



WEB COPY

1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 25th DAY OF OCTOBER 2021

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.S.No.35 of 1999

*** Tata Communications Limited**

***(Amended as per order dated 24.9.2008 in Application No.4446/2008)**

Videsh Sanchar Bhavan,

No.5, Swami Sivananda Salai,

Chennai 600 002

Rep by its Sr. General Managre (SR)

...Plaintiff

-VS-

1. M.V."LEPING LING"

represented by its Master

and all parties interested

in the vessel M.V."LEPING LING"

now lying at the port of Chennai

2. Owner of vessel

M.V."LEPING LING"

Guangzhou Ocean Shipping Co.

(Cosco Guangzhou)

412 Huan Shi East Road,

PO Box 510061,

Guangzhou 510000,

China

3. Inter Ocean Shipping (P) Ltd.

3, Jaffer Syrong Street,

Chennai 600 001

4. The Chairman,

Madras Port Trust,

Chennai 600 001

...Defendants



WEB COPY Civil Suit praying that this Hon'ble Court be pleased to pass a Judgment and Decree against the Defendants 1 to 3 jointly and severally:

(a) for a sum of Rs.2,00,00,500/- (Rupees Two Crores Five hundred only) together with interest at 24% per annum from the date of the suit till the date of payment;

(b) That the said vessel "M.V.Leping Ling" together with its hull, tackle, gear, engines, machines and equipment thereon and all the things and articles aboard the said vessel including its hull, engine, machinery, boats, spares, gears, plant, charts, drawings, all other papers equipment and other paraphernalia be arrested by a warrant of arrest under the orders of this Hon'ble Court;

(c) The Vessel "M.V.Leping Ling" together with its hull, tackle, gear, engines and equipments thereon and other accessories and components be sold under the directions of this Hon'ble Court and to direct the sale proceeds to be paid towards satisfaction of the plaintiff's claim in the event of the non payment of the amount by the defendants 1 to 3;



(d) If the sale proceeds are insufficient to satisfy the amount decreed, for a personal decree against the defendants 1 to 3;

(e) That pending the final assessment of the damage the said vessel be detained by the Fourth Defendant fail sailing the said vessel out of the Port of Chennai or allowing it to sail out of the Port of Chennai, without satisfying the Plaintiff's claim;

(f) To direct the fourth respondent through his authorised officers;

(i) to board the vessel and seize all the log books including communication log book, vessel movement log book, GPS position print out and or other electronic gadget which allows print out of its position and/or to copy the log books particularly the day when the cable was broken and also two days prior to cable break and a day thereafter, and return the same;

(ii) to take statement of crew members of the vessel facing any problem regarding vessel movement and or has faced other difficulties;

(iii) to take search of the vessel's anchor and anchor chain and also to photograph them, and

(iv) to obtain details of the ship such as owner/charterer, Tonnage,



WEB COPY (g) For payment of costs of the suit;

This Suit having been heard on 21/09/2021 the presence of Mr.M.Vijayan, for M/s.King and Patridge, Advocates for the Plaintiff herein and Mr.V.K.Ramabhadran for Mr.S.Raghunathan, Advocates for the defendants 1 to 3 and Mr.R.Karthikeyan, Advocate for the 4th defendant herein and upon reading the plaint filed herein and the other exhibits therein referred to and upon perusing the evidence adduced therein and having stood over for consideration till this date and coming on this day before this Court for orders in the presence of said advocates for the parties hereto and this Court having observed that this Court therefore does not see any merits in the contention of the learned counsel that the suit should be decreed since the first defendant had not filed a written statement and this Court do not find any merit in the contention of the learned counsel for the plaintiff that the agent of the defendant who had signed the pleadings was not properly authorized by the 2nd defendant and the learned counsel appearing for the plaintiff has fairly submitted that the 3rd defendant cannot be personally made liable for claim in tort, since the third defendant is only a local agent of the vessel and **it is ordered as follows:-**



That the suit in C.S.No.35 of 1999, be and is hereby dismissed.

WEB COPY

2) That the parties hereto shall bear their own costs of this suit.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
25th DAY OF OCTOBER 2021.

Sd/-

ASSISTANT REGISTRAR(Comm. Cases)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies
of the Orders/Judgments/Decrees in this format.



WEB COPY

ARS
10.02.2022

6

C.S.No.35 of 1999

ORDER

DATED : 25.10.2021

THE HON'BLE MR. JUSTICE
R.SUBRAMANIAN

FOR APPROVAL: 15.02.2022

APPROVED ON : 21.02.2022



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 21.09.2021	Delivered on 25.10.2021
-----------------------------------	------------------------------------

CORAM**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN**

C.S.No.35 of 1999
(Admiralty Jurisdiction)

*** TATA Communications Limited,**
Videsh Sanchar Bhavan,
No.5, Swami Sivananda Salai,
Chennai 600 002
Rep by its Sr. General Manager (SR)

*(amended as per order dated 24.09.2008
in Application No.4446 of 2008)

... Plaintiff

Vs

1. M.V."Leping Ling"
Rep by its Master
and all parties interested
in the vessel M.V."Leping Ling"
now lying at the Port of Chennai.

2. Owner of Vessel
M.V."Leping Ling"
Guangzhou Ocean Shipping Co.
(Cosco Guangzhou)
412 Huan Shi East Road, PO Box.510061



Guangzhou 50000, China.

