

[IN THE COLONIAL COURT OF ADMIRALTY OF CEYLON]

1971

*Present: Wijayatillake, J.*

E. THILAGARATNAM, Plaintiff, and  
THE MOTOR TRAWLER "MEEGAMUWA", Defendant

*Action in Rem No. 1 of 1971*

*Admiralty Court—Claim for salvage—Two ships owned by same Corporation—One ship in distress—Rescue of it by the other ship—Rescue operation conducted by an employee of the Corporation—Circumstances when the employee may become entitled to salvage award.*

"Mylicdy" and "Meegamuwa" were two motor trawlers owned by the Fisheries Corporation (Ceylon). At a time when all the employees of the Corporation except the staff officers were on strike and the situation was very tense and confused at the Headquarters, a radio message was received from "Meegamuwa" that the vessel was in distress near about Beruwala on account of a shortage of fuel. The plaintiff, who was himself an employee of the Corporation but was not attached to a particular vessel as such, was then requested by the Assistant Manager (Ships) to rise to the occasion and take

the vessel "Myliddy" with the fuel required for "Meegamuwa". He did so most successfully. The rescue operation was undertaken by the plaintiff in the teeth of the strike and at grave risk to himself and a casual crew of three persons whom he employed. They were all in danger of being treated as "black legs" by the resenting strikers.

In the present action the plaintiff claimed salvage award on the basis that "Myliddy" rendered assistance to "Meegamuwa" and thereby rescued the latter vessel from a dangerous and critical position. He averred that in his transaction all those on board the "Myliddy" underwent some risk to their lives.

*Held*, that the plaintiff was entitled to succeed in his claim for salvage although he was an employee of the Corporation and both vessels belonged to the Corporation. When, in a particular situation the service rendered falls outside the scope of implied duty and has been exceptionally hazardous, the person or persons rendering such assistance would be entitled to claim salvage. In the present case it was the strike which turned the scales in favour of the plaintiff.

## ACTION in rem against the Motor Trawler "Meegamuwa".

*M. Kanagasunderam*, for the plaintiff.

*K. Shinya*, with *S. S. Basnayake* and *Nihal Singaravelu*, for the defendant.

*Cur. adv. vult.*

November 23, 1971. WIJAYATILAKE, J.—

The plaintiff avers that on 8.9.69 the Motor Trawler "Myliddy" owned by the Fisheries Corporation (Ceylon) rendered assistance to the Motor trawler "Meegamuwa" also owned by the said Fisheries Corporation on a distress signal for fuel as she was adrift near Beruwala and thereby rescued this vessel from a dangerous and critical position. The plaintiff avers that in this transaction all those on board the "Myliddy" underwent some risk to their lives. He claims a sum of Rs. 75,000 as his share of the salvage based on a valuation of the "Meegamuwa" at Rs. 1,500,000 and the cargo of fish at Rs. 250,000.

The defendant pleads that there was no occasion for performance of "salvage" services as the plaintiff was an employee of the Corporation which owns both these vessels and he was merely carrying out a routine function within the scope of his duties by delivering the necessary fuel to the "Meegamuwa" as it was the duty and custom for vessels belonging to the Corporation to give mutual assistance to other vessels of this Corporation. The defendant pleads that the "Myliddy" manned by a crew consisting of employees of the Corporation set out on the signal given by the "Meegamuwa" with two drums of oil supplied by the Corporation on the orders of the Asst. Manager on duty. The defendant denies that it was a distress signal as such and that it was a routine

request for fuel; that the vessel was running on its own fuel and it was not adrift at any stage. The defendant accordingly pleads that in any event the plaintiff did not act voluntarily and the services performed did not cause or contribute to the salvaging of the "Meegamuwa" as she reached the port of Colombo on her own fuel without making use of the fuel that was supplied by the "Myliddy".

The defendant makes a counterclaim for the damages suffered by the arrest of the vessel without reasonable or probable cause and/or mala fide and/or with negligence and/or wrongfully and unlawfully causing the arrest of the vessel on 6.3.71.

