

(2012) 05 BOM CK 0058

In the Bombay High Court

Case No : First Appeal No. 624 of 2005 and Cross Objection No. 21748 of 2005

M/s. Denklav Marine Services Ltd., 156, Maker Chambers III, 15th Floor, Nariman Point, Mumbai-400021 and M/s. Orinoco Marine Consultancy India Pvt. Ltd., Maker Chambers IV, 4th floor, Nariman Point, Mumbai-400021 APPELLANT

Vs

Mrs. Benedicta A. Fernandes Raj Deep Apartments, 3rd Floor, Opp. "Sheetal Cinema", L.P.S. Road Kurla (West), Mumbai-400070 RESPONDENT

 Anthony Peter Fernanded Since deceased through his only heir Mrs. Benedicta Fernandes Vs Denklav Marine Services Ltd. and Another

Date of Decision : 08-05-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Constitution of India, 1950 — Article 136
Employees Compensation Act, 1923 — Section 30
Workmens Compensation (Amendment) Act, 2009 — Section 3, 4
Workmens Compensation Act, 1923 — Section 10, 19, 19(1), 19(2), 22A

Citation : (2012) 114 BOMLR 2355 : (2012) 4 LLJ 391 : (2012) 4 MhLj 856

Hon'ble Judges : Mridula Bhatkar, J

Bench : Single Bench

Advocate : Tariq Baig with Ms. N. Sumnani instructed by M/s. Bhatt and Saldanha, for the Appellant; Philip Francisca for the respondent in First Appeal, for the Respondent

Judgement

Mrs. Mridula Bhatkar, J.—Appellants challenge the judgment and order dated 10.9.2004 passed by the Additional Commissioner for Workmen's Compensation, Mumbai i.e 6th Labour Court. This being an appeal u/s 30 of The Employees' Compensation Act, 1923, (Workmen's Compensation Amendment Act 2009) (Hereinafter referred as "The Act") Substantial questions of law are as under :-

Findings

(1) whether the Tribunal has committed an error in awarding compensation though case is not covered u/s 3 of the Act and holding 100% disability ?

No

(2) Whether the order of compensation of Rs. 3,75,528/- is just and legal in view of amendment of 2009 in section 4 of the Act ?

No

(3) Whether the respondent/original applicant is entitled to claim compensation as per the terms and conditions of NMB agreement under the Act ?

No

Respondent is an original applicant. He was employed with the appellant/ shipping company on the board, the vessel M.T Shannon on 3.3.1998. He joined and worked as a Petty Officer or Chief Cook on the contract basis as a contractual employment for a period of 9 months i.e till 5.12.1998. He was required to do number of physical activities related to cooking including the storage and shifting of the food items. In August-1998, deep freezer of meat and fish stopped functioning therefore, he was ordered by the Captain to shift the food items i.e meat and fish to veg-room and vice versa, though there was a helper and mess-man to help him, proper warm clothes were not provided to the applicant. Again on 12.9.1998 he was asked to shift fish and meat to vegetable cooler room. At that time, no assistance was given though asked for and the applicant shifted nearly 15 boxes weighing about 50 k.gs., so the muscles of the shoulder of the applicant were injured and he sustained acute back pain. He was given first aid. However, he was not in a position to carry out his duties. When vessel reached at Panama Port, the applicant wanted medical help. However, he was not sent to a Doctor on the Port and the vessel started its voyage from Panama Port to Boston Port. It reached Boston on 16.11.1998, till then applicant suffered permanent dis-ability, therefore he filled the form of request of medical attention. While on duty, he was sent to Doctor and was asked to disembark from the ship at Boston on 6.12.1998 and instructed to undergo all the medical tests after reaching India. Applicant went to Agrawal Nursing Home, Kurla on 7.12.1998 as he was suffering from severe chest and back pain and was admitted to the hospital on 8.12.1998 and was discharged on 16.12.1998. Thereafter he went to his native place at Goa and took medical treatment at Salgaonkar Research Centre. He approached the appellants and reported about his health problem. However, he did not get positive response. He took treatment. He had received nonscheduled injury which was assessed as 100% dis-ability. He therefore, filed claim application under the Workmen Compensation Act for compensation of Rs. 1,87,764/- from the appellants. Both the parties adduced evidence. The Additional Commissioner after considering oral and documentary evidence, allowed the claim of the applicant and the Tribunal taking into account the amendment of 2000 in The Workmen's Compensation Act, awarded the compensation @ Rs. 3,75,528/- though the claim was made for Rs. 1,87,764/- . Being aggrieved by the said order, the employer filed this appeal and the applicant filed cross-objection praying for enhancement of the

compensation.

