

10 th May, 1955

Judge:

The Hon. Mr. Justice T. Gouder, LL.D.

*Philip Grech et. no. versus José Luis Urrutia ne. et.*

**Salvage — Assessment of Reward — Danger — Cargo —  
Rate of Exchange — Expenses — Costs —  
Sect. 546 of the Merchant Shipping Act, 1894.**

*In a claim for salvage reward it is not necessary that there should have been absolute danger for the property salvaged, but it is sufficient that there has been a state of difficulty and reasonable apprehension.*

*In the valuation of the cargo, a deduction is allowed, from the gross value, of all proper and customary expenses involved in the unloading, storage, and sale of goods, including custom-house charges, weighing, brokerage and commission. Insurance and pre-paid freight are not allowed as a deduction.*

3. No provision is made in the Maltese Law regarding the assessment of the salvage reward, section 546 of the Merchant Shipping Act, 1894, is applied; according to which a reasonable amount of salvage, left in the Court's discretion, shall be payable to the salvors.

The general principle which is to be kept in mind in assessing the reward is that salvage is not considered as compensation for the amount of work actually performed in the rendering of the service. It is not reckoned on the "quantum meruit" principle, as other considerations are taken into account in arriving at a reward. The general interest of navigation and commerce are considered; and liberality to the salvors is combined with justice to the owners of the salvaged property.

This general principle is applied in conjunction with certain material circumstances, which in varying degrees affect the amount of the reward; namely:— A. As regards the thing salvaged, 1. the degree of danger to human life, 2. the degree of danger to property, 3. the value of the property as salvaged; B. as regards the salvors, 1. the degree of danger to human life, 2. their skill and conduct, 3. the value of the property employed in the salvage service, 4. the danger to which the property was exposed, 5. the time and labour expended in the performance of the salvage service, 6. the loss or expense incurred in the performance of the salvage service.

Where all or many of these elements are found to exist, or some of them are found to exist in a high degree, a large reward is given; where only a few of them are found to exist, or they are all present only in a low degree, the salvage reward is comparatively small.

The expenses for which the Court may compensate the salvors in the award are only those expenses properly incurred in the furtherance of the salvage service, and before the vessel has been placed in a position of safety, and those expenses directly occasioned by the performance of the salvage service; as, e.g. the cost of repairing damage to the salvaging vessel. Other expenses, not allowed as salvage expenses, might be claimed independently of salvage.

*As regards the equitable division of the amount payable to the salvors by the ship and the cargo, the general rule is that every interest in the property that has benefited by the salvage contributes rateably, according to its value, to the salvage reward.*

*If the amount claimed as salvage reward by far exceeds the amount recovered, the costs of the case should be borne proportionately by the claimants and by the defendants.*

*If the value of the property saved is to be reckoned on the basis of the amount for which the property was insured, and the insurance was made in foreign money, the rate of exchange in the conversion of that amount in English money is that prevailing commercially at the time when the debt became due and payable.*

This is a claim for salvage reward by the Master of the British Steamship "Silver Med" against the Spanish motor vessel "Virgen de Lluch" and her cargo, represented as above stated;

According to the statement of claim, on the 18th October, 1953, at twenty three minutes past eleven in the evening, the "Silver Med", whilst on her from Spezia to Malta, sighted the "Virgen de Lluch" showing a distress signal — two red lights — about 45 miles off the port of Malta. Thereupon the "Silver Med" manoeuvred into closer quarter and asked the "Virgen de Lluch" whether she was in need of assistance. The "Virgen de Lluch" replied that she was adrift and required to be taken in tow. After successful operations, the "Silver Med" towed the "Virgen de Lluch" to Malta and had her brought into harbour by a tug-boat hired by the plaintiff;

The defendant pleaded that the service asked for, and rendered, cannot be considered as a salvage service. The "Silver Med" may claim payment only for the towage operations carried out by her;

The facts which gave rise to this action may be briefly stated as follows:—

On the 18th October, 1953, the motor vessel "Virgen de Lluch", built at Palma de Majorca in 1945, of 398 tons gross and 218.83 tons net, was proceeding from Ceuta to

