



Legal Briefing

10 March 2021

Leigh Day

Shipbreaking judgment: The shipping industry and the law of negligence

Oliver Holland and Rachel Bonner discuss the judgment of the Court of Appeal in *Hamida Begum (on behalf of MD Khalil Mollah) v Maran (UK) Limited*

A judgment of the UK Court of Appeal handed down today in ***Hamida Begum (on behalf of MD Khalil Mollah) v Maran (UK) Limited*** [2021] EWCA Civ 326 will have far-reaching implications across the shipping industry and the way it disposes of end-of-life vessels.

The Court's ruling (Lord Justice Coulson gave the leading judgment which was largely supported by Lord Justice Bean and Lord Justice Males) means that a shipping company in England selling a vessel for dismantling in South Asia could owe a duty of care to shipbreaking workers in Bangladesh even where there are multiple third parties involved in the transaction.

The finding intensifies the international spotlight on environmental and health and safety practices across the maritime sector.

The judges' view of the creation of a state of danger by the Defendant is key in the judgment, as is the Court's recognition that the case could be significant in the development of the law of negligence.



Hamida Begum, widow of Khalil Mollah. Credit: Pragna Jui Chakma

Leigh Day represents Hamida Begum, the widow of a shipbreaking worker, MD Khalil Mollah, who suffered a fatal accident while shipbreaking in Chattogram, Bangladesh, in 2018. Mr Mollah fell to his death while working on a ship called the EKTA (formerly Maran Centaurus). The EKTA had been previously owned and operated by entities within the Angelicoussis Shipping Group and its sale for demolition had been orchestrated by one of its UK subsidiaries, Maran (UK) Limited, the Defendant.



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Shipbreaking

When a ship reaches the end of its working life it must be dismantled, effected through a process known as “shipbreaking” which can happen in the relative safety of a dry dock at an approved ship recycling facility, in countries such as China and Turkey, or ships can be run aground on a beach in South Asia and broken up by hand, with toxins and hazardous materials leaking from the vessels and flowing directly into the sand, soil or sea.

The [International Labour Organization](#) says shipbreaking is among the most dangerous occupations in the world, with unacceptably high levels of fatalities, injuries and work-related diseases.

Carried out in large part by the informal sector, shipbreaking in South Asia is rarely subject to occupational health and safety controls or inspections. Unskilled migrant workers are deployed by the thousands to break down the vessels. Without protective gear, they cut wires, pipes and blast through ship hulls with blowtorches. The muddy sand and shifting grounds of tidal flats cannot support heavy lifting equipment or emergency access, and accidents kill or injure hundreds of workers each year. The damage to the environment is devastating.

Ethical shipyards which provide safe working conditions incur greater expense, so pay less for a vessel than a shipyard using the beaching method. The [Norwegian Council on Ethics](#) estimates that the additional profit per ship for the ship owner when choosing ship breaking over ship recycling is as much as US\$3-7 million.

According to leading [NGO Shipbreaking Platform](#), more than 70 per cent of the approximately 800 vessels reaching the end of their operating lives annually are broken up in Bangladesh, India or Pakistan. Standard practice is that sales of end-of-life ships are not conducted directly between the shipowners and shipbreakers themselves, but through demolition cash buyers who assume the credit risk with the result that shipowners are distanced from this unsavoury sector of the shipping industry.



Photos above taken by Luca Fasching in Chattogram, Bangladesh

The claim against Maran (UK) Limited

Mrs Begum brought a case against the British shipping company who, it is alleged, was responsible for the decision(s) which led to the vessel being beached at Chattogram. The company is domiciled in England and its parent company, with one of the largest private fleets in the world, is headed by Greek billionaire John Angelicoussis.



In August 2017, Maran Centaurus was sold for demolition in a transaction worth over US\$16 million. Mrs Begum argues that Maran (UK) Ltd could have ensured the ship was recycled at a shipyard where ethical working practices were in place to protect health, safety and the environment. However, Maran (UK) Ltd would have had to accept a lower sale price.

Given the well-known dangers of shipbreaking in Chattogram, it is alleged that Maran (UK) Ltd owed to workers such as Mr Mollah a duty of care to ensure that Maran Centaurus was dismantled in a way which did not lead to a foreseeable risk of death and injury.

Instead of facing a trial, Maran (UK) Ltd applied to the court to have Mrs Begum’s case struck out on the grounds that it was too far removed (in time and space) from Mr Mollah’s death to owe him a duty of care. It argued that his accident was caused by the pre-existing working conditions in Chattogram over which it had no control.

The strike-out application was heard by Mr Justice Jay in June 2020 and in a [judgment](#) handed down in July 2020, the Court refused to strike out Mrs Begum’s negligence claim, finding that she has an arguable case that Maran (UK) Ltd could have influenced where Maran Centaurus was scrapped, and that they could have ensured that she was ethically dismantled.