2. Learned Advocate for the appellants has submitted that he challenges the order of the Tribunal on two grounds; one that the claim application is not maintainable as it does not fulfill the requirements of Section 3 of the Workmen Compensation Act and secondly, the amount of the compensation granted by the Additional Commissioner is not as per the provisions of Section 4 of the Act and not justifiable. Learned Counsel submits that the respondent/original claimant joined the service of the appellant in March-1998 as a Chief Cook. He did not sustain any injury out of and in the course of his employment. The alleged injuries of stiff shoulder and back pain are neither covered under the Schedule of Section 4 of the Workmen Compensation Act nor within the ambit of Section 3 of the Act. He has submitted that the medical reports of the relevant period disclosed that he was suffering from back pain and shoulder pain. He never had any chest pain or any cardiac problem i.e ischaemia. He argued that the applicant signed off on 6.12.1998 from the vessel and he did not report to the company immediately for medical claim but he took treatment in the private hospital thereafter. He argued that the certificate relied by the claimant of the year 2000 cannot be relied as there was a time gap of two years from the last date of the employment and the certificate issued. He argued that there is every possibility that claimant might have developed heart problem subsequently and the ischaemia cannot be related to any injury which has occurred either due to the accident or in the course of employment. He further submitted that the medical report discloses the concerned Doctors have opined that he was obese. He was 100 k.g and his weight should not have been more than 57 k.g. Thus he was over-weight by 53 k.g which might have resulted in heart problem. He submitted that the Additional Commissioner (Labour) has erred in holding that the injury was arising out of the course of employment.

3. In support of his submissions, he relied on the judgment in the case of 1) Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another, , 2) Shipping Corporation of India Ltd. Vs. Madhavan, reported in 2005 III CLR 491, 3) Madan Harmat Vs. M/s. Shipping Corporation of India Ltd., & Anr decided by this Court in First Appeal No. 1107 of 1999 on 4th March 2005. 4) Shipping Corporation of India Ltd., Vs. Ratanji Somabhai Tandel reported in 2011 II CLR 215, wherein it is held that the diabetes melitus is not one of the diseases mentioned in the list in schedule-III of the Act.

4. Learned Counsel for the appellants further argued that the amount demanded was Rs. 1,87,764/- but Additional Commissioner has committed an error in awarding more compensation than demanded. The compensation more than demanded cannot be granted especially when u/s 4- amount of Rs. 2000 had been fixed instead of Rs. 4000 for the calculating.

5 Per contra, learned Counsel for the respondent argued that the order passed by the Additional Commissioner is legal and cannot be faulted out. She argued that the applicant though was suffering from frozen shoulder during the voyage,

he was not referred to Doctor at Panama port and subsequently was not treated properly by the Captain of the ship and the authority. She relied on the evidence of Dr. Mehta who examined claimant in December-1998 and has deposed that the applicant has sustained 95% total permanent dis-ability. Learned Counsel relied on the medical forms in order to get the medical treatment when he was in the employment on the ship. She argued that Captain of the ship ordered the applicant to do heavy work and because of this heavy work, he sustained injury to his shoulder. At the time of joining duty on ship in March-1998, the applicant was over-weight but he was considered fit and obesity did not come in the way of his employment. Learned Counsel while meeting the objections raised by the appellants about the quantum of the compensation, submitted that the Additional Commissioner has rightly calculated in paragraph-31 of the judgment, the amount of compensation as per schedule-IV, section-4 of The Workmen's Compensation Act. She submits that explanation to section-4 was amended as per the amendment of 2004 and the amount of Rs. 2000/- was increased to Rs. 4000/- . She submitted that at the time of final adjudication i.e on 10.9.2004, the compensation was awarded, taking into account the amendment, 60% of Rs. 4000/- was rightly calculated. She relied on the decision of the Supreme Court in New India Assurance Company Limited V/s V.K. Neelakandan, reported in 1999 (8) SCC 256. She further submits that the respondent has filed cross-objection in this First Appeal, by which enhanced claim of Rs. 26 lakhs is made. The claim is based on the National Maritime Board Agreement which was entered into by the Union of Seamen and the Board which is binding on the foreign vessels.