The plaintiff by way of replication avers that he was under no duty and/or obligation to his employer to take the "Myliddy" out to sea on the morning of 8.9.69 in order to assist the "Meegamuwa" and that he did so voluntarily and of his own accord. He further avers that even if there was a duty or custom for vessels belonging to the Fisheries Corporation to give mutual assistance to other vessels of the same Corporation he is not debarred or precluded or estopped from earning a salvage reward for services rendered by him in the context of the facts of this case. The case went to Trial on 14 issues.

On the voluminous evidence led in this case it will be convenient to discuss the questions which arise in the following order:—

- (1) The fuel situation when the "Meegamuwa" received the message to return to Colombo.
- (2) The location of the "Meegamuwa" when the officers on board detected the shortage of fuel.
- (3) The location of the "Meegamuwa" and the time when the first signal for assistance was sent.
- (4) The nature of the assistance required.
- (5) The time when the "Myliddy" set out with the two drums of oil.
- (6) The location of the "Meegamuwa" when the "Myliddy" cited her and supplied the fuel.
- (7) The quantity of fuel supplied and the necessity for the same
- (8) The abnormal conditions in the Fisheries Corporation.
- (9) Whether in the context of these conditions the plaintiff was in duty bound to act as he did.
- (10) Whether the Captain of the "Meegamuwa" and/or the engineer Brainudeen were aware of such conditions in Colombo.
- (11) Even if the plaintiff was in duty bound to go to the assistance of other vessels of the Corporation whether in the circumstances of this case the performance of his functions was so risky and hazardous as to merit a claim for salvage.

Gabriel, the Captain of the "Meegamuwa" in his evidence has stated that his vessel left Mutwal on 22.8.69 for Pedro Bank about 100 miles off Trincomalee on a fishing expedition with a supply of oil sufficient for about 20 days. The instructions were at the end of the fishing operations to return to the Trincomalee harbour on about the 8th September. While they were at Pedro Bank he had received a message on 5th September from Manamperi the Assistant Manager (Ships) to return to Colombo. Accordingly he had set course to Colombo passing Trincomalee—the course being 5 to 7 miles from the coast. He had given a message to Colombo that the expected time of arrival as 7 a.m. on 8th September. He has frankly admitted that when he diverted the ship to Colombo he did not check the fuel position as this ship normally carried a supply sufficient for 20 or 21 days, and in any event the scheduled date of return to Trincomalee was about 8th September. It would appear that there was no fuel meter and they had to rely on a dipstick and this checking was normally attended to by the engineer Brainudeen. He was unable to say whether the engineer had checked the fuel position when the ship was diverted to Colombo. I might observe that the Captain appears to have taken things for granted and depended entirely on the engineer. Particularly in the absence of a fuel meter one begins to wonder whether this was safe particularly as the ship was now on a voyage to Colombo, unless of course, there was provision for re-fuelling on the way out at Galle. The evidence as to whether re-fuelling facilities were available at Galle is of a nebulous character. It would appear that the Fisheries Corporation has no fuel-station but the Petroleum Corporation has a station but there is nothing to show that there was any arrangement between these two Corporations. On a consideration of the evidence in regard to the conditions on board the "Meegamuwa" it would appear that there was a lack of co-ordination owing to the strained relations between the Captain and Brainudeen. The latter's complaint was that the Captain appeared to have more confidence in his subordinate, Piyasena, an engine room assistant, who was trying his best to establish himself in the Corporation. Brainudeen has given us a graphic picture of his experience in the Arctic North and he was not modest about his claims as perhaps the most experienced engineer in the Corporation, and the most qualified in Ceylon today. His woeful tale was that Piyasena was trying to get his promotion and he was by-passing him and giving instructions to the Captain. This was his wail right through and one could picture as to the messy state of affairs on board the "Meegamuwa". This perhaps explains the Captain's indifferent attitude when the message was received to divert the ship to Colombo. I might also mention that unlike in a steamship when the coal available would be quite noticeable, in a vessel driven by oil without a fuel meter the responsibility of checking the fuel available was all the greater.

It was when the "Meegamuwa" was at a point between Dondra and Galle it was discovered that the fuel situation was not satisfactory and steps were taken to conserve the oil by transferring it to the daily service

tank. The fuel had to be transferred in buckets. This would show that the situation was not so easy. In this process the vessel had proceeded towards Colombo.

