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COMPENSATION FOR LIFE SALVAGE AT SEA

By DAVID W. BROWN

On the night of August 25, 1950 the *U. S. S. Benevolence*, a Navy hospital ship, collided with the *S. S. Mary Luckenback*. The collision took place on a foggy night about four miles west of the Golden Gate Bridge. Upon instructions from the United States Coast Guard, John Napoli proceeded in his small fishing boat to the scene of the accident and commenced taking on survivors of the *U. S. S. Benevolence*, which sank thirty minutes after the collision. Napoli transferred the first load of survivors to the *S. S. Mary Luckenback*. After this, some of the crew of the *S. S. Mary Luckenback* boarded Napoli's vessel to aid him in taking on more survivors. To make room for the victims and to facilitate rescue operations a valuable part of Napoli's catch for the day had to be jettisoned. Also, in the risky business of transferring people to the *S. S. Mary Luckenback* Napoli's ship was damaged as waves continually pushed the two vessels together. In all, Napoli rescued seventy members of the crew of the *U. S. S. Benevolence* from the water.

The Navy Department has seen fit to reimburse Napoli for his loss of cargo, for repairs to his vessel and for loss of income while repairs were being effected. The decision has met universal approval.¹

By compensating Napoli the Navy has gone beyond the duty usually assumed in compensating those who have performed meritorious service in saving life at sea. Since the case of *The Zephyrus*^{1a} in 1842 the idea has been imbedded in our law that salvage is a reward for saving property in peril at sea, and life salvage is awarded only out of property saved concurrently with the lives. It is the purpose of this comment to show how this principle has been treated since the International Salvage Convention of 1911 and to point out the possibilities for a more equitable interpretation as regards the life salvor.

According to the usual definition, "salvage is due to persons by whose assistance a ship or her cargo has been saved from impending peril on the sea, or in recovering property from actual loss in the case of shipwreck, derelict, or recapture. Success is essential to the claim."² The object must be maritime.³ G. H. Robinson in his work on admiralty law states that "the whole theory of salvage is predicated on the proposition that by general admiralty law there is no legal duty to aid a thing or person who is in distress."⁴ The award is made to encourage voluntary, meritorious service which is successful.

Despite this emphasis on the voluntary aspects of salvage, 46 U. S. C. A., section 728, reads as follows:

"The master or person in charge of a vessel, shall so far as he can do so without serious danger to his own vessel, crew, or passengers, render assistance to every person who is found at sea in danger of being lost; and if he fails to do so, he shall, upon conviction, be liable for a penalty of not exceeding \$1,000 or imprisonment for a term not exceeding two years, or both."

But the fact that the master has a duty to render assistance has not operated to

¹Perhaps the payment is explained as an *in quantum meruit* recovery based on an implied contract arising when the Coast Guard directed Napoli to the scene of the collision. Whatever the explanation, the precise legal basis for the award has not been made clear.

^{1a}(1842), 1 W. Rob. 329.

²The Blackwall (1869), 10 Wall. 1, 19 L. Ed. 870.

³50,000 feet of timber (1871), D. C. Mass. Fed. Cas. 4, 783.

⁴Handbook of Admiralty Law, p. 722, Gustavus H. Robinson, Hornbook Series (1939).

deprive him or his vessel of a claim for salvage.⁵ Nor has the fact that the crew may be carrying out his orders worked to deprive them of an award.

It is provided in 46 U. S. C. A. section 729 that "salvors of human life, who have taken part in services rendered on the occasion of the accident giving rise to the salvage, are entitled to a fair share of the remuneration awarded to the salvors of the vessel, her cargo, and accessories." Some cases construing this section state that no award will be made where human life is saved without any saving of property. The case of *In re St. Joseph-Chicago S. S. Co.*⁶ is an example. There, a vessel loaded with excursionists sank in a narrow river. Libelant rescued many of the passengers, but he did nothing to save the vessel which was refloated by another party eleven days later. The court said that under section 729 a simultaneous salvage of life and property was contemplated to justify the granting of remuneration to life salvors. Actually this interpretation was dictum because the libelant had failed to bring his claim within the two-year period allowed by 46 U. S. C. A. 730.

