

1985 March 28

[DEMETRIADES, J.]

YUSRA SHIPPING CO. LTD.,

Plaintiffs.

v.

THE SHIP "YAMAMA" AND HER CARGO AND
FREIGHT, AT LIMASSOL PORT,

Defendants.

(Admiralty Action No. 21/85).

*Salvage—Salvage services—Remuneration for—Amount of the
reward within the discretion of the Court—Principles on
which reward is assessed—Expenses and losses incurred
during the operation—Section 34 of the Wrecks Law, Cap.
298.*

5

Whilst the defendant Ship "Yamama" was sailing from
Limassol port to Lattakia her engine and the cooling water
pump had broken down and water, instead of being pump-
ed to the engine leaked heavily into the engine room. Fol-
lowing a call for help the ship "Lucky Star", owned by
plaintiffs, which was anchored at the anchorage outside the
Limassol harbour sailed to where the defendant ship was
and on being told by her master that he wanted him to
tow "Yamama" to Limassol, he did tow her safely to
Limassol anchorage.

10

15

Due to the overloading of her engine during the towing
of "Yamama" the gearbox of the "Lucky Star" broke down.
Had "Yamama" not been towed to the anchorage she
would, because of the bad weather and the leakage of the
water into the engine room be dragged out and sink.

20

The value of the "Yamama" was between U.S. \$35,000

to 40,000 and her cargo was insured for the total sum of \$200,200. The plaintiffs paid to the master and the crew of the "Lucky Star" \$5,000 bonus for the salvage of "Yamama" and that as a result of the salvage operation they
5 incurred expenses amounting to C£2,001 for the repair of the "Lucky Star" and alleged that they incurred losses amounting to \$9,500 as follows: For gas oil used during the operation, 500 dollars, for freight for cargo lost whilst the vessel was tied up for eight days for carrying out the
10 necessary repairs and for waiting to secure another cargo 4,000 dollars, for freight the vessel lost i.e. the freight of the cargo that was to be loaded on the ship on the day of the operation 4,500 dollars and for port expenses and agency disbursements incurred during the eight days the
15 ship was tied up for repairs 500 dollars.

In an action by the owners of the "Lucky Star" for remuneration for salvage services rendered to the defendant ship, her cargo and freight:

Held, that since the services were rendered to "Yamama" when there was danger to herself and the crew manning her and the cargo loaded on her the owners and the crew of "Lucky Star" are entitled to a reward for the services rendered; that the amount of the reward unless it is fixed by agreement, is in the discretion of the Court
20 (after stating the principles governing the amount of the reward -vide pp. 333-338 post); that this Court is not satisfied that plaintiffs lost the sum of \$4,000 freight for cargo
25 other than the one which was due to be loaded on their ship on the day of the operation; and that, therefore, the plaintiffs have properly incurred expenses and losses
30 amounting to, interpreted into Cyprus pounds, the sum of £8,850; that considering the risk to the salvor ship, in view of the state of the weather, and her crew, the fact that "Lucky Star", had she not acted promptly, there was
35 a danger of "Yamama" being sunk and the time spend for the operation, there is awarded to the plaintiffs the sum of £11,500.00 as salvage reward, in which the amount of \$5,000 paid by them to the Master and the crew of the
40 "Lucky Star" and which is most reasonable, is not included, as it has been added in the amount awarded for expenses and losses; and that, in the result, there will be

judgment in favour of the plaintiffs for C£20,600.00 (see, also section 34 of the Wrecks Law, Cap. 298).

Judgment for plaintiffs in the sum of C£20,600 with costs.

Cases referred to:

5

Brassal Offshore Services Ltd. v. The Ship "June" and another (1980) 1 C.L.R. 231;

Branco Salvage Ltd. v. The Ship "Dimitrios" and her cargo and freight (1968) 1 C.L.R. 252;

Attorney-General of the Republic v. Motor Tanker "Kerisserwaard" and another (1965) 1 C.L.R. 433. 10

Admiralty Action.