Near about Beruwala which is about 30 miles from Colombo the situation obviously had worsened and the Captain had sent a radio message to Colombo for two drums of oil to be sent in a 11-ton boat. There has been a serious controversy in this case with regard to the precise message. The plaintiff's version is that the ship was *adrift* near about Beruwala and Manamperi—the Assistant Manager (Ships)—had to act promptly to save the ship from disaster and he was requested to do the needful in the thick of a strike. I have given my careful consideration to this question and I am of opinion that the ship was not *adrift* as such but it was in imminent danger of going *adrift* as it was running short of fuel unless the oil called for was supplied. The direct and circumstantial evidence clearly point to this conclusion.

In this context one has to consider the situation at the Headquarters of the Fisheries Corporation. Things were in a state of confusion as there was a strike on. All the personnel except the staff officers were on strike and the situation was tense. It has been urged by Mr. Shinya that there was no such tension, but the very conduct of the officers and the others on board the "Meegamuwa" shows the degree of tension at the Headquarters. Brainudeen has frankly admitted that they were aware of the strike at the time they left for Colombo (page 347). There can be no doubt about this as they would have been in radio-communication during the fishing expedition. Knowing that a strike was on would the Captain of the "Meegamuwa" have sent this message for fuel unless it was absolutely necessary? I do not think they would have acted in a fit of frivolity to get a 11-ton boat out to sea with two drums of oil if it was purposeless. The Captain has explained that he did so out of an abundance of caution. True enough, but in the light of the situation at Mutwal it seems to me that the "Meegamuwa" was in serious jeopardy at the time this message was sent and the Captain acted with a due sense of responsibility.

A very important question arises as to the location where the "Meegamuwa" and the "Mylicdy" met each other. According to the plaintiff it was at a point in the vicinity of Beruwala. The position of the defendant has at various stages of this Trial shifted from Mt. Lavinia to a point off Mutwal. When the plaintiff was cross-examined it was categorically put to him, that it was at Mt. Lavinia but when the defence witnesses were called one by one they sought to shift the point as close to Mutwal as possible. As I see it there was a design in this to show that the part played by the plaintiff was as negligible as possible and to show that he was seeking to bolster up a claim. The Log book D M 4 has been produced to show that the whole operation of the "Mylicdy" had taken a very short time—but a close scrutiny of this document raises strong suspicions as to whether it has been doctored with a view to defying the claims of the plaintiff.

On a consideration of the totality of the evidence with regard to the time taken on this operation the version of the plaintiff appears to be more probable although I am not satisfied that the "Meegamuwa" was in a state of drift as such. As for the location where the two ships met each other it seems to me that the truth is that it was at a point about midway between Beruwala and Colombo.

The question arises why Captain Gabriel radioed the "Myliddy" when it was cited to deliver one drum of fuel if the "Meegamuwa" was in the vicinity of Mutwal and she needed no fuel. The submission for the defence is that the "Meegamuwa" took over the fuel out of courtesy—the "Myliddy" having come to their assistance. This sounds fantastic—why a man had to jump overboard the "Meegamuwa" and collect this drum of fuel if in fact this fuel was superfluous. Why this farce was enacted has not been explained satisfactorily. On the other hand one can safely presume that at the stage the drum of fuel was collected the fuel position on the "Meegamuwa" was desperate. The evidence for the defence is that this fuel was not in fact used but no documentary evidence has been led to show that the drum was returned to the stores. Surely those in charge of a vessel must be having a check on a matter of this nature, at least in the public interest. However, even if the fuel was not in fact used it is quite obvious that the Captain of the "Meegamuwa" was of the view that it was necessary to call for this quantity of fuel to enable the vessel to reach its destination.

In the assessment of the evidence in this case one has to be cautious about the various conflicts in this Corporation. It is apparent that things were in a state of turmoil and the officers and other personnel were seeking to safeguard and promote their interests at any cost. Many aspersions have been made against the Asst. Manager (Ships) Manamperi. I have anxiously sought to assess his evidence particularly in view of the claim made on his behalf by the plaintiff when he advanced his claim for salvage which he has tacitly approved. I might make a similar observation in respect of the other personnel on whose behalf the plaintiff made his original claim. I might observe that apart from the direct evidence in this case the circumstantial evidence has been of great avail to me and this evidence points to the fact that there is substantial merit in the plaintiff's claim for salvage—although as I have already observed this vessel was not adrift but in imminent danger of going adrift and the location of the meeting of the two vessels was at a point about midway between Beruwala and Mutwal.

