



South African Maritime Safety Authority

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Marine Notice No. 11 of 2016

Skipper pleads guilty to Culpable Homicide after unlawfully and negligently causing the death of two passengers.

TO SHIP OPERATORS, SEAFARERS, MARITIME TRAINING INSTITUTIONS AND PRINCIPAL OFFICERS AND REGIONAL MANAGERS

Summary

This marine notice brings to the attention of industry, criminal proceedings implemented in the Regional Division of the Western Cape after the loss of a small passenger vessel which resulted in the loss of two lives.

1. Background

A small passenger vessel departed from a harbour on the South African coast and onboard there were 39 persons in total comprising of the skipper, 3 crew and 35 passengers of whom 4 were children.

The wind was reported as a moderate to strong South Easterly with a swell height of 2 to 3 metres.

The skipper decided to proceed further out to sea, where whales had been seen the previous day. At this point the wind and swell increased.

The skipper stopped the vessel to allow the passengers to vacate the top deck. A wave broke over the stern of the vessel which resulted in flooding which resulted in both engines stopping and the aft pontoon taking on water.

The bilge alarms were not operational.

The skipper was unable to start either of the two engines as all electrical power was lost.

The vessels liferaft 'was launched by a passenger who did not secure it to the vessel. It drifted away.

The vessel capsized.

One passenger and one crew member died, the majority of persons suffered from a degree of shock and hypothermia, 24 were admitted to hospital.

The skipper was a member of the Closed Corporation that owned the vessel.

SAMSA decided that the vessel had to be salvaged from the seabed to enable a thorough Preliminary Enquiry to be undertaken. The vessel was recovered and towed to port.

The Preliminary Enquiry concluded that;

1. The vessel was in an unseaworthy state due to lack of maintenance;
2. The vessel was taken to sea with points of possible ingress of water into the hull being less than 200 millimetres above the surface of the water;
3. Owners have failed to ensure that the stability information of the vessel is reliable and reflects the actual operation of the vessel;
4. Owners have appointed a skipper that was not correctly certificated as required by regulation;
5. Owners have appointed crew members to be employed on the vessel that have not undergone the required approved safety induction training;
6. Owners are not able to produce the required records detailing essential safety training of the crew and passengers;
7. Owners and skipper are not able to produce the required records of the conduct of emergency procedures to be practiced; and
8. Owners and skipper are not able to produce the names of the occupants of the vessel at the time of the casualty.

Given the gravity of the accident and the contraventions of the Act and the Regulations, the report was forwarded to the South African Police Services Investigating Officer. In light of the conclusions, it was recommended that the National Prosecuting Authority pursue a case against the skipper.

2. Proceedings

The skipper was charged with two counts of culpable homicide in that he unlawfully caused the death of two persons.

3. Main Count

The skipper pleaded guilty to the two charges.

1. The skipper stopped the vessel to allow passengers on the top deck to descend in a wave and weather conditions that created and caused the rear pontoon of the catamaran vessel to flood resulting in both engines seizing, the electrical system to fail, the vessel to drift and the vessel to ultimately capsize due to wave action which chain of events resulted in the death by drowning of two persons;
2. A reasonable skipper of the vessel under the prevailing weather and wave conditions would not have stopped the vessel;
3. A reasonable skipper of the vessel under the prevailing weather and wave conditions would have foreseen that death to passengers on the vessel might be the result of stopping the vessel;
4. The skipper admitted that he should have been more careful and should not have stopped the vessel in the prevailing sea and weather conditions, which action was negligent.

4. The Agreed Sentence

Five years imprisonment wholly suspended for a period of 5 years on the following conditions;

1. The skipper is not convicted of culpable homicide committed during the period of suspension;
2. He does community work for a period of 200 hours within the next 18 months;
3. He tenders a formal written apology to the families of the deceased persons; and
4. He undertakes not to apply for a passenger vessel endorsement for 5 years from the date of his sentence. Should he subsequently apply for such an endorsement he shall include this plea and sentence agreement with such application.

5. The aggravating factors

1. Two innocent people lost their lives and a large number of people were injured and placed in jeopardy;
2. The skipper should have been more careful with the lives that were entrusted to him while on the sea; and
3. The skipper did not hold a passenger vessel endorsement which is required by regulation for this type of vessel.

The above incident and the resultant loss of life demonstrates the devastating effect of noncompliance with the rules and regulations as contained in the South African Maritime Legislation. It should be a lesson learnt for those in the industry that these rules exist for a reason. SAMSA therefore wishes to draw attention to this incident and remind members of the industry that criminal liability can result from negligent actions at sea.

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