Admiralty action for remuneration for salvage services rendered by the ship "Lucky Star" to the defendant ship, her cargo and freight. 15

L. Papaphilippou, for the plaintiffs.

No appearance for the defendants.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. This is an action by which the plaintiffs, who are the owners of the ship "LUCKY STAR", claim remuneration for salvage services rendered to the defendant ship, her cargo and freight. 20

Though the ship, hereinafter called the "YAMAMA", and the cargo loaded on her, were, on the application of the plaintiffs, arrested, no appearance was entered by or on her behalf. 25

The facts which led to these proceedings are in brief the following:

On the 13th January, 1985, and at about 19.20 hrs the Master of the "LUCKY STAR", who is the first witness for the plaintiffs, whilst attempting to speak over the V.H.F. with another ship that was to sail from Beyrouth, heard the "YAMAMA" calling for help. The witness then spoke with "YAMAMA" and was told that she urgently needed help as her engine and the cooling water pump had broken down and that water instead of being pumped to the engine leaked heavily into the engine room.

At the time the "LUCKY STAR", which was loaded with 150 cubic meters of empty carton boxes of approximately 25 tons, was anchored at the anchorage outside the Limassol harbour waiting for her turn to be loaded on the following day, i.e. the 14th January with another cargo.

"LUCKY STAR" sailed to where "YAMAMA" was and after the Master of "YAMAMA" told the witness that he wanted him to tow "YAMAMA" to Limassol, he threw a rope on the "YAMAMA". The weather was rough as a north-easterly wind was blowing and whilst the crew of "YAMAMA" were pulling the rope to secure it on their ship, "YAMAMA" hit "LUCKY STAR" on the side and caused damage to her hull.

Towing then began but as "YAMAMA" was going in a zig-zag manner—apparently its steering gear was out of order—the rope snapped. In the meantime, the weather was getting worse but "LUCKY STAR" managed to throw another rope to "YAMAMA" and safely towed her to Limassol anchorage. By that time the wind got stronger and its force reached 6 beaufort.

The two vessels reached the anchorage at about 5.30 hrs on the 14th January, 1985. When they reached the anchorage the "LUCKY STAR" could not stop as its gear box broke down due to overloading of her engine during the towing of "YAMAMA". The witness finally managed to stop his ship by turning it against the wind. In the opinion of the witness, had "YAMAMA" not been towed to the anchorage she would, because of the bad weather and the leakage of the water into the engine room, be dragged out and sink.

The evidence of this witness, that "LUCKY STAR" towed "YAMAMA" to the port of Limassol and the reasons for doing so is corroborated by the contents of the "Sea Protest" sworn by the Master of "YAMAMA" before the Registrar of the District Court of Limassol, on the 15th January, 1985. This document is exhibit 'A' attached to the affidavit filed in support of the application of the plaintiffs for the arrest of "YAMAMA" and her cargo and reads as follows:

5

"Sea Protest"

"I, Imad Ghalawanji Syrian Passport No. 7188 Master of M/V YAMAMA Syrian Flag Reg. No. 3 LA declare that on 13.1.85 at 15.20 hours sailed from Limassol port direction Lattakia course 073 true with 280 tons of generals.

10

On 13.1.85 at 18.25 hours it happened that cooling water pump broke which cools the main engine and caused heavy leakage and water never reach main engine and resulted high heat to main engine. Immediately engineer stopped engine and tried hard to repair pump but impossible also checked head cylinders and found some damaged. Our position 33 37E 34 44N wind started north easterly to increase and reached nealy 4 beaufort which caused change position of my vessel to south westerly. When I felt that impossible reach any port by her own means therefore and for the sake the safety of my vessel/crew and cargoes. At 18.55 hrs I tried contact any near vessel by VHF asking for help but no success also tried contact through Cyprus Radio also without success. At 19.10 hrs I heard M/V LUCKY STAR calling other vessel. I called her and master replied and asked him for help and gave him my vessel's position to tow vessel to Limassol. Master M/V LUCKY STAR was near my vessel and immediately arranged towage. On 14.1.85 at 00.15 hrs towage started towards Limassol where we arrived at 05.30 hrs.