In a somewhat similar case, *The Admiral Evans*,⁷ the libelant removed passengers and luggage from a ship which had been run aground and which sank later the same day. Subsequently it was raised. The court said that libelant had no claim on the vessel for life salvage since he rendered no service in rescuing the vessel. It concluded that libelant's only claim against the owners was *in personam*. These cases give a narrow interpretation to section 729 which allows "salvors of human life rendered on the occasion of the accident giving rise to salvage . . . a fair share of the remuneration awarded to the salvors of the vessel, her cargo, and accessories." (*Emphasis added.*)

In *The Annie Lord*⁸ the court took a different view and awarded a salvage claim to libelant. In this case libelant towed the *Annie Lord* until weather and the health of her rescued crew made continued towing unwise. On reaching port with the injured crew the libelant directed ships to the distressed vessel, and they brought her to safety. Here, of course, in addition to life salvage the libelant had also rendered services in saving the vessel by bringing her closer to port. In *The Shreveport*⁹ a similar result was reached where only life salvaging services were rendered "on occasion of the accident giving rise to salvage." However, the claim was not for a salvage lien on the vessel, but only for a share of the salvage award.

The court in *Dr. George J. Moser, Inc.*,¹⁰ the most recent case on the subject, indicated that the life salvor's claim was not *in rem* against the salvaged vessel but rather for a share in the awards made to other vessels who actually salvaged ship and cargo. Libelant had relieved one of the salvaging vessels of injured passengers from the salvaged vessel.

The cases show that the courts are unwilling to allow a share in the salvage award unless the life salvage was closely related to the vessel salvage. In the absence of this close relationship, the life salvor's claim must be one *in personam* against the owner, or against those receiving the award. The reluctance of the courts to allow a maritime lien for salvage of life is understandable. The maritime lien is allowed for service to the vessel itself, not to its passengers. It gives rise to an *in rem* right against the vessel

⁵The Shreveport (1930), 42 F. 2d 529, D. C., SC., 1930.

⁶D. C., Ill. (1919), 262 F. 535.

⁷D. C., Wash. (1923), 286 F. 442.

⁸D. C., Mass. (1917), 251 F. 157.

⁹D. C., S. C. (1930), 42 F. 2d 524.

¹⁰C. C. A., N. Y. (1932), 55 F. 2d 904.

not even dependent on possession. In effect it may be a secret lien. Further, courts realize that ships are of greatest value commercially when they are continuing their voyage, not when they are tied up in litigation. An *in personam* action for life salvage obviates these problems so far as the ship is concerned.

In the *Atlantic Transport Co. v. U. S.*¹¹ the award included an allowance for damages to the salvaging vessel as part of the salvage award. The courts usually include this as part of the award or else make separate provision for it. If the *U. S. S. Benevolence* had been salvaged at the time Napoli rendered his services, this case would serve as a basis for a claim to remuneration which would include compensation for damages to his ship. But, it would not be a precedent for allowing a salvage lien to him as a cargo owner for cargo damaged in salvage operations.¹²

Considering a different situation the court in *Warschauer v. Lloyd Sabaudo S. A.*¹³ refused to impute either criminal or civil liability to the ship owners for the master's failure to comply with his legal duty under section 728. The master in command of a large passenger liner knowingly steamed by the libellant who was adrift in a small boat. The court relied on a provision in the treaty of 1911 establishing the International Salvage Convention. It specifically exempted the ship owners from liability for the master's breach of duty to rescue persons. It still remains to be seen whether or not a master would be personally liable to those persons whose peril at sea he neglected; that is, whether criminal liability imports a corresponding civil liability.