Malta with a cargo of chickpeas, when, at about 6 p.m., the main engine broke down, the gear wheel having stripped some of its teeth. Consequently, the vessel became stationary, and could not proceed to her destination. The engine had been giving trouble since noon on that day, but the vessel had managed to proceed until the final break down. It was not possible to effect repairs at sea, the required repairs were a dockyard engine-shop job. The vessel carried a crew of nine, including the master;

The master — Captain *Jose' Luis Urrutia*, defendant — caused two vertical red lights to be hoisted to show that the vessel was not under command, and therefore unable to carry out any manoeuvre as might have been required by the "Regulations for Preventing Collisions at Sea";

This signal is not a distress signal, nor does it necessarily indicate that the vessel showing it requires assistance, as a vessel might be stopped and be not under command while effecting any necessary repairs. It is however, considered an act of courtesy for a vessel to pass close to the vessel displaying it to enquire if any assistance is required;

At the time of the breakdown the vessel was about 20 miles to the North-Westward of Gozo, and about 40 miles in the same general direction from the port of Valletta;

As the vessel is not fitted with wireless to send a radiogram, but only fitted with wireless telephone, her master was unable to communicate with his agent in Malta to arrange for the vessel to be towed into port, Malta not being equipped with instruments to receive wireless telephony;

At about 11.30 p.m. a vessel was seen to be approaching from a northerly direction, and an effort was made to signal her with an aldis lamp (a modern type of Morse lamp) in the international code, requesting a tow; but this signal was not understood;

The vessel came close to the "*Virgen de Lluch*" and communication was effected by megaphone, and the request for towage to Malta was repeated. This vessel was

the "Silver Med", a steamer sailing under the British flag, registered in Cyprus, which was bound from Spezia to Port Said, calling at Malta for bunkers;

The "Silver Med", having agreed to tow the "Virgen de Lluch" to Malta, manoeuvred into position and passed her a five inch manilla hawser (new); and towing commenced;

It appears that towage commenced at 0.35 a.m. on the 19th October, 1953, and continued until 3 a.m., when a stoppage was made in order to reinforce the 5" manilla hawser with a 3" wire rope. This having been arranged, towage recommenced at about 3.20 a.m.; but at 3.40 a.m. another stoppage took place owing to the 3" wire parting. This broken wire was hauled on board the "Silver Med", and at about 4.00 a.m. towage recommenced with only the 5" manilla hawser, and continued until approximately 8 a.m. on the 19th October, the time of arrival off the entrance to the Grand Harbour;

At about 8.10 a.m. the pilot boarded the vessel, and the master of the "Silver Med" signalled to inform "Lambert Brothers", his agents, of the situation, and to request them to order a tug-boat to help the "Virgen de Lluch" into harbour. The tug approached the "Virgen de Lluch" at about 9.10 a.m., and towed her into port. Subsequently the "Silver Med" herself entered the port;

During the operation the sea was calm and the weather fine, according to the testimony, in the sea-protest, of the master of the "Virgen de Lluch" and to the testimony of his mechanic Alejo Figeroa. According to the master of the "Silver Med" the sea was moderately rough with a good swell, and at about 3 a.m. on the 19th October the weather worsened;

The referee appointed by this Court submitted, with the assistance of Mr. Victor R. Sammut, LL.D., appointed to assist him, the following considerations and conclusions;

"Virgen de Lluch" and her crew and cargo were in no immediate danger when she was taken in tow, but she had been rendered incapable of sailing owing to the breakdown above mentioned, and could not possibly have made port

on her own. The danger she was in was only remote. Such remote and apprehended danger is sufficient to render the service given by the "Silver Med" salvage service, as it is not necessary that there should be absolute danger in order to constitute a salvage service; it is sufficient that there is a state of difficulty and reasonable apprehension;

The salvors incurred no risk whatever to themselves and their property in the performance of the service. The salvage operation consisted in a straightforward and simple tow;

The length of time occupied was approximately nine and a half hours, from about 11.25 p.m. on the 18th October to shortly after 9 a.m. on the next day;

Although the time occupied in the service was approximately  $9\frac{1}{2}$  hours, the time lost in rendering the service was appreciably less, as the "Silver Med" was on her way to Malta to take bunkers, and did not therefore deviate at all from her route except in so far as was necessary to approach the tow and make her fast. Most of the time spent on the tow would have been occupied just the same by the salving vessel in her trip to Malta in the ordinary course of events. From four to five hours is a fair estimate of the delay caused to the "Silver Med" by the towing of the "Virgen de Llunch";

