

ANDREAS IACOVOU,

Plaintiff,

v.

ANDREAS  
IACOVOU  
v.  
THE M/V  
FERTILIA,  
AND OTHERS

1. THE M/V FERTILIA,
2. THE MASTER OF M/V FERTILIA,
3. RAFAELE ROMANO, OWNERS OF M/V FERTILIA,
4. LLOYD'S SICILIANO, INSURERS OF M/V FERTILIA,
5. CO-OPERATIVE CENTRAL BANK LTD., OWNERS  
OF THE CARGO OF M/V FERTILIA,

Defendants.

(Admiralty Action No. 1/61)

~~Admiralty—Salvage services—Principles governing remuneration for—Same principles apply with equal force in the case of any person rendering such services whether he is a professional salvor or not—It is in the interest of all concerned with navigation and sea-transport that such services should be duly appreciated and properly compensated according to law.~~

~~Admiralty—Salvage services—Nature of—Element of danger—Assessment of remuneration for—Apportionment between vessel and cargo.~~

This admiralty action was instituted by the plaintiff claiming remuneration for salvage services which he claims to have rendered to motor vessel "Fertilia", registered in Naples, Italy, when she ran aground on a shoal of rocks, about two miles before reaching the anchorage outside Paphos port, Cyprus.

The action was originally brought against the vessel, her master and her owner, defendants Nos. 1, 2 and 3 respectively; and, against the insurers and the cargo owners defendants Nos. 4 and 5.

After service of the writ on the shipping agents, the first three defendants entered an appearance under protest and took steps to have the service set aside. Eventually the application was granted, and the plaintiff had to serve notice of the writ under rule 23, on the shipowner (defendant No. 3) in Italy. In due course this defendant appeared and contested the claim.

The insurers (defendants No. 4) by notice filed early in the proceedings, declared that they had no interest in the matter,

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and the claim against them was not pressed and it was summarily disposed of on the ground that the interest of this defendant, in either ship or cargo, had not been established. The cargo-owners (defendants No. 5) defended the action in due course.

*Held*, (1) on the evidence before me, I find that the plaintiff rendered to the ship and her cargo valuable salvage service involving danger, which (salvage service) the plaintiff volunteered when the ship was in danger of serious damage, and which her master accepted. The salvage service consisted in plaintiff's proceeding to the ship in answer to her call for help ; in fetching the spare anchor and making the ship steadier thereon by cable ; in making arrangements for unloading under adverse weather conditions, involving a degree of danger to persons and property, about 550 tons of her cargo, until the ship was refloated in the morning of the 23rd September.

(2) Plaintiff's contractual obligation was to unload at the anchorage near the port. Unloading at the place where the ship had grounded, in the weather conditions in which the service was rendered, for the purpose of refloating the ship and saving loss to her cargo, amounts, in my view, to salvage service.

(3) Here the services did not come from professional salvors ; but the same principles apply with equal force in the case of any person rendering services amounting to salvage. It is in the interest of all concerned with navigation and sea-transport, that such services should be duly appreciated and properly compensated, according to law. The amount must be determined upon the relevant factors, in each particular case.

(7) On the question of amount, I assess the salvage which the plaintiff is entitled to, for the services rendered to ship and cargo, at £370.—I find this figure by reckoning remuneration for the removal of 546 tons of fertilizers from the ship on the shoal rocks to the anchorage outside the harbour, a distance of about a mile and a half, at 8/- (400 mils) per ton, taking into consideration the fact that the plaintiff (and his lightermen) received in addition, the contract amount of 0.200 mils per ton, for the transport of the same goods from the anchorage to the pier, including discharge into the lighters as per *exhibit* 4. So for the salvage of these goods and their transport for the additional distance, I assess £220.

(8) Moreover, for the services rendered to the ship until her refloating, I assess the salvage at £150 in addition to the amount paid to the plaintiff by the shipping agents, Messrs. Mantovani & Sons Ltd., for the use of his launch.