It is also noteworthy that although the plaintiff addressed his letters to the Fisheries Corporation shortly after this transaction the position as set out by him was not seriously controverted for a considerable period. If the position as set out by Captain Gabriel is correct and the Log book D M 4 was available with the entries as they are at present it is strange why the Corporation failed to question the correctness of the assertions in the plaintiff's letters. Furthermore, although the plaintiff had returned the log book of the "Myliddy" this all important

document has not been produced by the defendant. This log book would have revealed many a relevant factor—particularly in regard to the time taken for the operation and the location of the meeting of the two vessels. No doubt, Captain Mendis has been lukewarm about the plaintiff's claim but as it appeared to me he was in a state of disgust as he had been unfairly treated by being shifted from one post to another without any consideration to his experience and seniority. I wonder how Captain Mendis would have reacted if he was called upon by Manamperi to render the necessary assistance to "Meegamuwa" with a strike on. He may well have excused himself owing to the strike and in the absence of a regular crew and "Meegamuwa" may have gone adrift and been perhaps a total loss.

In the light of my observations the question does arise as to whether the plaintiff has in this operation done anything which merits salvage—as he was only performing a duty at the request of his immediate superior. When this question was put to Captain Gabriel, Brainudeen and Captain Mendis they dismissed it with a cynical smile so much as to say that the assistance rendered on this day was just a matter of routine and nothing extraordinary. It was just a bagatelle. The question does arise whether in the context of the situation at the Fisheries Corporation, Mutwal, one could dismiss this question so lightly. Considering the promptitude with which Manamperi acted by rushing from his home to office and requesting the plaintiff to give the necessary assistance one would have expected at least the officers who gave evidence for the defence to express their commendation and thanks to the plaintiff for his spirit of service in the situation that arose on this day. At least the plaintiff, Manamperi, Seneviratne and the others who joined in this venture might have been commended but all the good work done by them has been received with a very cold smile reminding one of the Arctic: As I have already observed the conduct of those on board the "Meegamuwa" who had made a hasty exit even before the "Myliddy" was fully berthed and without even an exchange of greetings shows the spirit prevailing in the Corporation during this period (page 297). It is in this light one has to assess the evidence in this case, particularly the evidence on behalf of the defendant. The defence has called Devadas, cadet officer and Sunil de Silva, Trainee Officer, to show that they were on board the "Myliddy" at the time of this operation and that the plaintiff's version regarding the location of the meeting of the two vessels and the time factor is not true. The plaintiff does not speak to these two officers joining him. The defence would have been in a position to lead some documentary evidence of their presence on board the "Myliddy" but no attempt has been made to corroborate their presence by the production of any pay register or other record. In the absence of any such record and the belated nature of their evidence one cannot say with confidence that they were in fact on board. Even their evidence shows that the operation had gone on for about 3 to 4 hours. I do not think the evidence of the radio operators at the Corporation in regard

to the entry of the "Meegamuwa" to port is of much value as it is admitted that sometimes it takes several hours to reach the destination after the signal is given re-entry.

When the plaintiff submitted his claim to the Fisheries Corporation, on the face of the log books, records and other registers if there was any suspicion as to whether this was a fraudulent claim or at least an exaggerated claim without any merit, in view of the persistence of the plaintiff, it was the clear duty of the Corporation officials who had any suspicions about the plaintiff, Manamperi or any others who were to benefit by this claim for salvage to hold an inquiry into this matter and record the evidence available. If this was done the evidence of both Devadas and Sunil de Silva who are said to have been on board the "Mylyddy" would have been of greater avail. One cannot penalise the plaintiff for the lethargic attitude of the higher-ups in the Corporation.

Now that I have discussed the facts and come to certain conclusions the question does arise whether on the basis of these conclusions the plaintiff is entitled to succeed in his claim for salvage.

In the Law of Salvage there are now well recognised and established principles which have to be kept in mind. The right to salvage is what the law called *jus liquidissimum*, the clearest general right. Bringing assistance to a ship in danger is recognised as a salvage service. Rights of salvors are independent of contract. Salvage is governed by a due regard to benefit received, combined with a just regard for the general interests of ships and marine commerce. (Kennedy (1958)-5-13.)