6. Learned Counsel for the appellants in reply to the arguments on the cross-objection, submitted that the claim of enhanced compensation is not maintainable, so also the compensation awarded by the Additional Commissioner at the rate of Rs. 4000/- is not legal. He argued that while deciding the amount of the compensation, the date of accident is material. The case of Neelakandan (supra) is overruled in the case of Kerala State Electricity Board and Another Vs. Valsala K and Another, .

7. Issue No. 1 :- Original claimant was admittedly working on the vessel and was employed from March-1998 till 5.12.1998. Since 1993 he was employed by the appellant on the ship time to time. Medical forms filled up by him and the medical certificates given by different Doctors are produced by him in support of his contention of injury of frozen shoulder. These medical forms disclose that he complained in September-October-1998 of back pain and frozen shoulder during the voyage. He was not sent for the medical treatment at Panama port and he was examined and advised by medical officer at port Boston. Thus, it is clear that the Captain of the ship or the authority did not care to give medical treatment to the applicant/claimant during the voyage. When he was given employment on the ship in March, he was medically fit. However, he developed back pain and problem of frozen shoulder when he was on the ship working as a Chief Cook. The claimant has adduced evidence regarding specific instances in the month of August & September-1998 when he was asked to do extra work of lifting and

shifting heavy articles. He was not given proper assistance to do a manual work and at one time he lifted 15 boxes of 50 k.g each thereafter he developed frozen shoulder. Submission of the learned Counsel for the appellants that it cannot be considered as an injury during the employment, is not accepted. An accident means a sudden impact or sudden unexpected abnormal situation which has caused the injury to the body. Frozen shoulder is a muscular injury may cause due to the damage of the muscle or bone of the shoulder which is not visible outside but it is an internal injury. Learned Additional Commissioner has properly appreciated the evidence and has rightly held that injury was arising out of the accident in the course of the employment.

8. For assessment of percentage of the injury the evidence of Dr. Sajjan Mehta is important. Though he has given admission that there is 25% of dis-ability and the condition of the shoulder is frozen, he has stated in the cross-examination that total permanent dis-ability is 95%. When he examined the patient in the year 2000, the patient was suffering from some cardiac ailment and frozen shoulder. There is a certificate dated 7.6.1999 of Salgaonkar Research Centre. It was certified that on 21.12.1998, Doctor has examined the claimant and has treated him medically. It is reproduced as follows :-

"Suggestive of critical inducible antero-lateral wall myocardial ischaemia. He was put on anti-ischaemic medications and referred for Coronary Angiography at Mumbai, since these facilities are not available in Goa.

After thorough physical examination and perusal of his medical reports, giving due importance to his critical status of his Coronary Circulation together with chronic intractable shoulder arthritis and backache, after considering to nature of his duties, I came to reasonable conclusion that at present his medical status amounts to permanent disability for performing his duties."

9. The applicant/claimant signed off the ship on 5.12.1998. Immediately he was examined and treated on 21.12.1998 in Salgaonkar Medical Research Centre. Therefore, this particular certificate is important and is accepted. One more aspect is to be clarified that while measuring the dis-ability, it is necessary to take into account the capacity to perform the duty. Thus the nature of the work has important bearing to measure the dis-ability. He was doing work as a Chief cook. So free movement of the shoulder is very much required in the cooking process and it was prohibited because of the disability. If the claimant would not have been doing a job of cooking and would have been doing other job where other faculties of the body are required to be used, then such disability may not be considered as total disability. However, he is working as a Cook, So it is a case of the total permanent disability.

10. Issue No. 2 :- The Additional Commissioner in paragraph-25 of the judgment has calculated the amount of compensation. Age of the applicant at the time of accident was 49 years. His salary was Rs. 62,000/- per month. The relevant factor as per the schedule was 156.47. So the amount of compensation was