The reasons for not allowing life salvage awards in the absence of salvage of vessel, cargo, and accessories are twofold. First, it is felt that there is a moral duty to aid those in danger at sea; second, it is said that the ship owner is unduly burdened when he must pay salvage even though none of his property was recovered. Concerning the first reason, it is curious that the government has felt it desirable to add the spur of criminal liability if it felt that the recognition of the moral duty to rescue life was sufficient. The second reason places too much emphasis on the tangible property aspects of the salvor's work. In many cases the contingent liability incurred by the owners where loss of crew and passengers are involved would far exceed the cost to the owners of replacing the vessel. The life salvor insulates the owner from this liability. In *U. S. v. Cornell Steamboat Co.*¹⁴ the government was obliged to contribute to a salvor's award even though it had only an intangible interest in the property. The Supreme Court said that the salvor's *in personam* remedy "extends to one who has a direct pecuniary interest in such property." Ship operators are carriers owing a duty to their passengers and crew. They have an insurable interest in their safety. They have to respond in money damages for negligence in performing their duty. To this extent operators have a direct, pecuniary interest in their passengers and crew. In this sense life salvors are protecting the operators' property when they save lives. For this service they should be entitled to compensation even in the absence of other property salvage.

Various statutes impose tort liability on private shipowners. 46 U. S. C. A. 491 makes him liable for damage sustained to passengers where negligent in case of explosion, fire, collision, and other causes. 46 U. S. C. A. 761 gives passengers' personal representatives an action against the owners for wrongful death. 46 U. S. C. A. 688

¹¹Ct. Cl. (1930), 42 F. 2d 583.

¹²Handbook of Admiralty Law, p. 749-750, Gustavus H. Robinson, Hornbook Series (1939).

¹³D. C., N. Y. (1933), 6 F. Supp. 433.

¹⁴(1906), 202 U. S. 184.

gives the crew a similar right of action in case of injury, and their representatives a right of action in case of death to the seaman where the owner is negligent.

In case of the federal government operating naval and coast guard vessels, it becomes liable to pay six month's wages in case of death to service men.¹⁵ This is in addition to the indirect expenses involved in replacement and training. In the case of other government owned vessels, the seamen have the rights authorized by 46 U. S. C. A. 688 *et seq.* in case of injury or death.

The opportunity of shipowners to limit liability to value of the vessel after the disaster has been removed to some extent in favor of personal injury or death claims.¹⁶ These statutes show that the life salvors, even though they do not save the vessel or cargo, may be protecting the shipowner from sizable claims in case of disaster at sea. No undue burden is imposed on owners by requiring them to make reasonable compensation to those who come to the aid of their vessels. Of course, there are sensible limitations which could and should be made on these awards. Some of these considerations are set out by Mr. Knauth in his article on salvage principles and aircraft.¹⁷

It is interesting to consider briefly the legislation of England and other countries as regards life salvage. By the Merchant Shipping Act of 1894 (57-58 Victoria C. 60) S. 544(3) the Board of Trade may award life salvors an award out of the Mercantile Marine Fund. There is no claim against the shipowner unless property is also salvaged.

The proposed Air Salvage Convention¹⁸ included a clause subjecting the airlines operators to a liability of up to \$8,300 to those who render assistance in life saving operations at sea. The award was to be an indemnification for "useful or necessary expenses." The obligation on masters to go to the aid of distressed aircraft at sea is criminal, not civil.

These provisions are of note because they reflect a growing feeling that salvage of life in itself is a desirable end and that this end is encouraged by compensation either from the owners or the government. They indicate a dissatisfaction with the common law position that there is no duty to aid those in distress, at least as applied to maritime perils.

It is to be hoped that the example of the Navy in awarding Napoli compensation for his efforts in connection with the *U. S. S. Benevolence* will serve as a forerunner to more positive legislation in favor of those who render assistance to those in peril at sea. Legislation could be framed which would insure the life salvor a fair share in the award with the ship salvors when the ship is salvaged. In such cases the life salvor should not be left to an *in personam* remedy alone against the owners. In case the ship is not salvaged, the life salvors should be entitled to an award from the operators or owners up to an extent limited by law and determined in particular instances by the court after considering the risk, expense, and success of the salvor's efforts. A well-drawn law should take into account the considerations mentioned by Mr. Knauth in his article on the Air Salvage Convention.¹⁹

¹⁵10 U. S. C. A. 903, 34 U. S. C. A. 943.

¹⁶46 U. S. C. A. 183.

¹⁷Aviation and Salvage, Arnold W. Knauth, 36 *Columb. Law Review* 224, (1936).

¹⁸Text (1938), U. S. Aviation Reports, 253.

¹⁹*Supra*, note 17.