The "Meegamuwa" should have been in danger. Such danger should be real and sensible and not fanciful or vaguely possible. If the ship was at no time in danger there would be no occasion for salvage.

Danger to the property or life which is the subject of the salvage service is the very foundation of the claim for salvage (Kennedy-15).

The danger need not be absolute or immediate. It must, however, be at least so near, so much a just cause of present apprehension, that, in order to escape out of it or to avoid it (as the case may be), no reasonably prudent and skilful seaman would refuse the salvor's help if it were offered to him upon the condition of his paying for it the salvor's reward . . . . . The ignorance of those to whom the service is rendered may well form in itself an element of real danger to them and to the property in their charge. (Kennedy, p. 17-21.) For instance, in the present case, if those in charge of "Meegamuwa" were in a state of apprehension due to a lack of appreciation of the fact that the fuel in the ship was sufficient to carry her to the destination it would still constitute a danger to found a claim for salvage.

The conduct of the Captain, Brainudeen and Piyasena which prompted the radio message for fuel, though it may not be strictly an S. O. S. or a "May day" signal makes it clear that there was a need for assistance.



The fact that this signal was directed to the employer, in my opinion, does not make any difference unless, of course, the message was sent in a fit of mischief or frivolity, to create worse confusion in Mutwal where there was a strike on! I do not think this imputation can be made against the officers on board the "Meegamuwa". Assuming therefore that this message was sent with a due sense of responsibility the only conclusion one can come to is that the Captain entertained a reasonable apprehension that his ship was in peril.

The burden of proving the presence of danger rests upon those who claim as salvors. (Simmonds, Vol. 35, p. 738.) This burden would be discharged on a balance of probabilities as in a civil case in our Courts. Simmonds refers to a case where persons who are induced by ambiguous signals to proceed to the assistance of a vessel which is in danger as entitled to claim as salvors. (Vol. 35, page 738.) In the instant case too if the signal was such that Manamperi understood it as a distress signal that the ship was drifting or about to drift the elements necessary for a salvage claim would be satisfied.

Voluntariness is an essential element of salvage in the sense that if a service is rendered solely under a pre-existing contractual or official duty owed to the owner of the salvaged property, or solely in the interest of self-preservation, it is not a salvage service. (Kennedy 25.) In all cases, indeed, where duty springing from office, or arising out of contract would have legally bound the claimants to do services of the same nature as those actually rendered, the court is vigilant to protect the owners from improper claims, without neglecting what is required for the ends of justice and the encouragement of enterprise on such occasions. (Kennedy 97. Simmonds Vol. 35, page 740.) However, when in a particular situation the service rendered falls outside the scope of implied duty and the service rendered has been exceptionally hazardous the person or persons rendering such assistance would be entitled to pursue a claim for salvage. The Court does not favour such claims unless the extra-contractual service which they have rendered is of a substantial nature (Kennedy—157), *The Sappho* (1871) L.R. 3 P.C. 690, *The Agamemnon* (1883) 5 Asp. M.L.C. 92. This is the principal question in the instant case. Both vessels belong to the same Corporation and the assistance has been rendered by the plaintiff who is an officer of this Corporation and not attached to a particular vessel as such. Thus he was in duty bound to perform services such as this. See the recent case of *The Gregerso* (1971) 1 A.E.R. 961. But the vital question is whether in the performance of his duty he undertook a venture which was exceptionally hazardous and risky as to take it outside the scope of his implied duty. Mr. Kanagasunderam has drawn my attention to the case of *The Glenfruin* (1885), Vol. 10, Probate Div. 103-108 where both vessels were owned by the same owner and the master and the crew were declared entitled to salvage. (Kennedy—155.) I understand there is no precedent in our Court of Admiralty pertaining to a claim of this nature and I have given my anxious consideration to