3. Inter Ocean Shipping (P) Ltd.,
3 Jaffer Syrong Street,
Chennai 600 001.

4. The Chairman
Madras Port Trust,
Chennai 600 001.

... Defendants

Prayer : Plaintiff filed under Order VII Rule 1 of the Code of Civil Procedure read with Order IV and XXIV of the Original Side Rules, praying for the following judgment and decree:-

(a) for a sum of Rs.2,00,00,500/- (Rupees Two Crores Five hundred only) together with interest at 24% per annum from the date of the suit till the date of payment;

(b) That the said vessel "M.V.Leping Ling" together with its hull, tackle, gear, engines, machines and equipment thereon and all the things and articles aboard the said vessel including its hull, engine, machinery, boats, spares, gears, plant, charts, drawings, all other papers equipment and other paraphernalia be arrested by a warrant of arrest under the orders of this Hon'ble Court;



WEB COPY

(c) The Vessel "M.V.Leping Ling"together with its hull, tackle, gear,engines and equipments thereon and other accessories and components be sold under the directions of this Hon'ble Court and to direct the sale proceeds to be paid towards satisfaction of the plaintiff's claim in the event of the non payment of the amount by the defendants 1 to 3;

(d) If the sale proceeds are insufficient to satisfy the amount decreed, for a personal decree against the defendants 1 to 3;

(e) That pending the final assessment of the damage the said vessel be detained by the Fourth Defendant fail sailing the said vessel out of the Port of Chennai or allowing it to sail out of the Port of Chennai, without satisfying the Plaintiff's claim;

(f) To direct the fourth respondent through his authorised officers;

(i) to board the vessel and seize all the log books



WEB COPY

including communication log book, vessel movement log book, GPS position print out and or other electronic gadget which allows print out of its position and/or to copy the log book particularly the day when the cable was broken and also two days prior to cable break and a day thereafter, and return the same;

(ii) to take statement of crew members of the vessel facing any problem regarding vessel movement and or has faced other difficulties;

(iii) to take search of the vessel's anchor and anchor chain and also to photograph them, and

(iv) to obtain details of the ship such as owner/charterer, Tonnage, etc.;

(g) For payment of costs of the suit;

For Plaintiff : Mr.M.Vijayan

for M/s. King and Patridge



WEB COPY

For Defendant : Mr.V.K.Ramabhadran,

for Mr. S.Raghunathan, for D1 to D3

Mr. R.Karthikeyan, for D4

J U D G M E N T

1. The plaintiff which is the successor in interest of Videsh Sanchar Nigam Limited, has filed the suit seeking a money decree for a sum of Rs.2,00,00,500/- being the expenses involved in restoration of the submarine Fibre Optic Cable damages and loss of revenue with interest at 24% per annum from the date of suit till date of payment. Arrest and sale of the vessel M.V.Leping Ling, a personal decree against defendants 1 to 3 and seizure of the log books, vessel movement log book, GPS position print out, etc., were also sought for.

1.1. According to the plaintiff, its predecessor had laid the fibre optic cable at a depth of 2 meters beneath the sea level between Chennai and Penang in Malaysia. The chart of the route of the Submarine cable shall be kept in every ship plying in the vicinity of the said cable and it is made accessible to the Master of the ship for the purposes of navigation and for



anchoring of the ship. A chart is republished from time to time with suitable amendments and updates by the British Admiralty Charts (BAC).

The charts published by BAC are assigned serial numbers for the purposes of identity. The chart also shows the prohibited anchorage zone around the cable. The chart showing the lie of the submarine cable which is subject matter of the suit bears BAC No.574. The Master of the vessel is duty bound to follow the charts and avoid anchoring in the prohibited zone, so that any damage that could be caused to such submarine cables is avoided. The Master also owes a duty to be informed of mariner notices which are published from time to time updating the chart and routes of the cable through hydrographic survey of India.

1.2. According to the plaintiff at about 9.00 hours Indian Standard Time (I.S.T.) on 14.01.1999, the International Communication link from Chennai through the submarine cable got totally disrupted and it was found that there was a break in the submarine cable between Repeater R1 and Repeater R2 in the cable route from the shore end. The plaintiff informed the Malaysian counterpart namely Telekom Malaysia, about the break in the cable immediately after noticing the interruption. The officials of the plaintiff spotted a ship in the vicinity of the breakage and immediately

approached the Chennai Port Trust seeking information on the ship that had



anchored near the area of disruption. A hand written note was provided by the Signal Station Master of the Chennai Port Trust containing the name of the ship its nationality, its local agent and the anchor position.

1.3. Upon obtaining the said information at about 19.00 hours on 14.01.1999, the plaintiff wrote to the Coast Guard (Eastern Region) on 15.01.1999 indicating the location of Repeater R1 and R2 and requested the Coast Guard to board the vessel and take the statement of the truth from the crew members of the vessel. It is also claimed that the breakage happened between 8.40 and 9.00 hrs I.S.T. on 14.01.1999. According to the plaintiff, the first defendant vessel had anchored within the prohibited zone which is one nautical mile on either side of the exact location of the cable and the movement during anchoring of the ship had resulted in breakage of the submarine cable. Therefore, according to the plaintiff, since the first defendant vessel was the only vessel seen in the vicinity of the cable at the time of the breakage, it could be reasonably presumed that the first defendant vessel was responsible for the breakage. It is the further contention of the plaintiff that the information provided by the Madras Port Trust and the Coast Guard would show that the first defendant vessel had in fact anchored in the vicinity of the cable at the relevant time.