Maran (UK) Ltd appealed the High Court judgment and its case was heard by the Court of Appeal on 9-10 February 2021. On March 10, 2021 the Court of Appeal upheld Mr Justice Jay’s finding that it is arguable that Maran (UK) Ltd owed Mr Mollah a duty of care and that it would be wrong to strike the negligence claim out at this stage.



Duty of care

There is a well-established exception to the principle that a defendant is not liable for harm caused by the acts of a third party which applies when the defendant is responsible for creating a state of danger which results in the third party causing injury to the claimant.

The Court recognised that claims based on a duty of care, in circumstances where the damage has been caused by a third party, are currently at the forefront of the development of the law of negligence, and the alleged duty in this case could certainly be regarded as being on the edge of that development.

The reasons advanced by Maran (UK) Ltd as to why it is not arguable that the exception applies were that:

1. It was not the shipowner which sent the ship to Chattogram or which controlled the vessel's ultimate destination. It merely sold the vessel to an intermediate buyer, which was free to decide where the ship would be broken up, on terms that required safe demolition
2. There was no relationship of proximity between the shipowner and Mr Mollah, a requirement for any duty of care
3. If Mr Mollah had not been killed while working on this vessel he might just as easily have been killed or injured when working on some other ship

The Court disagreed with Maran's arguments, noting that the sale price and quantity of fuel oil to be left on the vessel was only consistent with a sale to an ultimate buyer in Bangladesh, and that there is at least an arguable case that the shipowner knew and intended that the ship would go to Bangladesh to be broken up, and it exercised the same control over the ship's destination as if it had been sold directly to the shipbreaker in Chattogram.



Photo taken by Luca Fasching in Chattogram, Bangladesh

As Lord Justice Males held:

“The defendant was responsible for sending the ship to Chattogram, knowing that this would expose workers such as the claimant’s husband to the risk of death or serious injury as a result of the negligence of the shipbreaker which employed him. It was not a case where there was merely a risk that the shipbreaker would fail to take reasonable care for the safety of its workers. On the contrary, this was a certainty, as the defendant knew.”

The Court held that in the present case the Defendant did not have control over working conditions in Chattogram, but it did have control over whether Mr Mollah would be exposed to the risk of death or serious injury from working on its ship. Lord Justice Males considered this to be a foreseeable risk which the Defendant created by its decision to send the vessel to be broken up in Bangladesh and is arguably sufficient to create the necessary relationship of proximity.

The Court was not attracted by the Defendant’s argument that Mr Mollah could just as easily have been killed working on another ship. On the Claimant’s case, the Defendant obtained the highest possible price for the vessel and sought to wash their hands of responsibility for anything, however foreseeable, which happened after that.

Creation of danger

Mrs Begum argued that this is not a case where Maran (UK) Ltd failed to make things better; here it made things worse. It created a danger by deciding that the vessel was to be broken up in Chattogram, where the working practices are so notoriously unsafe, and brought about Mr Mollah’s death because, in the circumstances, that death was not a mere possibility but a probability.

The Court agreed that this way of putting the claim is arguable, and not fanciful. It was held that the ‘creation of danger’ is a recognised exception to the usual rule as to the intervention of third parties which may give rise to a duty of care.

Lord Justice Coulson, with whom the other members of the Court agreed, found:

“[Maran (UK) Ltd] arguably played an active role by sending the vessel to Bangladesh, knowingly exposing workers (such as [Mr Mollah]) to the significant dangers which working on this large vessel in Chattogram entailed... The [shipbreaking] yard’s failure to provide any safety harnesses or any other proper equipment, and the tragic consequences of their not doing so, were entirely predictable.”



What should Maran (UK) Ltd have done?

Maran (UK) Ltd argued before the Court that it was wholly unclear what else it could have done, or should have done, to avoid the risks to Mr Mollah.

The Court found that the answer that lay in Mrs Begum's evidence, in particular that of a shipbroking expert, that the Defendant could, and should, have insisted on the sale to a 'green' yard, where proper working practices were in place.

The Court found that the inclusion of provisions in the contract of sale requiring safe demolition was well within the reasonable control of the Defendant. A clause imposing an obligation on the buyer to confirm that they would only sell to a yard that would perform the demolition 'in accordance with good health and safety working practices...' was in fact included in the contract, but this had no real force as the parties to the contract knew that clauses such as this would be entirely ignored. As the Court noted, **"That appears to be part of the unhappy reality of the shipbreaking business: everyone turns a blind eye to what they know will actually happen."**

As the Court concluded, **"it is at least arguable that [Maran (UK) Ltd] could have acted differently and that, if they had done, it might have made a real difference to the outcome"**.