15

20

25

30

35

Cannot ascertain damage unless dismantling engine.

I Declare General Average.

(Sgd.) MASTER".

On the same day, that is on the 15th January, 1985, the witness signed the following statement:

“TO WHOM IT MAY CONCERN

5 I Fadel Mansour Syrian passport No. 608 Master of M/V LUCKY STAR Cyprus Flag Reg. No. 380796 declare that on 13.1.85 at 19.10 hrs heard M/V YAMAMA, Syrian Flag calling for help. Her position 33 37E 34 44N.

10 At 19.22 hrs I sailed with my vessel towards M/V YAMAHA, wind was North Easterly nearly 3 beaufort. At 23.45 hrs I arrived near YAMAMA and was at position 33 34E 34 41N windform was increasing coming about 4 beaufort. Master M/V YAMAMA agreed for towage to Limassol according Lloyd
15 form.

On 14.1.85 at 00.20 hrs towage started towards Limassol where arrived 05.25 hrs same day.

20 Therefore for the right of my vessel/crew and owners I would like owners M/V YAMAMA to respect their agreement otherwise to safeguard all parties concerned, I ask for the seizure of M/V YAMAMA at Limassol.

(Sgd) MASTER”

25 This statement was produced and is exhibit ‘B’ before me. The witness produced, also, in Court the log-book of the “LUCKY STAR” in which the events he related and to which I have already referred to appear. The Court inspected the log-book and kept as an exhibit photocopy of the relevant page. This document is marked exhibit 1.

30 What is the legal position regarding salvage in Cyprus was considered in a number of cases dealt with by the Supreme Court of Cyprus and useful reference may be made to *Brasal Offshore Services Ltd., v. The Ship “JUNE” and another* (1980) 1 C.L.R. 231, *Branco Salvage*

Ltd. v. the Ship "DIMITRIOS" and her cargo and freight, (1968) 1 C.L.R. 252, and the *Attorney-General of the Republic v. Motor Tanker "Keisserward" and another*, (1965) 1 C.L.R. 433. Reference may, also, be made to section 34 of the Wrecks Law, Cap. 298, which reads:- 5

"34. In determining any dispute as to the amount of salvage to be paid to any salvor, the Court or Judge determining it shall award such sum as appears just and reasonable in the circumstances of the case, having regard to- 10

- (a) the enterprise and promptitude of the salvors in rendering assistance;
- (b) the degree of damage and distress from which the property is rescued; 15
- (c) the degree of labour and skill displayed and the danger incurred by the salvors;
- (d) the value of the property saved;
- (e) the time employed in rendering the services;
- (f) the success of the effort to save the property: 20

Provided that no salvage shall be awarded unless the property in respect of which salvage is claimed shall have been exposed to actual peril threatening its destruction save for the assistance rendered by the salvor." 25

In Halsbury's Laws of England, 4th ed., vol. 43, para. 1036, under the heading "Danger to Property or Life", it is stated:

"Danger requisite. The essence of a salvage service is that it is a service rendered to property or life in danger. The requisite degree of danger is a real and appreciable danger. It must not be merely fanciful, but it need not be immediate or absolute. It is sufficient if 30

at the time of the service the situation of the subject of the service is such as to cause reasonable apprehension on the part of the person in charge of it. The danger may arise from the condition of the salvaged vessel, or of her crew, from her position, or from the master's want of skill or his ignorance of the locality or of local conditions. A service which begins as salvage is not necessarily transformed into towage because on the voyage the ship is towed past, or into, ports at which she could be in safety."

From the totality of the evidence before me it is clear to me that services were rendered to "YAMAMA" when there was danger to herself and the crew manning her and the cargo loaded on her. The owners and the crew of "LUCKY STAR" are, therefore, entitled to a reward for the services rendered.