There was very little labour involved in the operation; only what is required to make the tow fast, to add the wire rope to the manilla hawser, and to wind in the lines, besides keeping a look-out to see that the tow was proceeding satisfactorily. The operation did not require more than normal skill;

The parties accepted that the value of the "Virgen de Llunch" be reckoned on the basis of the amount for which she is insured, namely three million one hundred and seventeen thousand five hundred Spanish pesetas (3,117,500 Sp. Pes.);

The rate of exchange should be that of 110 pesetas to the pound sterling, that prevailing commercially on the date at which the debt became due and payable. Halsbury states, Laws of England, second edition, vol. 23, s.251:—

"When an obligation to pay money in foreign currency is sought to be enforced in the English Courts, the claims can only be expressed in English money. The rate of exchange to be applied in effecting such conversion is that prevailing commercially on the date at which the debt became due and payable. This principle was accepted in "Atlantic Shipping and Trading Co. vs. Dreyfus (Louis) & Co." (No. 2) (1922), 127 L.T. 415 H.L.; 35 Digest 172, 320.

At this rate of exchange the value of the "Virgen de Llunch" is £28,340 approximately;

The vessel and cargo having been brought into a position of safety in Malta, which was the vessel's port of destination, the cargo value on which salvage is to be awarded is its assessed value in Malta, the place where the salvage service terminated, on the 19th October, 1953. In the valuation of the cargo a deduction is allowed, from the gross value, of all proper and customary expenses involved in the unloading, storage, and sale of goods, including custom-house charges, weighing, brokerage, and commission. Insurance and pre-paid freight are not allowed as a deduction. The invoice value of the cargo, which consisted in three parcels of chickpeas, imported by John Falzon and Aristide Psaila, who have been joined as co-defendants to the suit, was of £14,047. 19s. 5d. Its market value in Malta would correspond approximately to the invoice value plus expenses plus five per cent profit allowed by the Price Control Board. As the expenses are deductible, the total value of the cargo in the present instance is estimated at its invoice value plus five per cent (5%) profit, although its invoice cost is normally accepted as a sufficiently close approximation of the value of the cargo at the port of loading. The total value of the cargo thus estimated is £14,749;

The whole net freight unpaid and at risk at the time of the service, which was preserved by the salvage service for the shipowner, is to be taken into account as a contributing interest. Such freight in the present case amounted to £900;

As no provision is made in Maltese Law regarding the

assessment of the salvage reward, section 546 of the Merchant Shipping Act, 1894, is applied, according to which a reasonable amount of salvage, left in the Court's discretion, shall be payable to the salvor;

The general principle which is to be kept in mind in assessing the reward is that salvage is not considered as a compensation for the amount of work actually performed in the rendering of the service. It is not based on the "quantum meruit" principle, and other considerations are taken into account in arriving at a reward. The general interest of navigation and commerce are considered, and liberality to the salvor is combined with justice to the owners of the salvaged property. This general principle is applied in conjunction with certain material circumstances, which in varying degrees affect the amount of the reward; these circumstances being:—

A. As regards the thing salvaged:—

1. The degree of danger to human life;
2. The degree of danger to property;
3. The value of the property as salvaged;

B. As regards the salvors:

1. The degree of danger to human life;
2. Their skill and conduct;
3. The value of the property employed in the salvage

services;

4. The danger to which the property is exposed;

5. The time and labour expended in the performance of the salvage service;

6. The loss or expense incurred in the performance of the salvage service;

Where all or many of these elements are found to exist, or some of them are found to exist in a high degree, a large reward is given; where only a few of them are found, or they are all present only in a low degree, the salvage remuneration is comparatively small (Kennedy, p. 151);

In the present case, no risk was involved in the operation, which was a simple and straightforward tow in conditions of little or no difficulty. Very little labour and only normal skill were required. Further, the "Silver



"Med" was not a vessel specially equipped for salvage operations, which to some extent would entitle the salvors to an enhanced reward; and she was not deviated from her normal course, but only delayed somewhat. She was placed in no danger in carrying out the service;