1.4. The plaintiff would further claim that it estimates the damage consisting of the cost of repairs and restoration of the cable at Rs.2,00,00,500/-. The plaintiff would contend that as a juristic person, the first defendant is liable to make good the loss and as owners and agents of the first defendant and defendants 2 and 3 are also liable for the loss. Though the Chairman of the Madras Port Trust was made the fourth defendant, no relief was sought for against him. The plaintiff also sought for arrest of the vessel and an order of arrest was made. Upon furnishing the security by the insurer of the vessel, the vessel was allowed to sail out of the Chennai Port.

2. The suit is resisted by the second defendant contending that the first defendant vessel was not responsible for breakage of the submarine cable. The second defendant would terms the suit, as a speculative one based on conjunctures and surmises without any positive evidence. The claim of the plaintiff that the submarine cable was laid 2 meters beneath the sea bed as per the international practice was also vehemently denied.

2.1. According to the second defendant, the navigation chart BAC No.574 was scrupulously followed by the Master of the ship and the ship had in fact anchored outside the prohibited zone. The plaintiff was also put



to strict proof of the fact that there was a breakage of communication around 9.00 hours I.S.T on 14.01.1999. The claim of the plaintiff that the damage to the cable was caused by the ship anchoring within the prohibited zone was vehemently denied.

3. The third defendant being the agent of the ship cannot be made personally liable for the loss as the third defendant had nothing to do with the ship while it was sailing. The quantum of damages claimed was also denied by the second defendant. The first defendant filed a Memo adopting the written statement of the second defendant. The third defendant filed a written statement contending that the third defendant being the agent cannot be made personally liable under Section 230 of the Indian Contract Act.

4. On the above pleadings, the following issues were framed by this Court:

1. Whether the suit is maintainable against the defendants as according to the defendants 1 and 2, the ship namely M.V.Leping Ling was owned by the Sovereign State of Peoples Republic of China;

2. Whether the suit is maintainable for want of leave under



3. *Whether the master of the vessel has exercised due diligence and caution followed the rules and regulations while reaching the Port of Chennai;*
4. *Whether the vessel owned by the first defendant is liable for the damage caused to the under sea cable laid by the plaintiff due to dropping of its anchor;*
5. *Whether the first defendant vessel anchored in the prohibited zone or the vicinity of chartered position of the cable;*
6. *Whether the third defendant who acted as an agent can be made personally liable;*
7. *Whether the plaintiff suffered loss and entitled to claim the sum of Rs.2,00,00,500/- towards the interest at the rate of 24% per annum from the date of the suit realization;*
8. *To what other reliefs, the plaintiff is entitled to?*

5. At trial, one Mr.R.Sridhar, General Manager of the Plaintiff Company was examined as P.W.1 and Exhibits P1 to P29 were marked. On the side of the defendants, a Surveyor Captain Bobby Vaid, was examined as D.W.1 and Exhibits D1 to D35 were marked.



WEB COPY

6. I have heard Mr.M.Vijayan, learned counsel appearing for M/s.King and Patridge for the plaintiff, Mr.V.K.Ramabhadran, learned Senior Counsel appearing for Mr.S.Raghunathan, for the defendants 1 to 3 and Mr.R.Karthikeyan, learned counsel appearing for the fourth defendant.

Issue Nos.1 & 2

7. Though these two issues were framed on the maintainability of the suit against the sovereign, as the ship in question was owned by the sovereign state of People's Republic of China at the time of alleged accident and the requirement of permission under Section 86 of the Code of Civil Procedure, no evidence was placed in this regard at the time of trial. The counsel appearing for the defendants did not address any arguments on these issues. Hence both the issues 1 and 2 are answered in favour of the plaintiff.

Issue Nos.3, 4 and 5:

8. Since these issues relate to the factum of accident, negligence on the part of the Master of the ship and the liability arising there from, these issues are taken up together for disposal. It is the simple case of the plaintiff that the first defendant being the only ship which was in the vicinity of the



cable at the time of the accident, it alone could have caused the accident.

Reliance is placed by the plaintiff upon Ex.P8, which is a computer print out to establish the fact that there was a breakage of communication link through the submarine cable between 8.44 and 9.00 hours I.S.T. on 14.01.1999. The plaintiff would also further rely upon Ex.P2, which is the copy of BAC No.574 to show that the first defendant vessel had in fact anchored within the prohibited zone. The plaintiff would also draw support from Ex.P3 which is said to have been issued by the Signal Station Officer of the Madras Port Trust, which according to the plaintiff, discloses the anchoring position of the ship its nationality and its Indian Agent.

8.1. The letter dated 16.01.1999 from the plaintiff addressed to the Commander of the Coast Guard (Eastern Region) seeking details of the ship has been produced as Ex.P4. Letter from the Madras Port Trust dated 18.01.1999, addressed to the agent of the ship namely the third defendant has been produced as Ex.P6. The hand written note maintained by the predecessor of the plaintiff has been produced as Ex.P9 to demonstrate the damage was caused between 8.44 and 9.00 hrs I.S.T. on 14.01.1999. The report of the Signal Station of the Madras Port Trust on 20.01.1999 has been marked as Ex.P13. Relying upon the above documents, Mr.M.Vijayan,

learned counsel appearing for the plaintiff would vehemently contend that



once it is proved that the first defendant ship was in the vicinity of the breakage at the time of the breakage, it has to be reasonably presumed that it is the first defendant ship that was responsible for the breakage.