(9) Apportioning the salvage of £370 between vessel and cargo, I take the view that the salvage for the goods, *i.e.* the £220 should be equally divided between ship and cargo as it has equally benefited, in my opinion, both. The rest of the salvage should be borne by the ship, I think, considering all the circumstances, including the respective values. The usual measure of apportionment according to respective values, would, in my opinion, lead to injustice in the present case.

(10) I therefore award £260 against the shipowner (defendant No. 3) ; and £110 against the owners of the cargo (defendants No. 5). The amount of the court-deposit (£150) to be paid out to plaintiff for the benefit and account of the party who made the deposit.

(11) As to costs, I award plaintiff his costs for one advocate, against both defendants, Nos. 3 and 5, jointly and severally to be taxed at the top of the scale applicable to the total amount recovered (£370) ; subject to any order for costs previously made in the course of the proceeding.

*Judgment in terms.*

Cases referred to :

*Branco Salvage Ltd. v. Photos Photiades & Co.* 1962 C.L.R. p. 325.

**Admiralty Action.**

Admiralty Action for remuneration for salvage services which the plaintiff rendered to Motor Vessel "Fertilia" when she went aground off the coast of Paphos on the 22nd September, 1961.

*L. Pilavakis* with *G. Tornaritis*, for the plaintiff.

*St. G. McBride*, for defendant No. 3.

*L. N. Clerides*, for defendants Nos. 4 and 5.

*Cur. adv. vult.*

The following judgment was delivered by :

VASSILIADES, J.: This is a claim for remuneration for salvage services, which the plaintiff claims to have rendered to motor vessel "Fertilia", registered in Naples, Italy,

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owned by the third defendant. The action was originally brought against the vessel, her master and her owner, defendants Nos. 1, 2 and 3 respectively ; and against the insurers and the cargo owners defendants Nos. 4 and 5.

After service of the writ on the shipping agents, the first three defendants entered an appearance under protest and took steps to have the service set aside. Eventually the application was granted, and the plaintiff had to serve notice of the writ under rule 23, on the ship owner (defendant No. 3) in Italy. In due course this defendant appeared and contested the claim.

The insurers (defendants No. 4) by notice filed early in the proceedings, declared that they had no interest in the matter, and the claim against them was not pressed. In any case it may be summarily disposed of at this stage, on the ground that the interest of this defendant, in either ship or cargo, has not been established. The action against them fails. The cargo-owners (defendants No. 5) defended the action in due course.

So, at this stage, the claim constitutes a dispute between the plaintiff on the one hand, and the ship owner and cargo owners (defendants Nos. 3 and 5 respectively) on the other. Salvage services were denied by both these defendants, who, furthermore, put the amount in issue.

In support of the claim, the plaintiff went to the witness-box as P.W. 3, and called two more witnesses : the Harbour Master and Chief Pilot of Famagusta (P.W. 1) ; and the Customs Officer, Paphos (P.W. 2). The shipowner, (defendant No. 3) called no evidence ; the cargo-owners (defendants No. 5) called one witness, mainly to produce certain documents.

The facts of the case present no difficulty. On the evidence before me I find them as follows : M/v " Fertilía " registered at Napoli, under No. 790 and belonging to defendant No. 3, was on her way to Cyprus with a cargo of fertilisers, about 2,000 tons, belonging to defendants No. 5. The registered size of the vessel is 276 feet length, by 37ft. breadth, and 17 ft. draught ; 1,598 tons gross, and 924 tons net. She was built in 1955, and she is equipped with oil engines 2SA 6CY 400 × 480mm. Her value at the material time was about one hundred and sixty thousand pounds (£160,000) ; and the value of her cargo about twenty-two thousand (£22,000).

The night of the 21st to the 22nd September, 1961, she run aground on a shoal of rocks, about two miles before reaching the anchorage outside Paphos port, which was her first port of discharge in Cyprus. The shoal of rocks in question, was about a mile from the western coast of the island, not far from Paphos lighthouse.

After some unsuccessful attempts to get his ship off the rocks, the Captain called for help with his sirens ; that was at about half past one after midnight. His signal was heard at Paphos town, where the Police awoke up the Customs Officer at his hotel, and proceeded with him to the port, at Kato Paphos, to deal with the emergency.