the serious implications of the issue before me. In my view on a consideration of the facts in this case if the plaintiff performed these services at a time when the situation was normal in the Fisheries Corporation then he would be precluded from pursuing this particular claim. But as I have already observed on the day in question there was a strike on and all personnel except the officers were on strike. It is in this atmosphere that the Assistant Manager (Ships) requested the plaintiff to rise to the occasion and he did so without finding excuses and that most successfully. He had also to employ a casual crew in the teeth of the strike. They would have been treated as "black legs" and one could almost feel the resentment that would have been shown by the strikers. Mr. Shinya has submitted that all the three persons employed although they were on a casual basis they were regularly available for employment; but in my opinion this is a distinction without a difference—as their loyalty was only to themselves. Furthermore, in employing a casual crew the plaintiff underwent a grave risk as one or more of them may have out of sympathy for the strikers or on their instigation sabotaged the whole venture!! Those are the risks the plaintiff faced; and now it is easy after the event to belittle his efforts. This is just the attitude of arm chair critics—and perhaps if Manamperi and the plaintiff adopted this attitude and the "Meegamuwa" went adrift, if not on the rocks, the question arises how the Corporation would have reacted! I might again stress the fact that it is the strike which turns the scales in favour of the plaintiff.

Success is necessary for a salvage reward (Kennedy—98). The plaintiff has proved that his mission was successful. Although the "Meegamuwa" ultimately took in only one drum of fuel it is clear that this drum was taken on board with a due sense of responsibility and not to satisfy the whims and fancies of the officers of the "Myliddy". Whether this fuel was used or not is immaterial. Furthermore, it is in evidence that the "Myliddy" escorted the "Meegamuwa" to port. Where doubt exists as to the value of service court leans to salvors. (Kennedy—106). I have done so always keeping in mind the fact that the plaintiff was performing a duty and that both vessels belonged to the same owner.

I would accordingly hold that the plaintiff is entitled to salvage.

As for the assessment of the salvage reward there is no absolute rule or fixed scale of remuneration in civil salvage. The Court endeavours always to combine the consideration of what is due to the owners, in the protection of the property, with the liberality due to the salvors in remunerating meritorious services. The Court ordinarily inclines to a lenient view towards salvors (Kennedy 164–187). Admittedly the "Meegamuwa" is of the value of Rs. 1,500,000. It had a heavy cargo of fish too. In the circumstances, taking into consideration the fact that the plaintiff is an employee of the Corporation I fix the salvage at Rs. 25,000.

I do not see any merit in the claim in reconvention. The plaintiff has taken the usual steps available to him in a case of this nature as provided for by Statute. The fact that the vessel is owned by the Fisheries Corporation is of little avail to the defence as admittedly this vessel was not registered with the Insurance Corporation. Furthermore, it is evident that the administration in this Corporation was beset with conflicts. Once the "Meegamuwa" was seized the Corporation should have taken immediate action to have her released but several days have been spent on this and the plaintiff cannot be held responsible for this delay and consequent loss. What would have been the position if the salvage services rendered to the "Meegamuwa" were by a vessel not owned by the Corporation and she was arrested? In a Corporation such as this one would expect the necessary provision readily available for a quick release of a vessel under arrest. Can the salvor be blamed if the machinery moves at a slow pace? With modern Banking facilities the release could have been obtained in a very short time. I am not satisfied that the defence has proved any *mala fides* and/or *crassa negligentia* on the part of plaintiff in the steps taken for the arrest of the vessel.

I answer the issue as follows :—

1. Yes
2. Yes
3. Rs. 25,000
4. (a) Yes
4. (b) Not all. There were three casual employees
5. Yes
6. (a) Yes
6. (b) Yes, in the circumstances as proved
7. Yes
8. Does not arise
9. No
10. Yes
11. (a) May have
- (b) Not necessary to answer in view of answer to issue 9
12. Nil
13. No
14. Does not arise

I accordingly enter judgment for plaintiff in a sum of Rs. 25,000 with costs which I fix at Rs. 2,500. I dismiss the claim in reconvention.

Before I conclude I must convey my thanks to the learned counsel Mr. Kanagasunderam, Mr. Shinya and their juniors for the invaluable assistance given to me in this case. It will be an omission on my part if I fail to commend the services of Manamperi, Assistant Manager (Ships) and the others who joined him and the plaintiff in the salvage operations despite the strike at the Corporation and the unpleasant atmosphere they had to work in. I presume their positive approach to the problem they were faced with will receive the due commendation from the authorities concerned.

I must also express my thanks to the Registrar and the other members of the staff of this Court for their service throughout this long Trial—the transcript of which is over 700 pages.

*Judgment entered for plaintiff.*