8.2. Countering the submissions of the learned counsel for the plaintiff, Mr.V.K.Ramabhadran, learned Senior Counsel appearing for the defendants 1 to 3, would submit that the suit being one for damages and for recovery of charges of restoration of the cable which was allegedly cut due to the negligence on the part of the Master of the first defendant vessel, it is incumbent on the plaintiff to prove, beyond reasonable doubt, that the breakage was caused because of the negligence of the Master of the first defendant ship. The learned Senior Counsel would also contend that Ex.P8 being a computer printout cannot be relied upon without a certificate under Section 65 (b) of the Evidence Act, having been produced. He would further point out that the initial report of the Signal Station Master of the Madras Port Trust would show that the ship was anchored outside the prohibited zone.

8.3. Drawing my attention to Ex.P19 dated 30.01.1999 addressed to the Senior General Manager of the plaintiff's predecessor by the Commander of the Coast Guard (Eastern Region), the learned Senior



Counsel would contend that the position of the ship on 14.01.1999 was 175 yards away from the Northern limit of the prohibited area for anchoring and trawling and therefore, the claim of the plaintiff that the first defendant ship had anchored within the prohibited zone has been belied by the very document produced by the plaintiff namely Ex.P19. It is the further contention of the learned Senior Counsel that P.W.1 who's not the author of several of the documents that has been produced by the plaintiff, particularly Exs.P2, P3, P4, P8, P9 and P19, cannot speak about the contents of those documents and in the absence of any evidence by the authors of the documents, those documents cannot be relied upon to fix the liability on the defendants. It is the further contention of the learned Senior Counsel that unless the essential fact that the first defendant ship had anchored inside the prohibited zone is established, the Court cannot presume that the first defendant ship was responsible for the accident (snapping of the cable) in order to mulct the liability on the first defendant.

8.4. Mr.V.K.Ramabhadran, learned Senior Counsel would also submit that the plaintiff has not produced any document to establish that the ship had in fact anchored within the prohibited zone. The learned Senior Counsel would also contend that Ex.P2 has not been properly proved, according to him the writings made in Ex.P2 are not made by P.W.1 and the



person who had allegedly made those writings had not been examined.

Therefore, according to the learned Senior Counsel in the absence of any evidence to show that the Master of the first defendant vessel was negligent in handling the vessel and anchoring inside the prohibited zone, the defendants cannot be made liable for the claim of the plaintiff.

8.5. Mr.V.K.Ramabhadran, learned senior counsel would also further contend that the plaintiff has not proved the alleged revenue loss by any acceptable evidence. The learned Senior Counsel would also point out that the charges for restoration of the cable was paid by Telekom Malaysia as demonstrated by Ex.P29 series and in the absence of any evidence to show that the plaintiff has under taken the said liability, the plaintiff cannot make a claim for the cost of restoration also. The learned Senior Counsel would also add that apart from proving the accident, the plaintiff is also bound to prove negligence on the part of the Master of the ship in order to make the ship or its owner liable for damages. Taking me through the evidence of P.W.1, the learned Senior Counsel would contend that there is no evidence whatsoever to establish negligence on the part of the Master of the ship.

8.6. I have considered the rival submissions.



8.7. The plaintiff's claim is essentially based on the fact that there was a snapping of the cable between 8.40 and 9.00 hours I.S.T. on 14.01.1999 and the first defendant ship was the only ship that was seen in the vicinity of the cable between Repeater R1 and Repeater R2 from the shore around the said time and therefore, it shall be presumed that the cause of the accident or cause of the snapping of the cable was anchoring of the first defendant vessel within the prohibited zone. The evidence that is sought to be relied upon by the plaintiff is Ex.P8 the Computer print out, Ex.P2 the sketch, Ex.P3 the note by the Signal Station Manager of the Chennai Port Trust and Ex.P19 the Report by the Coast Guard (Eastern Region).

8.8. As rightly pointed out by Mr.V.K.Ramabhadran, learned senior counsel appearing for the defendants, Ex.P8 is a computer printout and the same requires a certificate under Section 65(b) of the Evidence Act, to be admitted in evidence. Admittedly no such certificate has been produced by the plaintiff. As regards the other documents the authors of the documents have not been examined. P.W.1 has in fact conceded that he is not a maritime expert and he cannot identify the exact location of the vessel at 8.40 hrs I.S.T on 14.01.1999. The author of Exs.P14 and P19, the Deputy

Commandant of Coast Guard (Eastern Region) has not been examined to



show the exact location of the ship at the time of the alleged accident.

Though it is claimed by P.W.1 that Ex.P2 is the photo copy of the chart taken from the vessel, he has admitted that he had not stated so in his proof affidavit.

8.9. The defendants have produced a compilation of documents which were not allowed to be marked by the learned Additional Master, wherein also a copy of the chart BAC No.574 has been produced. As per the said chart the location of the ship is outside the prohibited zone, Ex.P19 also demonstrates that the location of the ship on 14.01.1999 at the time when it anchored at about 8.40 hrs I.S.T was outside the prohibited zone. As far as Ex.P3 is concerned the same is a hand written note and it is said to have been issued by the Duty Officer, Signal Station of the Port Trust. It appears to be an incomplete document and the author of the document has not been examined. P.W.1 would admit that he did not collect it from the Port Trust. P.W.1 would admit that there are variations in the position of the vessel as shown in Exs.P3, P4, P5, P14 and P19. He would further add that the variations are very minor in nature. The overall reading of the evidence of P.W.1, particularly in cross-examination would show that he is not fully conversant with the facts of the case. He had rather chosen to demonstrate



example he has answered in the negative for question No.28, which reads as follows:

“Q.No.28: Have you stated in your proof affidavit that Ex.P2 was a photocopy of the chart taken from the vessel?”