The siren-signal was also heard by the plaintiff, a seaman, who was awakened at his house, about half a mile from the port. Climbing on the roof of his house in order to get a view of the sea behind a small hill lying between his house and the sea in the direction the signal came from, the plaintiff saw the lights of the vessel on the shoal rocks ; and, realising more or less what happened, proceeded immediately to the harbour for help.

The plaintiff is a lighterman and a seaman of considerable experience, and owns a motor-launch which he uses in connection with his business as a contractor for loading and unloading cargoes, at Paphos anchorage, about half a mile out of the small port of Paphos, where goods have to be carried to and from the ship in lighters.

The Customs at Paphos Port were not equipped with their own motorcraft, so that the Customs Officer, accompanied by a Medical Officer, went with the plaintiff in the latter's motor launch, to the ship in trouble. That was at about 2 o' clock in the morning, while a south-westerly wind was blowing, and a fairly strong swell was going on.

On arriving near the ship, the persons in the launch realised that the ship was aground, rolling and pounding as the swell moved and the seas were breaking on the ship's side. Not without difficulty the persons in the launch eventually managed to board the " Fertilis ", where the Captain explained both in Italian, which was fairly well understood by the plaintiff, and in broken English to the Customs Officer, his difficulties and asked for help. On the evidence before me I am satisfied that in those circumstances, the operation of boarding the ship was not free of danger to the persons, and risk of damage to the launch ; nor was it easy.

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It was obvious that the ship and her cargo were in danger of damage and in need of help. The Captain in charge of the vessel, called for help ; and when help was offered by the plaintiff, the Captain accepted it. The kind of help which could be rendered, was discussed ; and thereupon the plaintiff went back to the Port of Paphos in his launch, returning in due course with a fairly large spare anchor, (about 150 okes) which he dropped at a suitable distance from the ship, to make the ship steadier, and to use for pulling, when conditions were suitable for manoeuvring to release the ship from the rocks.

This operation of fastening the anchor in question, on the ship's cables, and of dropping it so fastened, at a suitable post, required skill in such matters and experience with the sea, particularly in that area ; and it was not free from danger, considering the conditions in which it was carried out.

The next operation in the endeavour to refloat the ship, was to relieve her of weight by removing part of her cargo. To avoid throwing goods overboard, arrangements were made for discharge in lighters. It was obvious that this was the best help which could be rendered in the circumstances, in the interests of both ship and cargo. The plaintiff arranged for lighters, and gangs of labourers, who by dawn had already commenced unloading. This continued for the whole of that day, the 22nd September ; but the ship, notwithstanding the next inflow of the tide, could not get free from the rock. By the evening of the first day (the 22nd September) the Harbour Master and Chief Pilot of Famagusta, Captain Kantounas (P.W. 1) went to Paphos in connection with the difficulties of this ship. He was taken on board the " Fertilias " by the plaintiff at about 20.15 hrs. Weather conditions had in the meantime somewhat improved ; but the unloading had to be discontinued for the night. Captain Kantounas remained on board for the night ; and early next morning watched and directed the operations in the endeavour to refloat the vessel.

The unloading continued as from about 6.30 hours, the morning of the 23rd September, always under the direction of the plaintiff. And by the next inflow of the tide, at about 7.30 hours a total of some 550 tons of cargo had been carried off the " Fertilias " to the Port of Paphos. At this stage, relieved of considerable part of her cargo, and helped by the tide, the " Fertilias ", using the full strength of her engines astern and pulling hard on the anchor dropped by the plaintiff, was able to get released from the rock and

refloat. Apparently the damage was not very severe ; and the ship was able to proceed on her own power to the usual anchorage about half a mile out of Paphos Port, where she dropped anchor and continued discharging the rest of the cargo destined for Paphos. A total of 900 tons was discharged (D.W. 1) ; and early in the afternoon of the 23rd September, the " Fertilis " sailed from Paphos for Famagusta, where she proceeded on her own power, carrying the rest of her cargo.

