" and which, in terms of the prevailing port conditions, weather interruptions and customary operational practices, had been met;

(vi) that any delay caused by the lawful directions of the Port Authority could not be attributed to the Plaintiff and which constituted a supervening event for which the Defendant bore no liability. In this context he relied on an arbitration decision reported as ***<u>Sanko Steamship vs. Navios</u>*** wherein it was held that:

> " ... 47. ...
>
> *While the actions of the Port Authorities, including the Admiral of the Port, in berthing vessels out of turn for their own purposes, may be at variance with some more equitably regulated systems, the practice is certainly not unknown, where governmental receivers are involved and should not, at least under the circumstances in this case, be construed as tantamount to a 'Restraint of Princes', absent some direct forcible governmental action or decree of illegality preventing performance of the Charter and not just delaying it."*

(vii) that under the terms of the Sugar Charter Party, the liability of the Defendant had been contractually capped at US $ 80,000 as allocated in the Distribution Account and which had been paid by the Defendant;

(viii) the claim made for damages under negligence was being made to avoid the contractual limitation that had been capped in clause 4 of the Rider Agreement to the Sugar Charter Party;

(ix) the Plaintiff on account of delay of loading of goods could only maintain a claim for Demurrage and claims in either tort or contractual losses were legally untenable. In this context he relied on a decision reported as ***<u>K Line Pte Limited Vs</u>***

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Priminds Shipping (Hk) Co Limited ("Eternal Bliss") [4]In which it was held that demurrage generally liquidates all damages for delay unless a separate breach (like failure to load full cargo) is proven;

(x) the damages that were claimed by the plaintiffs were partially self induced on account of engaging negligent stevedores. In this context he relied on a decision of the Lahore High Court Lahore reported as ***Federation of Pakistan vs. Messrs AlFarooq Flour Mills Limited***[5]

(xi) the Plaintiff could not circumvent the Contractual Demurrage cap by framing a claim in negligence as it was not possible to recover purely financial losses in tort where the losses arise from a contractual relationship which are subject to a predetermined remedy. In this context he relied on decision reported as ***East River Steamship Corp vs Transamerica Dalaval Inc***[6] in which it was held that manufacturers aren't liable in tort for purely economic losses.

D. *Order of the Court*

8. I have heard Dr. Adeel Abid and Mr. Ishrat Zahid Alavi and have perused the record.

(i) *Express Terms regarding time period for loading and departure from Itajai, Brazil*

9. The facts as between the parties are not in dispute. The Plaintiff and the Defendant entered into a Sugar Charter Party for the transport of 25,000 MT of sugar from Itajai, Brazil to Karachi, Pakistan out of which only 21,279 mt of sugar was in fact loaded and which took 36 days to load. Admittedly there is no express term in the Sugar Charter Party and its various addendums and rider agreements that stipulates either a period of time within which the Defendant was obligated to load the cargo onto the Vessel nor is there a term in the Sugar Charter Party and its various addendums and rider agreements that obliged the Defendant to depart from

[4] [2021] EWCA Civ 1712
[5] 2000 CLC 215
[6] 476 U.S. 858 (1986)

Itajai, Brazil to Karachi Pakistan by a certain date. In such circumstances, I cannot see how it be contended by the Plaintiff that the Defendant breached a term of the Sugar Charter Party or its various addendums and rider agreements regarding the amount of time it was to take to load the cargo or as to the date on which the Defendant was to leave Itajai, Brazil for Pakistan so as to claim damages for such a breach.

(ii) *Breach of Express Term regarding Working Load of Crane and Certification of Cranes*

10. The next contention that has been maintained by the Plaintiff is that the Defendants were as per clause 2 of the Sugar Charter Party obligated to provide "*4 cranes having a Safe Working Load of 30 Metric tons*" and which were also, as per Clause 42 of the Additional Clauses to the Sugar Charter Party, to be subject to certification showing that had been tested within a period of one year prior to the issuance of Notice of Readiness. In this context, it is contended by the Plaintiffs that the report prepared by Wilson Sons Shipping Services and the report prepared by the Port Authorities at Itajai, Brazil both indicate that out of the four cranes that comprised part of the Gear of the Vessel, two were frequently breaking down and which were therefore not operating in consonance with their load requirements as contained in clause 2 of the Sugar Charter Party and that further a perusal of the certification that was provided by the Defendant to the Plaintiff would show that the cranes were last tested in the year 2021 and hence Clause 42 of the Additional Clauses to the Sugar Charter Party had also been breached thereby allowing the Plaintiff to claim damages for loss suffered. In response to the contentions of the Plaintiff, the Defendants while conceding that the certification that was provided did not conform with Clause 42 of the Additional Clauses to the Sugar Charter Party, as admittedly the Cranes had not been tested within a period of one year prior to the issuance of Notice of Readiness, contending that when such certifications were presented by the Defendant to the Plaintiff, they were accepted and as such the clause was waived by them.