His answer to question No.199, reads as follows:

“A: Kindly refer to my answer to Q.No.28.”

Question No.199 reads as follows:

“Q.199: Have you filed the said engine logs, log book and engine book in this Hon’ble Court ?”

Similarly for question No.209, which reads as follows:

“Q.209: On what basis do you say that the seal found in Page No.3 of Ex.P20 is the seal of the master of MV Leping Ling?”

The answer is “kindly refer to my answer question No.26 and question No.33”

Question No.26 reads as follows:

Q.No.26: Has Ex.P2 been signed or certified by any statutory authority as an authenticated document?



WEB COPY

A.: No. Witness adds: it has been authenticated by the ship's captain.

Question No.33 reads as follows:

Q.33: *Is Ex.P2 a complete document or a part of document?*

A.: It is a part of the document

Again his answer to question No.211 is “kindly refer to my answer to question No.190”.

Question No.211 reads as follows:

Q.No.211 *Are you aware that the 1st defendant's surveyor informed the plaintiff that they (surveyor) should be notified in advance prior to any repairs are inspection?*

Question No.190 reads as follows:

Q.No.190: *Attention of the witness is drawn to his answer to Q.Nos.134 & 135, did you personally participate in the survey conducted by Coastguard Department, Cable and Wireless as well as M/s.Ericson and Richards (Madras)?*

A.: I am not aware of the survey.”



8.10. I find that the witness had given such answers to several questions in cross-examination requiring the counsel to refer to his earlier answers, I am unable to appreciate the conduct of the witness that too a General Manager of a Telecommunication Company which has come to Court with a huge claim for Rs.2,00,00,500/- as damages for an alleged accident. Similarly P.W.1 is also unable to explain the hand written notes that have been made in Ex.P2. To a specific question as to who had made the hand written note at page 3 of Ex.P20, which has been separately marked as Ex.P2, the witness has said that he does not know who had made the notes. Therefore, in the absence of specific evidence or the examination of the author of Ex.P20 the report, I do not think that the defendants could be made liable for damages for snapping of the cable.

8.11. Mr.M.Vijayan, learned counsel appearing for the plaintiff would strenuously argued that the doctrine of *Res Ipsa Loquitor* would apply and the very fact that the first defendant vessel was the lone vessel that was in the vicinity of the cable cut that is between Repeater R1 and R2 from the shoreline, it should be presumed that the first defendant vessel is responsible for the accident. He would also rely upon the judgments of this Court in ***The Management of Thiruvalluvar Transport Corporation Ltd.,***



this Court in CMA Nos.1122 and 1123 of 2014 in ***The Managing Director,***

Tamil Nadu State Transport Corporation Limited, Kumbakonam v.

Ramasamy and another, wherein this Court had invoked the doctrine of *Res Ipsa Loquitor* to presume negligence. I do not think the said doctrine could be extended to presumption of an accident, if the accident had been proved and the manner in which the accident had happened could be sufficiently gathered from the material available on record, then the Court can invoke the doctrine of *Res Ipsa Loquitor* to conclude that the particular vehicle or the vessel was responsible for the accident. In the absence of any direct evidence of the accident or the manner in which the accident had taken place, I do not think it will be safe to abstract doctrine to fasten the liability on the defendants.

8.12. The one and only fact that has been established by the plaintiff is that there was a disruption of communication via the submarine cable in question between 8.40 and 9.00 hrs I.S.T. on 14.01.1999. The report of the retrieval ship of the submarine cable repairers M/s. Cable and Wireless, cannot be relied upon to show that the accident has happened in the manner suggested by them in the absence of examination of the author of the document. The plaintiff has not chosen to examine either the author of



WEB COPY

8.13. Turning to the evidence that has been produced by the defendants, the survey report of M/s. Ericson & Richards (Madras), has been filed as Ex.D1, the second survey report has been filed as Ex.D2 and an addendum has been filed as Ex.D3. The author of these documents has been examined as D.W.1. He has spoken about the contents of the report. No doubt, D.W.1 was not present when the survey was done by the Coastguard or the repairers namely M/s.Cable & Wireless, but however he had gone to board the ship on 22.01.1999 along with the Deputy Commandant of Coastguard Mr. B.K.Loshali and Mr.V.S.Sreelan, General Manager Operations of the plaintiff's predecessor and he had observed the position of the ship was at latitude 13° 0.35 minutes north and longitude 80° and 22.04 minutes east and this observation almost tallies with the position noted in Ex.P3 issued by the Signal Station Manager at 19.40 hours on 14.01.1999, except for a minor variation in the seconds. At this position, the ship was at least 0.7 miles north of the northern limit of the prohibited area. It is also observed in Ex.D1 report that the cable being a coaxial cable was prone to unpredictable shifting on the sea bed. This being a suit for damages and recovery of cost for restoration of the cable, the plaintiff apart from proving the accident must also prove negligence on the part of the Master of the vessel. I find that such evidence is totally absent in the case



on hand. P.W.1 has not stated anything in his proof affidavit which would demonstrate that the Master of the ship was so negligent in handling the ship and it was such negligence which resulted in the ship anchoring within the prohibited zone and thereby causing damage to the cable. In the absence of any evidence regarding negligence, I do not think the first defendant could be made liable.

