

Tojo Maru, The, NV Wijsmuller v Owners of Motor Tanker Tojo Maru (her cargo and freight)

[1972] AC 242, [1971] 1 All ER 1110, [1971] 2 WLR 970, [1971] 1 Lloyd's Rep 341, 115 Sol Jo 325

Court: HL

Judgment Date: 16/03/1971

Catchwords & Digest

SHIPPING AND NAVIGATION - SALVAGE AND WRECK - SALVAGE - COMMON LAW PROVISIONS RELATING TO SALVAGE - SALVAGE REWARD - AMOUNT FIXED BY THE COURT - MISCONDUCT AND NEGLIGENCE OF SALVORS - EFFECT OF NEGLIGENCE -- COUNTERCLAIM BY SHIPOWNER -- DAMAGE TO SHIP BY DIVER

The TM was involved in a collision with another ship and sustained extensive damage. On the following day a tug belonging to the contractors offered her services, and a standard Lloyd's form of 'no cure--no pay' salvage agreement was signed. It was necessary for the contractors to cover the aperture left by the collision with a thirty foot wide plate. The plate had to be bolted to the hull by firing bolts from a Cox bolt gun. The contractors' chief diver, contrary to the orders which he had received, attempted to bolt the plate into place by firing the bolt gun before the adjoining tank had been freed of gas. The result was an explosion which caused extensive damage to the tanker. The gun had been prepared and loaded on board the contractors' tug. It was fired by the diver under water and at some distance from the tug. Additional help was obtained to put out the fire resulting from the explosion and delay was caused in making the tanker sufficiently seaworthy to be towed away. The contractors made a claim for salvage and the owners counterclaimed for the damage caused by the admitted negligence of the contractors' diver. The agreed damages for the contractors' negligence exceeded the amount of the salvage award to which they were entitled. Two questions arose for decision: (i) whether, where the salvage operation had been successful, it was permissible to entertain the owners' counterclaim against the contractors for negligence or whether the negligence should be allowed for by merely reducing the amount of the salvage award, and (ii) assuming that the owners could counterclaim for the actual loss, whether the contractors were entitled to limit their liability under Merchant Shipping Act 1894 (c 60) s 503(1) as amended by Merchant Shipping (Liability of Shipowners and Others) Act 1958 (c 62) s 2(1): Held (1) there was no rule of maritime law that, in cases where a salvage operation had been successful or, alternatively, where the salvors had achieved more good than harm, the owners of the salvaged vessel were precluded from bringing an action against the salvors for damage caused to the vessel by the negligence of the salvors; accordingly the owners were entitled to maintain an action by way of counterclaim for the actual loss caused by the negligence of the diver and were not restricted to a right to set off that loss against the amount of the salvage award; (2) the contractors were not entitled to limit their liability under s 503(1) of the 1894 Act because the negligent act of the diver in firing the gun was not an act 'in the management or navigation' of the tug within the meaning of the section nor was it an act by a person on board the tug; (3) accordingly the owners were entitled to be awarded the sum by which the agreed damages exceeded the amount of the remuneration to which the contractors would have been entitled but for their negligence.

Case History

Annotations	Case Name	Citations	Court	Date	CaseSearch
--	Tojo Maru, The, NV Wijsmuller v Owners of Motor Tanker Tojo Maru (her cargo and	[1972] AC 242, [1971] 1 All ER 1110, [1971] 2 WLR 970, [1971] 1 Lloyd's Rep 341, 115	HL	16/03/1971	CaseSearch Entry

	freight)	Sol Jo 325			
Reversing	Bureau Wijsmuller NV v The Tojo Maru (Owners), The Tojo Maru	[1970] P 21, [1969] 3 All ER 1179, [1969] 3 WLR 902, [1969] 2 Lloyd's Rep 193, 113 Sol Jo 811	CA	30/07/1969	CaseSearch Entry
Reversing in part	Bureau Wijsmuller NV v The Tojo Maru (Owners), The Tojo Maru	[1970] P 21, [1969] 2 All ER 155, [1969] 2 WLR 594, [1969] 1 Lloyd's Rep 133, 113 Sol Jo 86	P, D and Admlty	13/01/1969	CaseSearch Entry

Cases considered by this case**Annotations:** All Cases**Court:** ALL COURTS**Sort by:** Judgment Date (Latest First)

Treatment	Case Name	Citations	Court	Date	CaseSearch
Considered	Dwina, The	[1892] P 58, 61 LJP 71, 7 Asp MLC 173, 66 LT 862	P, D and Admlty	circa 1892	CaseSearch Entry
Considered	Yan Yean, The	(1883) 8 PD 147, 52 LJP 67, 5 Asp MLC 135, 31 WR 950, 49 LT 187	P, D and Admlty	circa 1883	CaseSearch Entry
Considered	Thetis, The	(1869) LR 2 A & E 365, 38 LJ Adm 42, 3 Mar LC 357, 22 LT 276	pre-SCJA 1873	circa 1869	CaseSearch Entry
Distinguished	Cape Packet, The	(1848) 3 Wm Rob 122, 8 LT 582, 6 Notes of Cases 565	pre-SCJA 1873	circa 1848	CaseSearch Entry