

[IN THE COLONIAL COURT OF ADMIRALTY OF CEYLON]

1957

*Present : Basnayake, C.J.*

IN RE POLISH OCEAN LINES OF GDYINA

*Applications Nos. 1 and 2 of 1953*

*Action for salvage—Assessment of reward.*

In this action for salvage the owner of the salvaged vessel did not appear. The vessel was a derelict at the time it was salvaged.

*Held*, that the Court could award the salvor more than a moiety of the value of the salvaged property.

In assessing the reward for salvage the Court takes into account not merely the actual expenses incurred but also the loss suffered by the salvor.

<sup>1</sup>(1891) *A. C.* 531 *at page 533.*

**T**HIS was an action for salvage.

*S. J. Kadirgamar*, for Plaintiff in Applications Nos. 1 and 2.

No appearance for defendant.

*Walter Jayawardene*, with *B. C. F. Jayaratne*, Crown Counsel, for Attorney-General (On notice).

*Walter Jayawardene*, with *B. C. F. Jayaratne*, Crown Counsel, for Principal Collector of Customs (On notice).

*Cur. adv. vult.*

June 7, 1957. BASNAYAKE, C.J.—

This is an action for salvage by the salvor the Polish Ocean Lines of Gdynia in Poland. It would appear that when the plaintiff's motor vessel "Mickiewicz" of 2,240 tons was proceeding on a voyage from Tsing Tao laden with a cargo of Peanuts and Sesame seeds on or about 2nd April 1953 a motor launch was noticed in the Bay of Bengal about 700 miles from Colombo Latitude 05° 56" N Longitude 91° 45" E adrift in the Ocean. A Chinaman, its sole occupant, was in an exhausted condition. The Master picked up the motor launch with the famished Chinaman. On examination it was found that the launch had a cargo of 29 packages of tins described as condensed milk which when opened were found to contain opium. The course of the vessel was deviated to Colombo, which was the nearest port. The Customs authorities took charge of the opium which weighed 738 kilograms and was valued at Rs. 29,562.71, and the motor launch was taken over by the plaintiff's agent in Colombo, the Ceylon Trading Company Ltd.

The Attorney-General and the Principal Collector of Customs who were noticed deny any liability to pay salvage to the plaintiff. Neither the owner of the salvaged vessel nor the Chinaman who was found in it has though noticed entered appearance in these proceedings. The Principal Collector of Customs has deposited the value of the opium in Court and neither he nor the Attorney-General makes any claim thereto.

The only question that arises for decision is what amount is the plaintiff entitled to as salvage. There is no absolute rule or fixed scale of remuneration in civil salvage (*The Ewell Grove* 1835 3 Hagg. 209, 221). The amount of the salvor's reward, in the absence of a valid agreement, is a matter to be determined in the discretion of the Court. There are certain limits laid down in the decisions. Kennedy (Civil Salvage 3rd Ed. p. 146) states :—

"It may be taken, however, as a safe general rule that in no case in which the owner of the salvaged property appears will the Court award the salvor more than a moiety of the value of the salvaged property."

The matters that may be taken into account in assessing the reward are thus classified in Kennedy :

A. As regards the things 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 is exposed.
- (5) The time and labour expended in the performance of the salvage service.
- (6) Responsibilities incurred in the performance of the salvage service, such, e.g. as risk to the insurance, and liability to passengers or freighters through deviation or delay.
- (7) Loss or expense incurred in the performance of the salvage service, such e.g. as detention, loss of profitable trade, or repair or damage caused to ship, boats, or gear.

The amount of the salvage reward depends on how many of the above elements are present in a given case. According to the plaintiff's statement, which is uncontradicted, the costs incurred in the salvage including the deviation is £1,332-7-8. The plaintiff does not state that the salvage itself was hazardous or involved any loss or expense in its performance. It is not alleged that freighters have made any claim on the plaintiff in consequence of the deviation. The plaintiff had also to take the Chinaman to a port that would permit him to land, as the Immigration Authorities in Colombo refused to admit him. The salvaged launch is valued at Rs. 1,000.

There is a further circumstance that has to be taken into account in determining the amount of the reward payable. The launch was a derelict at the time it was salvaged. The practice of the Court of Admiralty in awarding a reward for salvage of a derelict is stated thus by Brett M. R. in *The City of Chester*<sup>1</sup> — “ Even in the case of derelict the Court of Admiralty has hardly ever under any circumstances, and in no known case of non-derelict has ever awarded, as for salvage reward, more than half of the value of the property saved. ” Instances of rewards of more than half are not unknown in cases in which the owners did not appear.

In the circumstances of this case and bearing in mind the fact that the Court in assessing the reward for salvage takes into account not merely the actual expenses incurred but also the loss suffered by the salvor, I assess the reward of the salvor at Rs. 20,000 and I also award him costs. After deducting Rs. 1,000 the value of the launch handed over to the salvor's agent the balance sum of Rs. 19,000 and the costs should be paid out of the money deposited in Court.

*Judgment for plaintiff.*

<sup>1</sup> (1884) 9 F. D. 182, 186.