11. I have considered the contentions of the Plaintiff and the Defendant. There can be no doubt that Clause 42 of the Additional Clauses to the Sugar Charter Party clarifies that the certification that had to be produced by the Defendant in respect of the Cranes, should have specified that the Cranes had to have been tested within a period of one year prior to the issuance of Notice of Readiness. The fact is that the Plaintiffs, however, accepted the documentation and proceeded with the Sugar Charter Party on the basis of

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the Certifications provided by the Defendant to them and which term, prima facie, must therefore be considered to have been waived by them. That having been done I see no room to subsequently argue that a breach of such a term has occurred and for which liability should be attributed to the Defendant. While, the Plaintiffs would have been well within their rights to repudiate the Sugar Charter Party, but which they choose not to do, can only lead to the conclusion that they were willing to proceed with the Sugar Charter Party on the basis of the certifications that had been submitted to them and on which account, prima facie, liability cannot be attributed to the Defendant.

(iii) Breach of implied term as to Seaworthy

12. The Plaintiffs by way of an alternative argument have contended that the Defendants are liable for the breach of an implied term that exists in Sugar Charter Party that a Vessel, subject to a Charter Party must be "Seaworthy."

13. In the context of implying such a term it is not contended by the Plaintiffs that the condition of the Vessel not "Seaworthy" as the Plaintiff. Surveyors themselves inspected the Vessel and while three inspections were required of the holds of the Vessel, were eventually approved for loading. The only issue in this regard is as to whether the Cranes of the Vessel met the standard of being "seaworthy." There is some evidence that has been adduced in terms of the report prepared by Wilson Sons Shipping Services and from the report prepared by the Port Authorities at Itajai Brazil to indicate that out of the four cranes that comprised part of the Gear of the Vessel, two were breaking down and had also been considered to not be operating in consonance with their load requirements as contained in clause 2 of the Sugar Charter Party. The Plaintiffs on this basis contend that a prima facie case that the Vessel's Gear was "Seaworthy" had not been met and which being an implied term, would entitle the Plaintiffs to claim damages. The Defendants do not object to such a clause being implied but state that they have not breached any such clause either in respect of the condition of the Vessel or in respect of the Vessel's Gear, each of which they contend met that condition on account of the disclosure of the various certifications that were accepted by the Plaintiffs.

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11. I have considered the contentions of Dr Adeel Abid in the context of implying a term as to the gear of the Vessel being "Seaworthy. Firstly, in

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terms of Section 3 of the Sale of Goods by Sea Act, 1925 such a term can be implied. However, keeping in mind that the clauses that are attempted to be implied are specifically covered in an express terms that is contained in the contract and which I have already held, prima facie, have not been breached, it is not open for the Plaintiff to attempt to enforce the same by implying such a term. This contention therefore must be rejected.

(iv) ***Negligence***

12. Finally, the Plaintiff contends that even if there was no breach of any express or implied terms of the contract as existing between the Plaintiff and the Defendant, the Defendant should be found in breach of its duty of care owed to the Plaintiff to ensure that the goods were loaded in a timely manner. The Defendants conversely contend that no such duty is owed by the Defendant to the Plaintiffs and even if such a duty was owed, it was not breached as the goods were loaded onto the vessel in a timely manner and only a few days delay was caused by on account of the disruption to the operation of the cranes. The further contend that the majority of the delay was caused either by incremental weather, by the actions of port authorities, or by the actions of stevedores and none of which actions should be attributed to the Defendants.

13. It is not the Plaintiff's case, that they are attributing the delay caused by the incremental weather to the Defendant and which admittedly accounted for 13 days of the delay. It would seem that as approximately another 14 days account for the loading of the vessel, it seems that about 9 days were lost on account of the Cranes being inoperative <u>or</u> on account of other actions of the Port Authorities inspecting and preparing reports on the cranes or on account of the stevedores refusing to work, each of which the Plaintiff attribute to the Defendants negligence. The question that needs to be considered is firstly, as to whether a breach of duty of care can be attributed to the Defendants on account of two Cranes on the Vessel being inoperative. I think not. The Defendants having provided the certification of the Vessel's Gear and which was accepted by the Plaintiffs would prima facie be enough to discharge any duty of care that was owed by the Defendants to the Plaintiff otherwise what was the purpose of asking for and being provided such certification. In addition, having come to the conclusion that the Defendants have not breached their duty of care to the Plaintiffs, it would follow that the delay caused by the Port Authorities in

terms of conducting a survey on the cranes cannot be attributed to the Defendant.

14. Finally, even if the Plaintiffs were to have been considered liable for the delay either for breach of contract or for breach of a duty of care, their liability having been specifically limited to US $ 80,000 in the disbursement account, under clause 4 of the Rider Agreement, which term was specifically agreed to by the Plaintiff and which amount has been disbursed by the Defendant to the Plaintiff, I see no reason why any liability in excess of that amount would be payable by the Defendant to the Plaintiff. That being said, CMA No.573 of 2025 must be dismissed.

15. For the foregoing reasons, I am of the opinion that the Plaintiff has failed to disclose a prima facie case to establish a claim as against the Defendants. Needless to say the balance of convenience would also vest with the Defendant and who would suffer irreparable loss on account of being detained. Consequentially, CMA No.573 of 2025, is dismissed with no order as to costs, however the order dated 19 November 2025 will remain operative for a further 4 days to permit the Plaintiff to avail a remedy of an appeal, if he deems appropriate.

Nasir/

Sd/- Mohammad Abdur Rahman
Judge

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