

The burden of proving fault in a collision

Based on the ruling of December, 16th, 2011

1. Collision liability

Steerage fault from the striking ship
Fault in the maintenance of the striking ship

2. The proposal for a regulation

3. The probative value of the sea report

1) Collision liability

The mechanism of liability regarding collision requires proof of the fault. Case law supports this rule, thus the Court of Appeal in the reported ruling² refused to admit a presumption of fault in the absence of an attributable proved fault against a ship running that collided with another ship moored alongside. More exactly, the liability scheme regarding collision works as follows:

- If no vessel is at fault, the collision will be called "fortuitous" if due to a force majeure, or "questionable" if there are doubts about the causes of the accident. In both cases, damage will be bear by those who suffered from it.
- If the collision is caused by the unique fault of one of the ships, "responsibility for repairing the damage is borne by the person who committed it".
- If there is "common fault" of the vessels involved in the collision, "the responsibility of each is proportional to the severity of the respectively committed faults". In this last hypothesis, if the faults appear equivalent in the production of damage or if their respective proportion cannot be established, the responsibility is shared equally. Finally the proof of facts can be established by any means.

- Steerage fault from the striking ship

The fault may find its source in the conduct of the vessel but whatever the source, the proof of the fault has to be brought. This is supported by case law which considers that mere statements by one of the parties are insufficient to prove an omission's fault.

Such was the case in the judgment of 16 December 2008 where the lapse of a minute between the motor stop and the shock (supposed causal fault of the collision and allegedly sufficient delay to allow the captain of the striking ship to avoid the shock) was not considered sufficient to satisfy the proof requirement. Indeed, there was no objective evidence brought to assess the circumstances of the facts (position relative to the wind, ship speed, distance between them...).

- Fault in the maintenance of the striking ship

The fault of the striking ship may be brought by the evidence of poor maintenance or failure to monitor at the origin of the engine failure that causes the collision. But objective evidences have to be brought regarding the possibility for the ship to avoid collision.

Thus for instance, it has been held the fact that a broken-down vessel restarts after a filter cleaning, does not demonstrate that improper maintenance or lack of supervision caused the motor failure at the origin of the collision. In the same case, to exclude the fault, the Court of Appeal relied on the ship maintenance log of the striking ship attesting a regular and adapted maintenance (in any case not at fault).

2) The proposal for a regulation

The proposed regulation issued does not deprive the striking ship's right to plead the absence of the conditions required to engage its responsibility governed by the provisions of [Law No. 67-545 of 7 July 1967](#) and is not equivalent to an admission of liability notably on the ground a deposit check has not been recovered.

Indeed, does not imply obligation to repair damage following a collision, the recognition of its existence and its measure. Thus an agreement between experts (instructed by both parties to the dispute) on the amount of repairs does not deprive the owner of the striking ship brought in justice to plead the absence of the conditions of his liability.

3) The probative value of the sea report

The sea newspaper contains, besides the meteorological and nautical indications, all the important events concerning the ship and the navigation undertaken as well as the potential damage undergone or caused; it ends by the assertion by the captain which makes it real and sincere. These documents benefit from a simple assumption until proved otherwise.

Besides this obligation, the captain has, upon his arrival, to transmit the documents to the competent authority in order to certify them. Moreover if extraordinary events concerning the ship, the passengers or the ship's cargo occurred during the navigation, he has to make a detailed report within 24 hours of his arrival.