calculated as Rs. 1,87,764/- and so it was claimed. However, the amount was awarded as Rs. 3,75,528/- , on the basis of 2004 amendment in Section 4 wherein the amount of deemed income u/s 4 was increased from Rs. 2000/- to Rs. 4000/- . In Neelakandan (supra) Supreme Court held that the benefit available at the time of adjudication be given to the workmen and not at the time of accident. The judgment of the Division Bench in Neelkandan (supra) was overruled by the judgment of the larger bench in Kerala State Electricity Board. In case of Kerala State Electricity Board (supra). Amendment in Section 4 and 4A of The Workmens" Compensation Act 1923 made by Act 30 of 1995 w.e.f 15.9.1995, by which the amount of compensation and rate of interest were increased. Whether compensation to be paid as per benefits available from the date of the accident or from the date of the adjudication in view of the amendment of 1995 was the issue. The larger Bench of the Supreme Court while dealing with this issue has considered the judgment of New India Assurance Company Limited V/s. V.K. Neelakandan (supra) and of Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, . In the case of Kerala State Electricity Board, enhanced rate was not made applicable because the accident took place prior to 15.9.1995 though decided subsequent to 15.9.1995. However, the Court did not reduce the amount of the compensation by using powers under Article-136 of the Constitution of India. It is held that :-

"A two-Judge Bench of this court in New India Assurance Co. Ltd., v. V.K. Neelakandan, Civil Appeal Nos. 16904-16906 of 1996, decided on 6.11.1996, however, took the view that Workmen's Compensation Act, 1923 being a special legislation for the benefit of the workmen, the benefit as available on the date of adjudication should be extended to the workmen and not the compensation which was payable on the date of the accident. The two-Judge Bench in Neelakandan's case (supra), however, did not take notice of the judgment of the larger Bench in Pratap Narain Singh Deo's case, 1976 ACJ 141 (SC), as it presumably was not brought to the notice of their Lordships. Be that as it may, in view of the categorical law laid down by the larger Bench in Pratap Narain Singh Deo's case, the view expressed by the two- Judge Bench in Neelkandan's case is not correct."

11. In the present case, the accident though has taken place in the year 1998 and the issues are adjudicated upon on 10.2.2004, we cannot calculate the amount as per the amendment of 2009 at the rate of Rs. 4000 but it is to be calculated as per the amendment of 2004 by rate of Rs. 2000/- . Thus the Commissioner has committed an error in not considering the ratio of Kerala State Electricity Board & Anr. Thus though the applicant is entitled to compensation considering the 100% dis-ability, he is not entitled to get the benefit of the amendment of 2009 of enhanced rate.

12 Issue No. 3 :-

Before the Commissioner, the applicant initially made a claim of Rs. 1,87,764/- . In the course of submissions the applicant enhanced the claim that he is entitled

to Rs. 26 lakhs as per the terms and conditions of the agreement of the National Maritime Board. Thus he claimed that he is entitled to receive the compensation as per the Company Rules. The Commissioner has framed issue no.4 that; Does the applicant prove that he is entitled to receive compensation as per the Company Rules ? In paragraph-29 of the judgment and also in paragraph-31 while dealing with issue nos.4 & 6 respectively, the Commissioner has made his assessment about the issue. He has referred that in the cross-examination the appellants have admitted that there are rules in the company for settling the claims and the rules for compensation also exist. It is mentioned that the Advocate of the original claimant issued notice to the opposite party to produce the said rules. However, the appellant did not produce the said rules and therefore, such rules were not placed on record. In view of the admissions given in the evidence by the witnesses of the appellants, the learned Commissioner held that the original applicant is entitled to receive the compensation from the company on the basis of the Company Rules. However, in the operative order he has calculated the benefits as per sections 4, 4A & 3(a) of the Workmen Compensation Act 1923 and awarded Rs. 3,75,528/- with interest @ 12% p.a payable from the date of the accident i.e 12.9.1998.

13. In appeal, learned Counsel for the respondent/original appellant made submissions that as no such rules were produced before the trial Court, those rules are to be produced before the appellate Court. After considering the finding given by the Commissioner, this Court under Order 41 Rule 33 of the CPC directed the appellants on 3.2.2012 to produce the National Maritime Board agreement between the Ship Owners Association and Union of Seamen. Pursuant to this, the learned Counsel for the appellant produced summary of agreement of 1998 which was issued by National Maritime Board (India) Ballard Estate, Mumbai. It appears that this summary of agreement is generally applicable to all categories of Seamen engaged on foreign going Indian vessels and shall be binding on all shipping companies employed seamen on such articles of agreement. The learned Counsel for the original applicant produced copies of agreements like (1) ITWF (International Transport Workers Federation) (2) Wage Scales for ratings CBA w.e.f 1.1.1998 valid till December-1999. In support of her submissions, learned Counsel has relied heavily on the judgment dated 31.7.2006 (Coram : Abhay Oka, J) in the case of M/s. Shipping Corporation of India Limited Vs. Madan Karson in First Appeal No. 707 of 1996.