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She arrived at Famagusta harbour in due course ; and remained there under repair for some days. Her damage was described by witness Kantounas, whose evidence on the point I accept, and I find accordingly. The temporary repairs at Famagusta cost about £1,200. The final repairs, according to Captain Kantounas, must have cost a great deal more ; but he could not give from the witness-box even a rough estimate of what these would be. He gave the actual cost of the ship's delay at about £200-£220 per day.

On the evidence before me, I find that the plaintiff rendered to the ship and her cargo valuable salvage service involving danger, which (salvage service) the plaintiff volunteered when the ship was in danger of serious damage, and which her master accepted. The salvage service consisted in plaintiff's proceeding to the ship in answer to her call for help, in the circumstances already described ; in fetching the spare anchor and making the ship steadier thereon by cable ; in making arrangements for unloading under adverse weather conditions, involving a degree of danger to persons and property, about 550 tons of her cargo, until the ship was refloated in the morning of the 23rd September.

Counsel for the defendants submitted that the unloading operations were part of plaintiff's obligation as unloading contractor for the cargo which was to be discharged at Paphos. I cannot accept this submission. Plaintiff's contractual obligation was to unload at the anchorage near the port. Unloading at the place where the ship had grounded, in the weather conditions in which the service was rendered, for the purpose of refloating the ship and saving loss to her cargo, amounts, in my view, to salvage service.

In *Branco Salvage Ltd. v. Photos Photiades & Co.* 1962 C.L.R. 325 a salvage claim in respect of the services rendered to a stranded vessel and her cargo, was contested by the cargo-owners, both on the ground that

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the plaintiffs were not entitled to salvage reward from the cargo-owners, and the ground that the claim was excessive. "The nature of a salvage service, the reasons which render its existence and maintenance desirable where there is navigation, and why it stands on a separate footing as regards remuneration, are obvious matters and need no comment", I said in that case; and I still hold the same view. Here the services did not come from professional salvors; but the same principles apply with equal force in the case of any person rendering services amounting to salvage. It is in the interest of all concerned with navigation and sea-transport, that such services should be duly appreciated and properly compensated, according to law. The amount must be determined upon the relevant factors, in each particular case. And this is a stronger case than *Branco v. Photiades* (supra).

Coming now to the question of amount, I assess the salvage which the plaintiff is entitled to, for the services rendered to ship and cargo, at £370. I find this figure by reckoning remuneration for the removal of 546 tons of fertilizers from the ship on the shoal rocks to the anchorage outside the harbour, a distance of about a mile and a half, at 8/- (400 mils) per ton, taking into consideration the fact that the plaintiff (and his lightermen) received in addition, the contract amount of 0.200 mils per ton, for the transport of the same goods from the anchorage to the pier, including discharge into the lighters as per exhibit 4. So for the salvage of these goods and their transport for the additional distance, I assess £220. Moreover, for the services rendered to the ship until her refloating in the circumstances which I have already described earlier in this judgment, I assess the salvage at £150 in addition to the amount paid to the plaintiff by the shipping agents, Messrs. Mantovani & Sons Ltd., for the use of his launch.

Apportioning the salvage of £370 between vessel and cargo, I take the view that the salvage for the goods, *i.e.* the £220 should be equally divided between ship and cargo as it has equally benefited, in my opinion, both. The rest of the salvage should be borne by the ship, I think, considering all the circumstances, including the respective values. The usual measure of apportionment according to respective values, would, in my opinion, lead to injustice in the present case.

I therefore award £260 against the ship owner (Defendant 3); and £110 against the owners of the cargo (Defendants 5). The amount of the court-deposit (£150) to be paid out to plaintiff for the benefit and account of the party who made the deposit.

As to costs, I award plaintiff his costs for one advocate, against both defendants, 3 and 5, jointly and severally, to be taxed at the top of the scale applicable to the total amount recovered (£370); subject to any order for costs previously made in the course of the proceeding.

*Judgment accordingly. Order as to costs as aforesaid.*

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