



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

THE OWNERS OF THE mv ‘BANGLAR MOOKH’ v TRANSNET LTD

The Supreme Court of Appeal (SCA) today dismissed an appeal by the owners of the *Banglar Mookh* (the appellant) against an order of the Western Cape High Court, Cape Town dismissing the appellant’s claim against Transnet Ltd (the respondent) for payment of damages suffered when their vessel, the MV ‘Banglar Mookh’, which was at the time being piloted by an employee of the respondent (the pilot), collided with the knuckle at the ‘A’ berth at the entrance to Duncan Dock in the Cape Town harbour.

The appellant had alleged in its particulars of claim that the cause of the collision was the gross negligence of the pilot. Before the high court there were two conflicting versions of the events which led to the collision, one in the evidence of the master of the vessel who testified on behalf of the appellant, the other in the evidence of the pilot who testified on behalf of the respondent. The high court, relying on the demeanour of the witnesses of both parties, rejected the evidence of the pilot as unsatisfactory and unconvincing. It also

rejected the evidence of the respondent's expert witness on the basis that it was 'undermined by an *a priori* and generally inflexible presumption in favour of [the pilot's] version of events'. It held that the version of the master of the vessel was to be preferred to that of the pilot. It also accepted the evidence of the appellant's expert witness. The high court found the appellant's expert witness to be 'an articulate and self-confident witness'. It held that the pilot had been negligent, but not grossly negligent. Item 10(7) of the Legal Succession to the South African Transport Services Act 9 of 1989 exempts the respondent from liability for loss or damage caused by a negligent act or omission on the part of the pilot. Based on this item, the high court dismissed the appellant's claim. It also dismissed the appellant's contention at the end of the trial that the high court should strike out the respondent's defence and give judgment in favour of the appellant for the respondent's failure, despite having given an undertaking to do so, to preserve the vessel tracking service (VTS) records. With leave of the high court the appellant then appealed to the SCA.

In dismissing the appeal, the SCA held that the high court had erred in holding that the version of the master of the vessel was to be preferred to that of the pilot. It held further that the high court had misdirected itself in a number of respects in its approach to the evidence, with the result that the SCA was at large and obliged to decide the matter afresh on the record. It stated that if the evidence was approached correctly, without misdirection, it was clear that the pilot's version, despite his weaknesses in giving evidence, was supported by most of the probabilities and should not have been rejected. Consequently, the SCA held that no negligence on the part of the pilot had been proved. The SCA rejected the argument of the appellant that the respondent's defence should have been struck out; because it had breached the undertaking to preserve the VTS records for production at the appropriate time should litigation ensue. It held that the absence of the VTS records did not make the trial unfair.