14. It is true that a seaman is entitled to claim compensation/damages as per the rules of the Companies or as per the terms and conditions of the agreement of National Maritime Board. It is a contractual liability and Civil Courts have jurisdiction to entertain suit for recovery of such amount. Whether liability to pay as per such agreement is a liability under the Act or not and whether the Commissioner has power to grant such amount by way of compensation under the Act are the main questions of law.

15. In B.T. Shipping London Limited V/s. Smt. Aarti Narayanan & Ors, a similar

issue of deciding the powers of the Commissioner to order employer to deposit further amount of the compensation u/s 22A of the Workmen Compensation Act was before the Court. The Court held as follows :-

"It is open to the dependants to enforce their claim as per the agreement in the service conditions in accordance with law but it cannot empower the Workmen's Compensation Commissioner to award or order for deposit of compensation of that amount which exceeds the compensation prescribed under the Act. Section 19(2) of the Act of 1923 only provides that no Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under the Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act. For enforcement of the clause in the service conditions whereby the employer has undertaken to provide cover in accordance with Appendix E to a maximum of three and a half times annual pay can be enforced through Civil Court and jurisdiction of Civil Court to that extent cannot be said to be barred u/s 19(2). So far as the Workmen's Compensation Commissioner under the Act of 1923 is concerned he is only empowered to award compensation or order deposit of compensation as prescribed under the Act and not exceeding thereto."

15-A A similar view is taken by this Court in First Appeal No. 2371 of 2005 (Hussain Abdul Kadir Khatib V/s. Shipping Corporation of India) decided on 10.9.2009. While deciding the First Appeal the learned single Judge relied on the judgment of the B.T. Shipping London and has held that the issue is no longer res integra and Workmen Compensation Act cannot grant compensation which is payable under the Act alone and not any compensation which may be payable under the Agreement and it was open for the workman to demand compensation under the NMB agreement before the Civil Court.

15-B In The Shipping Corporation of India Ltd. Vs. Ratanji Somabhai Tandel, , this Court has dealt with the jurisdiction of the Commissioner u/s 10 of the Act. u/s 10, a notice of the accident is required to be given to the Commissioner. It is held that the Commissioner can entertain the claim arising under the Act i.e for the injury as per section 3 of the Act. The Court framed issue whether the respondent was entitled to claim compensation under Workmen's Compensation Act on the basis of National Maritime Board (India) agreement? In the said judgment it was held that :-

"If a claim arises not in respect of an injury caused in the course of an employment but arises out of any other contract, such a claim cannot be entertained by the Commissioner under the Act. Sub-section (5) of section 3 of the Act gives an indication that the jurisdiction of a Civil Court is not totally ousted and in certain matters, Civil Court has jurisdiction to entertain a suit for damages. In my view, a claim arising under any collateral contract and not under the Act cannot be enquired into and decided by the Commissioner appointed under the Act. Such a claim can only be made and decided by ordinary Civil Courts in accordance with the law of the land."

15-C On careful reading of these judgments, it is found that the learned single Judges had no occasion to deal with the issue of registration u/s 28 of the Act. In B.T. Shipping London, the main issue was in respect of Commissioner's power to give direction to deposit further amount of compensation u/s 22A of the Act and in the First Appeal No. 2371 of 2005 relying on the finding in the B.T. Shipping London, Learned single Judge adopted same view.

16. In the judgment passed in First Appeal No. 707 of 1996 in SCI Vs. Shri Madan Karson decided on 31.7.2006 the Court has considered this aspect to certain extent and has upheld the order passed by the Commissioner who has granted compensation as per the terms and conditions of the registered agreement.

17. In the case in hand, the issue raised is whether such agreement between the employee and employer can be considered as an agreement under the Act and whether the Commissioner has power to award compensation as per the terms and conditions of the Act which may be far more than the prescribed formula of the compensation under Schedule-IV u/s 4 of the Act ?