Having reached my above finding, the next questions that pose for decision are what is the amount of reward to which the owners and the crew of the "LUCKY STAR" are entitled and who fixes it.

In Halsbury's Laws of England, *supra*, para. 1056, under the heading "Amount fixed by the Court", it is stated:

"General principles. The amount of the salvage reward is limited to the value of the property or the interest in property salvaged. Subject to that limitation, the amount of the reward, unless it is fixed by agreement, is in the discretion of the Court, and except in cases of absolute necessity the Court which tries the case should also assess the remuneration. As a general rule, where the owner of the salvaged property appears, the Court will not award the salvor more than one-half of the value of the salvaged property, whether the property is derelict or not. A variation in the exchange rate of a currency is not a relevant factor to take into account in fixing the award for salvage services. The

Court has power to award interest on a salvage award whether the salvage services were or were not performed under a special contract.”

In the case of *Branco Salvage Ltd.*, supra, Josephides J. in deciding the questions in issue held the following (at pp. 262-264:- 5

“The general principles are that the amount of the reward, unless it is fixed by agreement, is in the discretion of the Court. The Court, in assessing the reward, endeavours to combine liberality to the salvor with justice to the owner of the salvaged property. It regards not merely the work done in the performance of the salvage service, but the general interests of navigation and commerce. Thus it looks with favour on salvage services rendered by steamships built and maintained for salvage services (35 Halsbury’s Laws of England, 3rd edition, page 749, paragraph 1139). In assessing the reward the Court takes into account the danger to life, whether on board the salvaging or the salvaged vessel, and the danger to property. The value of the salvaged property is an important consideration in the assessment of reward; but it will not raise the reward out of due proportion to the services rendered. If the value is large the amount of the reward is usually a smaller proportion to the value than if the value is small (*ibid.*, at page 750, paragraph 1142). Likewise, the value of the property employed is also an important element in the assessment of the reward. It is not, however, the measure or limit of the reward. The risk to which the salvaging property is exposed by the performance of the salvage service is also an important consideration. The length of the salvage operations is not in general a very important element for consideration, unless the services are dangerous or invoke protracted exertion; though the additional loss or expense incurred by salvors by reason of the duration of their services is taken into consideration in the assessment of the reward. The labour involved in the salvage 10 15 20 25 30 35

service is an important element only so far as it is accompanied by the exercise of skill, or by danger, or responsibility *ibid.*, at pages 751-2, paragraphs 1146-8). See also section 34 of our Cap. 298.

5 In assessing the amount of the salvage reward the
 • expenses and losses properly incurred by the salvor
 in the performance of the salvage services are taken
 into account (section 24 of our Cap. 298; and 35
10 Halsbury's Laws, page 752, paragraph 1149). Those
 losses and expenses may be given in the form of a
 separate award, but the common practice is to include
 it in the general award. The losses and expenses which
 are dealt with in this manner include expenses reason-
15 ably incurred in bringing the salvaged property into a
 place of safety; and expenses, such as the cost of re-
 pairing damage, and depreciation in value of the
 salving vessel, caused by the performance of the sal-
 vage service (*ibid.*, at page 752, paragraph 1149).

20 These principles are also to be found summarized
 in Kennedy's *Civil Salvage* (1958), 4th edition, at
 pages 210 to 218, where it is stated (at page 211) that
 'if the Court gives the amount of the damage, loss or
 expense specifically, it will take care not to give the
25 amount twice over by again considering them when
 it comes to fix the amount due for salvage remunera-
 tion proper, that is, the remuneration for risk, etc. in
 the service'.