8.14. An argument was advanced by Mr.M.Vijayan, learned counsel appearing for the plaintiff to the effect that since the first defendant has not filed a written statement, suit should be decreed against the first defendant. No doubt a ship is considered to be a juristic person and it is answerable to claim in rem under the Admiralty Law. But the present claim which is for damages will not fall under the category of a maritime claim under the Admiralty Law. Therefore, unless the claim can be considered to be a maritime claim which gives rise to a maritime lien, the claim cannot be considered as one in rem to make the ship liable. It will be the owners of the ship who would be liable for the claim and the second defendant which is the owner of the ship had filed the written statement and had contested the claim. I therefore do not see any merits in the contention of the learned counsel that the suit should be decreed since the first defendant had not filed a written statement.



WEB COPY 8.15. For the foregoing reasons, Issue Nos. 3, 4 & 5 are answered against the plaintiff.

Issue No.6:

9. In view of my answers to Issue Nos.3, 4 & 5, issue No.6 does not arise and in any event, the learned counsel appearing for the plaintiff has fairly submitted that the third defendant cannot be personally made liable for claim in tort, since the third defendant is only a local agent of the vessel. Hence Issue No.6 is answered against the plaintiff.

Issue No.7:

10. In view of my answers to Issue Nos.3, 4 & 5, this issue has to be necessarily answered against the plaintiff.

11. Though no issue was framed regarding the power of attorney produced by the defendant authorising the agent to sign and verify pleadings on its behalf, Mr.M.Vijayan, learned counsel appearing for the plaintiff would submit that what has been produced is only a copy of an unsigned power of attorney and the same cannot be accepted as a lawful authorisation. He would further contend that in view of Section 14 of the



Notaries Act, 1952 and in the absence of any reciprocal arrangement between India and China having been notified the power of attorney cannot be relied upon. He had also relied upon the judgment of the Calcutta High Court in *Chandra Proteco Limited and Hopgoodganim*, reported in **2015 SCC online Cal 5690** and the judgment in *REI Agro Ltd. v. UBS AG & Ors.*, reported in **AIR 2015 Cal 54** .

11.1. I have examined the original Power of Attorney that has been produced. Though it appears that the signature of the executant is a rubber stamp on a closure examination could be seen that it is actually a signature made in Chinese language. It bears the seal of the second defendant Company and a notary certificate is also appended to it. The Notary has certified that the power of attorney was signed in his presence and the seal of the Company was affixed in his presence and it is found to be authentic. I do not see any reason to disbelieve the statement of a notary. In fact this Court has rejected a similar contention of the plaintiff, while passing orders in Application Nos.1486 and 1487 of 2015.

11.2. On the objection relating to Section 14 of the Notaries Act, no doubt the Calcutta High Court in two decisions referred to above had taken the view that in the absence of a reciprocal notification a Power of Attorney



notarised by a Notary outside India cannot be accepted.

Mr.V.K.Ramabhadran, learned Senior Counsel appearing for the defendants would submit that a reciprocal arrangement under Section 14 of the Notaries Act, has been held to be unnecessary in other decisions. He would also draw my attention to the judgment of the Delhi High Court in ***National and Grindlays Bank Ltd., v. World Science News and others***, reported in ***AIR 1976 Delhi 263***, wherein the Delhi High Court had held that a Notary Public would include a notary public in a foreign country also. The Delhi High Court had relied upon Section 85 of the Evidence Act, to uphold the Power of Attorney executed in London.

11.3. Similarly in ***Rajesh Wadhwa v. Dr. (Mrs.) Sushma Govil***, reported in ***AIR 1989 Del 144***, the Delhi High Court after considering Sections 11 and 14 of the Notaries Act had held that Section 14 does not bar in recognition of notarial acts of such countries, even in the absence of a notification under Section 14 of the Notaries Act. In doing so, it was observed as follows:

“ 12. The Court also noticed the provisions of

Section 14 of the Notaries Act and satisfied itself at first



WEB COPY

whether there is reciprocity of notarial acts of Notaries of India being recognised in U.S.A. and vice versa and it held that such a notarial act of Notary of U.S.A. is recognisable in India and thus, the said document is admissible in India. The Court also advised that it is high time that the Central Government should issue necessary notifications also under Section 14 of the Notaries Act. It is the contention of the learned counsel for the respondent that Notaries Act had not made illegal and well-established previous practice of recognising the notarial acts of Notaries of U.S.A. or England by the Indian Courts when such acts of Notaries of India are recognised by the said countries as well. Yogeshwar Dayal, J., in the case of National & Grindlays Bank (AIR 1976 Delhi 263) (supra) has held such a power of attorney to be admissible in evidence and presumptions under Sections 57 & 85 of the Evidence Act were held to be available to such a document although he relied upon the case of Jugraj Singh (AIR 1971 SC 761) (supra) for giving that finding. Sultan Singh, J., in Suit No. 671/77,



WEB COPY

(reported in AIR 1979 NOC 199) (Delhi) followed the above case for giving the same opinion. However, independently of these two decisions of two Judges of this Court, I hold that the provisions of Section 14 of the Notaries Act do not place any bar in recognising the notarial acts of such countries wherein the notarial acts of Notaries of India are recognised. Even in Abdul Jabbar & Others, AIR 1980 All 369, it was held that Section 85 of the Evidence Act applies equally to documents authenticated by Notaries Public of other countries and there is no reason to import the provisions of Notaries Act for interpreting the provisions of Section 85 of the Evidence Act. I agree with these observations. Hence, I repel this contention of the learned counsel for the appellant that the said power of attorneys endorsed by Notary Public of U.S.A. by themselves are not admissible in evidence.”