Photos taken by Luca Fasching in Chattogram, Bangladesh

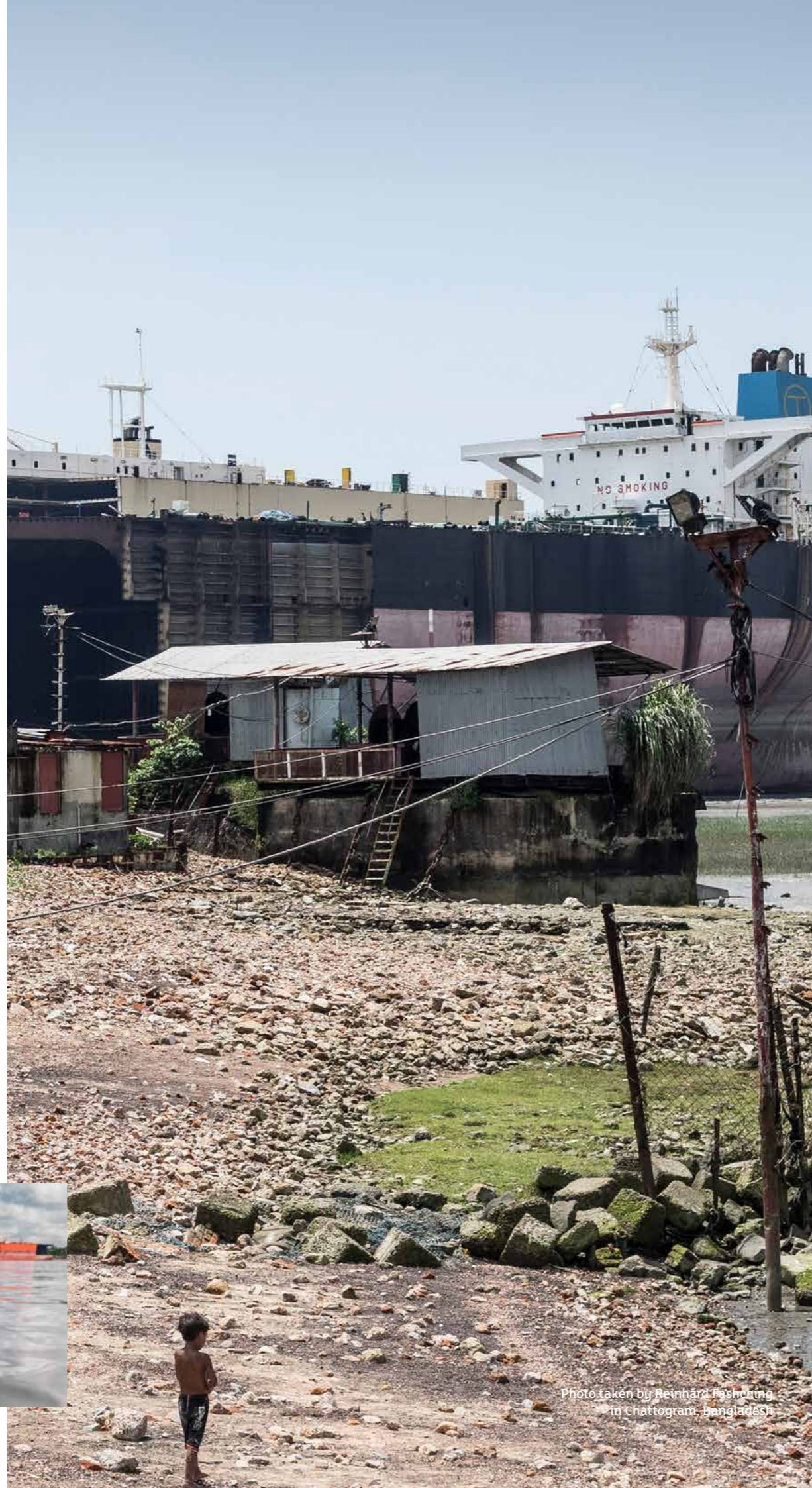


Photo taken by Reinhard Fasching in Chattogram, Bangladesh

Conclusion

The decision is likely to cause considerable concern within the shipping industry.

It supports the principle that a ship owner's liability does not automatically end once it sells a ship. If a duty of care exists at the time of sale, liability may be difficult to avoid if a vessel is sent to be scrapped on the beaches of South Asia.

Increased public awareness of the knowledge that shipowners have of the appalling conditions that workers such as Mr Mollah deal with every day, and the use of intermediate cash buyers to create distance between shipping companies and the shipbreaking yards on the Indian sub-continent, will not be welcomed by an industry that has traditionally structured itself in such a way to avoid liability and scrutiny.

The Court's finding also follows the worldwide shift towards stricter environmental and health and safety practices across the maritime sector. Criminal cases in the **Netherlands**, **Norway** and **Bangladesh** have made it clear that courts are becoming more willing to enforce international statutes to prevent the trans-boundary movements of hazardous waste.

It is hoped that what will follow is a change in the shipping industry's consideration for the human and environmental cost of their activities. It is critical that shipowners meet international standards for ship recycling, send their ships for dismantling at ethical yards, and that there is investment in South Asia to improve work practices, health and safety and the impact on the environment.

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Leigh Day

Pushing the boundaries, taking a stand

Leigh Day is a British law firm that works for individuals or communities who have been harmed or treated unlawfully. Our international human rights and environmental specialists represent people all over the world fighting for justice and challenging powerful corporate and government interests.

Contact us for an open and honest discussion.

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Published by Leigh Day
© 10 March 2021

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