30 It may be taken that, at the present time, the Court
 will be careful to award a sufficient sum to salvors to
 cover the expenses they have 'properly incurred' (sec-
 tion 24 of our Cap. 298) and to give them a reason-
 able additional amount as compensation for their
 services. As stated by Kennedy, at pages 217-8: 'The
35 only expenses for which the Court of Admiralty may
 compensate the salvor in the award are:

(1) expenses properly incurred by the salvor in the furtherance of the salvage service, and before the vessel assisted has been placed in a position of safety, and

(2) expenses directly occasioned by the performance of the salvage service, as e.g. the cost of repairing damage which, without any fault on the part of her officers or crew, has been caused to the salvaging vessel (including, of course, her boats, furniture and tackle) or of replacing damaged clothing' (see cases quoted in footnotes 10 and 11, at pages 217-8). 5 10

Finally, as stated in Kennedy, 'claims under the first head of expense are closely scrutinized by the Court, and must be strictly proved' (page 218)."

In view of the principles aforequoted and the provisions of section 34 of Cap. 298, it appears that the duty to fix the amount of reward is cast upon the Court. In the present case as to the amount of the reward to which "LUCKY STAR" is entitled, the plaintiffs called Mr. Antoine Elias, a Director of the plaintiff company, who gave evidence as to the value of "YAMAMA" after her salvage and the value of the cargo which she was carrying. 15 20

As regards the value of the ship, the witness said that he was himself in a position to estimate her value as very recently, that is within the last three months, he himself traded three vessels, one of which was scrap and the other two running vessels. His assessment was that the value of "YAMAMA" was between U. S. \$35,000 to 40,000. I accept this valuation made by this witness. 25

With regard to the value of the cargo loaded on the vessel, the witness produced three marine cargo policies in which the value of the cargo appears clearly. These insu- 30

rance policies are exhibits 7(a), (b) and (c) before me and show that the cargo was insured for the total sum of \$200,200. I, therefore, accept that this was the value of the cargo.

5 In giving evidence this witness said that he had paid to the Master and the crew the sum of \$5,000 bonus for the salvage of "YAMAMA" and that as a result of the salvage operation the plaintiffs incurred losses and expenses for-

A. C£2,001.- as follows:

10 £760.- for the repair of the clutch of the engine of his ship.

£690.- for having the hull of the ship repaired, and

£551.- for the rope which was cut during the salvage operation.

15 For the above sums the witness produced receipts (exhibits 4, 5 and 6) which corroborate his allegation.

B. \$14,500.00 as follows:

500 Dollars for gas oil used during the operation,

5,000 Dollars bonus to the crew and the Master,

20 4,000 Dollars freight for cargo lost whilst the vessel was tied up for eight days for carrying out the necessary repairs and for waiting to secure another cargo,

25 4,500 Dollars for freight the vessel lost, i.e. the freight of the cargo that was to be loaded on the ship on the 14th January, 1985, and

500 Dollars port expenses and agency disbursements incurred during the eight days the ship was tied up for repairs.

30 I am prepared to accept all items in A. above, but as regards B., I am not satisfied that the plaintiffs lost the

sum of \$4,000 freight for cargo other than the one which was due to be loaded on their ship on the 14th January, 1985.

I, therefore, find that the plaintiffs have properly incurred expenses and losses amounting to, interpreted into Cyprus Pounds, the sum of £8,850.00. 5

Considering now the risk to the salvor ship, in view of the state of weather, and to her crew, the fact that "LUCKY STAR", had she not acted promptly, there was a danger of "YAMAMA" being sunk and the time spent for the operation, I have decided to award to the plaintiffs the sum of £11,500.00 as salvage reward, in which, I must stress, the amount of \$5,000 paid by them to the Master and the crew of the "LUCKY STAR", and which I find as most reasonable, is not included, as I have added it in the amount I awarded for expenses and losses. 10 15

In the result, there will be judgment in favour of the plaintiffs for C£20,600.00.

The defendants to pay the costs of the action to be assessed by the Registrar of this Court and be brought to me for approval. He will take into account, also, the costs and expenses incurred by P.W. 1 after they are verified by receipts. 20

Judgment for plaintiffs for C£20,600.00. Order for costs as above. 25