11.4. The Calcutta High Court in *Alan Kaye v. Recovery Officer*

Employees’ Provident Fund Organisation reported in ***AIR 2006 Cal 158***,

<https://hcservices.ecourts.gov.in/hcservices/>

had held that an affidavit sworn before the Notary Public in England is



acceptable, even in the absence of any notification regarding reciprocal recognition. This Court had in ***Sarasu and others v. Ramasami***, reported in ***2007 (3) LW 1059***, had after examining Sections 85 and 31 of the Evidence Act, held that power of attorney executed outside India before a Notary Public would be admissible in evidence.

11.5. In ***Zhejiang Medicines and Health Products Import and Export Co. Ltd., v. Devanshi Impex Pvt Ltd.***, reported in ***2016 SCC online Bom 10041***, the Bombay High Court, after referring to the judgment in ***National and Grindlays Bank Ltd., v. M/s. World Science News and others***, reported in ***AIR 1976 Del 263***, had accepted a power of attorney executed in people's Republic of China and held that there is no need for a notification under Section 14 of the Notaries Act, to accept a power of attorney and act upon the same. The Bombay High Court has also relied upon a presumption created under Section 85 of the Evidence Act, the judgments of the Calcutta High Court which has been referred to by the learned counsel for the plaintiff have also been referred to by the Bombay High Court.

11.6. In the case on hand, there was no plea taken and no issue framed

regarding the validity of the power of attorney in the suit. Only with



reference to the second power of attorney which was executed in the year 2015, a plea was taken and that was overruled by this Court in Application Nos.1486 and 1487 of 2015 vide the order dated 19.03.2015. I therefore do not find any merit in the contention of the learned counsel for the plaintiff that the agent of the defendant who had signed the pleadings was not properly authorized by the second defendant.

12. For all the foregoing reasons, the suit stands **dismissed**. Even though the suit is a commercial cause, in view of the peculiar facts and circumstances of the case, I direct the parties to bear their own costs.

Sd/- R.S.M.J.
25.10.2021

List of Witness examined on the side of the plaintiff:

PW1 – Mr. R.Sridhar, General Manager of the Plaintiff Company

List of Exhibits marked on the side of the Plaintiff:

<i>S. No.</i>	<i>Exhibits</i>	<i>Description of Documents</i>	<i>Date</i>
1	Ex.P1	The letter of authorisation in favour of plaintiff's representative M.Sridhar	25.09.2013
2	Ex.P2	Chart (sketch)	-
3	Ex.P3	The ship owners details and position of vessel	14.01.1999
4	Ex.P4	The fax message by plaintiff to Coast Guard and others	14.01.1999



WEB COPY

S. No.	Exhibits	Description of Documents	Date
5	Ex.P5	The copy of letter by plaintiff to Coast Guard and others	15.01.1999
6	Ex.P6	The copy of letter from 4th defendant to 3rd defendant	18.01.1999
7	Ex.P7	The fax from 3rd defendant to plaintiff	18.01.1999
8	Ex.P8	The digital gateway switching system computer print out on the cable break	14.01.1999
9	Ex.P9	The extract from log book from control room of the plaintiff	14.01.1999
10	Ex.P10	The fax from cable terminal from Malaysia regarding IOCOM cable break	15.01.1999
11	Ex.P11	The copy of letter by Mercantile Marine Department Government of India to the plaintiff for inspection of the vessel marking copy to 3rd respondent	18.01.1999
12	Ex.P12	The fax to Coast Guard and Harbour Master by the plaintiff	19.01.1999
13	Ex.P13	The fax reply received from Madras Port Trust	20.01.1999
14	Ex.P14	The reply from coast guard to the plaintiff	21.01.1999
15	Ex.P15	The letter from Chennai Port Trust to the plaintiff	21.01.1999
16	Ex.P16	The copy of letter to Deputy Port Conservator by the plaintiff	21.01.1999
17	Ex.P17	The copy of letter to Coast guard by the plaintiff	21.01.1999
18	Ex.P18	The fax of preliminary report of IOCOM repair by cable & wireless Global Marine Cables "CABLE RETRIEVER" sent to the plaintiff	30.01.1999
19	Ex.P19	The fax of survey report by Coast Guard Region (East) sent to the	30.01.1999