In view of all this, a reward of £1,000 in addition to the expenses, is considered fair and reasonable;

The expenses for which the Court may compensate the salvor in the award are only those expenses properly incurred by the salvors in the furtherance of the salvage service and before the vessel has been placed in a position of safety, and those expenses directly occasioned by the performance of the salvage service, as, *exempli gratia*, the cost of repairing damage caused to the salvaging vessel (Kennedy, p. 182);

According to the above principle, only the following expenses may be allowed, namely:—

Manilla hawser ... ..	£56	0	0d.
Wire rope ... ..	£42.	0.	0d.
Wages ... ..	£22.	12.	0d.
Tug assistance ... ..	£24.	15.	0d.
Signal message ... ..	£1.	8.	0d.
Total:	£140.	15.	0d.

The plaintiffs may have the right to claim the other expenses, which have been disallowed, independently of salvage; and such right is being reserved to them. The disallowed expenses are those, with the exception of the expenses for the tug assistance and for the signal message, listed in exhibit "D" at page 49 of the record of the proceedings — which exhibit is to form an integral part of the present judgment;

In the apportionment of the salvage reward, the only participants in the present case are the owner, master and crew of the "Silver Med", the Dockyard having accepted a payment for the above assistance given by their tug on the basis of services rendered; which rules out any claim for salvage;

As the operation was not one requiring special skill,

courage and labour of the crew, it is principally by means of the vessel herself ("The Silver Med") that the salvage was effected; the more so that she is a motor vessel, and not a sailing vessel;

This vessel was not exposed to any danger. It does not appear that any part of her crew were transferred to the "Virgin de Lluch". A salving vessel may be exposed to some risk when a large part of her crew are so transferred;

The chief responsibility of the operation, as between master and crew, rested with the master;

When the salvaged vessel was approached, all hands were ordered on deck; but it does not appear from the evidence which of the crew were given additional work or more onerous duties than the others in connection with the operation;

The company of the "Silver Med" consisted in twenty-four as indicated in the list forming the integral part of the present judgment, at page 90 of the referee's report;

As regards the equitable division of the amount payable to the salvors between the "Virgin de Lluch" and her cargo, the general rule is that every interest in the property which has benefited by the salvage service contributes rateably, according to its value, to the salvage reward;

As the vessel ("Virgin de Lluch") has been valued at £28,340, the cargo at £14,749, and the freight at £900, in proportion to these values the rateable division of the salvage reward (£1,000), plus expenses (£140)—total £1,140—is, to be nearest point, as follows;

Vessel £731; cargo £381; and freight £28;

In the opinion of the sitting Judge, the referee's reasonings, opinions and conclusions, should be concurred in;

With regard to the costs of the case, defendants' counsel rightly pointed out that these will be taxed on the amount claimed by the plaintiffs nomine in their application for the issue of a warrant of seizure and another of impediment of departure, and he submits that, as the amount claimed in those applications — £10,000 — by far exceeds the amount recovered, on which costs would

have been taxed had there been no such previous claim, the excess should be borne by the plaintiffs;

The plaintiffs contend that they were misled by the rate of exchange of the peseta as published in the Government Gazette at the time they filed their said applications. The rate of exchange was at that time fixed at 30.66 pesetas to the pound sterling, and at this rate of exchange the "Virgin de Lluch's" value would have increased more than threefold;

Considering, however, the material circumstances of the present case, both as regards the thing salvaged and as regards the salvors, the increased value of the vessel would have made only a slight difference;

For the foregoing reasons, the Court adjudges as follows;

Liquidates the amount of the salvage reward in the sum of £1,000, saving its apportionment between the plaintiffs; liquidates the expenses payable to the plaintiffs in the sum of £140. 15. 0;

Consequently orders the defendant Captain José Luis Urrutia nomine to pay to the plaintiffs nomine the sum of £759 — £731 for the vessel and £28 for the freight; and orders the defendants Falzon and Psaila nomine to pay to the same plaintiffs nomine the sum of £381 for the cargo;

Orders that costs in excess of the sum which would have been taxed on the basis of the amount recovered be paid by the plaintiffs nomine, and the balance by the defendants Captain Urrutia and Falzon and Psaila nomine, in proportion to their respective contribution.

---