S. No.	Exhibits	Description of Documents	Date
		plaintiff	
20	Ex.P20	The fax by M/s.Cable & Wireless repairship regarding IOCOM Submarine Cable repairs	01.02.1999
21	Ex.P21	The photographs of damaged cable length by repair ship	-
22	Ex.P22	The copy of letters addressed to Mr.R.S.Jeevarathnam counsel for fourth respondent	29.01.1999
23	Ex.P23	The copy of notice sent to Mr.R.S.Jeevarathnam, counsel for 4th respondent	01.02.1999
24	Ex.P24	The copy of letter from Esskay shipping (P) Ltd to the plaintiff with regard to provisional assessment of Bill of Entry	26.03.1999
25	Ex.P25	The copy of bank payment voucher	29.03.1999
26	Ex.P26	The copy of bill of entry for home consumption	05.02.1999
27	Ex.P27	The copy of letter sent by M/s.Esskay Shipping (P) Ltd., to the Asst. Commissioner of Customs, Chennai	09.05.2000
28	Ex.P28	The copy of letter sent by the Deputy Commander Head Quarters to the plaintiff	01.03.1999
29	Ex.P29	The copy of invoices sent by C & W Marine and ACPL	-

List of Witness examined on the side of the Defendants:

DW1 – Mr.Captain Bobby Vaid



WEB COPY

List of Exhibits marked on the side of the Defendants :

<i>S. No.</i>	<i>Exhibits</i>	<i>Description of Documents</i>	<i>Date</i>
1	Ex.D1	Pages 1 to 11 of first set of document is DW1's Survey Report	25.01.1999
2	Ex.D2	DW1's second survey report No.99/060 containing pages 1 & 2	09.02.1999
3	Ex.D3	DW1's final survey report which was filed by way of an Addendum to Ex,D1	03.02.1999
4	Ex.D4	A fax message sent by DW1 to the plaintiff	25.01.1999
5	Ex.D5	The reply received by DW1 from the plaintiff in response to Ex.D4	27.01.1999
6	Ex.D6	A further fax message sent by the plaintiff	28.01.1999
7	Ex.D7	DW1's reply to Mr.Seelan of the plaintiff	29.01.1999
8	Ex.D8	The further fax sent by DW1 to Mr.V,Seelan of the plaintiff	29.01.1999
9	Ex.D9	The copy of the letter sent by the counsel for the defendants 1 to 3 to DW1	29.01.1999
10	Ex.D10	A fax message sent by DW1 to M/s.P&I Services Private Limited, Chennai	01.02.1999
11	Ex.D11	The attested photocopy of the training ship Dufferin, Bombay, certificate	01.09.1967
12	Ex.D12	The attested photocopy of the indenture certificate entered into between the witness and British Indian Steam Navigation Company Limited, London	02.02.1968



S. No.	Exhibits	Description of Documents	Date
13	Ex.D13	The attested photocopy of the Indentured Cadet certificate issued by cadet Training Officer	15.06.1970
14	Ex.D14	The attested photocopy of the letter received from Principal of Lal Bahadur Shastri Nautical and Engineering College, Bombay	07/04/1971
15	Ex.D15	The attested photocopy of the letter addressed by the General Cargo Division of the Peninsular & Oriental Steam Navigation Company, London	17.11.1972
16	Ex.D16	The attested photocopy of the letter from Captain Superintendent, Training ship 'Rajendra', Bombay	10/04/1974
17	Ex.D17	The attested photocopy of the certificate of Competency as Master of a 'foreign going ship' first page and cover	27.03.1976
18	Ex.D18	The attested photocopy of the letter addressed by the Great Eastern Shipping Company Limited	23.06.1978
19	Ex.D19	The attested photocopy of the office order issued by the Great Eastern Shipping Company Limited	14.04.1981
20	Ex.D20	The attested photocopy of the letter addressed by Great Eastern Shipping Company Limited	15.09.1981
21	Ex.D21	The attested photocopy of the letter issued by the Great Eastern Shipping Company Limited	05.08.1985
22	Ex.D22	The attested photocopy of the letter addressed by the Great Eastern Shipping Company Limited	21.06.1991
23	Ex.D23	The attested photocopy of the letter issued by Ministry of Surface Transport, Directorate General of	30.06.1992



S. No.	Exhibits	Description of Documents	Date
		Shipping	
24	Ex.D24	The attested photocopy of the certificate issued by the Great Eastern Shipping Company Limited, Bombay	07.01.1994
25	Ex.D25	The attested photocopy of the letter addressed by the Society of Consulting Marine Engineers and Ship Surveyors, London	18.11.1997
26	Ex.D26	The attested photocopy of the certificate of successful completion	01.10.2003
27	Ex.D27	The attested photocopy of the certificate issued by Warsash Maritime Centre	03.06.2005
28	Ex.D28	The attested photocopy of the renewal license issued by Insurance Regulatory and Development Authority	19.05.2006
29	Ex.D29	The attested photocopy of the contract regarding the appointment of non-exclusive Surveyor	09.07.2007
30	Ex.D30	The attested photocopy of the appointment renewal certificate appointee no.134-19 renewed effective as of July 1st 2005 until July 1st 2010	-
31	Ex.D31	The attested photocopy of the certificate issued by United Nations Conference on Trade and Development for the period from 3rd January to 16th January 1985	-
32	Ex.D32	The attested photocopy of the certificate issued by Mackinnon Mackenzie and Company Private Limited	-
33	Ex.D33	The attested photocopy of the certificate issued by the Shipping	-



<i>S. No.</i>	<i>Exhibits</i>	<i>Description of Documents</i>	<i>Date</i>
		Credit and Investment Company of India Limited (SCICI) and the centre for Maritime Corporation U.K.	
34	Ex.D34	The attested photocopy of defendant curriculum vitae which is prepared by the defendant	-
35	Ex.D35	The attested photocopy of defendant accredited surveyors card	04.06.2003

Sd./-R.S.M.J.

25.10.2021

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.