18. u/s 19 of the Act the Commissioner is empowered to decide any question which arises in the proceedings under the Act in respect of the liability of any person to pay the compensation. (emphasis placed). Section 19(2) of the Act bars the jurisdiction of the Civil Court to decide and deal with any question in respect of the liability incurred under this Act. The crux of the matter is whether NMB agreement or any such agreement can be considered as entered under the Act. Section 28 of the Act states that where the compensation is payable lumpsum and is settled by the agreement then the Memorandum of the agreement shall be sent by the employer to the Commissioner and after satisfying its genuineness Commissioner will record the Memorandum in the register as prescribed u/s 28. Section 28(2) reads as follows :-

"An agreement for the payment of compensation which has been registered under sub-section (1) shall be enforceable under this Act notwithstanding anything contained in the Indian Contract Act, 1872 (9 of 1872) or in any other law for the time being in force."

18-A Section 29 is about the effect of failure to register the agreement. The provisions of registration of the agreement contemplated under Sections 28 & 28(2) of the Act cover the terms and the conditions of the agreement under the Act. Section 28 states the duty of the employer to send the agreement to the Commissioner and it casts duty on the Commissioner to satisfy about its genuineness and then to record it in the register. Section 28 does not stop there. Sub-section 2 of Section 28 confers power and makes it enforceable under the Act. Thus registration of section 28(1) is not an empty formality as it is followed by a mandate of section 28(2) of the Act. Non obstante section 28(2) leaves no room for any other interpretation. If the agreement is registered, then it is enforceable under the Act. In the light of section 28(2), powers of the

Commissioner envisaged under sections 19(1) and 19(2) are to be read. u/s 19(1) the Commissioner derives the power to decide any question as to the liability of any person to pay compensation. The term "any person" enhances the power of the Commissioner and it cannot be restricted to only the employer. It is to be read in the context with the compensation payable by any person. Section 19(2) bars the jurisdiction of the Civil Court in respect of any liability incurred under the Act & the entire gamut of the liability under the Act is covered by the jurisdiction of the Commissioner. In support of this, I rely on the judgment in the case of Sitaprasad V/s. Afsari Beigum reported in 1977 TAC 311 equivalent 1977 LIC 1533 (ALL).

19. Thus it can be said that under the Rules and terms & conditions of the agreement, the amount of the compensation for disability or death is always on a higher side as it is a contract between the National Maritime Board and the Union of Seamen and the said agreement is binding on all the shipping owners who are covered under the Board. Thus the seamen can demand a maximum compensation under the NMB agreement. The compensation u/s 4 of the Act which he is entitled to get under the Workmen Compensation Act 1923 is generally substantially less than what he is entitled to get out of the contractual liability. When agreement provides a clause for the dis-ability and the compensation then it is necessary to facilitate the amount of the compensation by reducing procedural wrangles. The hardship of the seamen who sail for long voyage in deep sea water for months together is to be taken into account and Commissioner may pass order of compensation as per the rules. However, it is necessary for the applicant to lead specific evidence in respect of the registration of the agreement, rules, terms & conditions so also about the disability and compensation clauses mentioned in the agreement. A shallow and scanty evidence does not give proper assistance to the court to arrive at conclusion in respect of the calculation. A burden cannot be thrown on the shipping corporation or the employer. If registered agreement is not with the applicant seaman then the applicant should endeavor to bring it on record and lead evidence about its registration. Specific evidence does not mean that the applicant is required to prove a strict proof of the fact, but it should be sufficient and adequate for the Court to come to the logical conclusion about the amount of the compensation. If it is not done before the Commissioner then such claim under the Act fails. The applicant has option to submit to the jurisdiction of either Commissioner under the Workmen Compensation Act or the Civil Court for the compensation based on the NMB agreement.

20. There should be clear evidence from the original applicant before the Commissioner about the registration and also about the terms of the agreement. In the present case as stated above the appellant did not produce the agreement before the Commissioner. The agreement is now brought before the appellate Court. This agreement is disputed by the appellants as an agreement between the Seamen and the foreign vessels. It shows that if the monthly wages of the seaman is Rs. 10,000/- or above in case of 100% disability, the compensation

shall be given Rs. 12 lakhs. However, the present applicant made demand of Rs. 26 lakhs and basis of which is not explained. The learned Counsel for the appellant submitted that the NMB agreements were executed in respect of vessels of Indian ship owners and ITF and that is a model agreement. It was submitted that the foreign ship owners have to enter into an agreement with the Indian shipping agency governing the service conditions of Indian crew on foreign vessel and the agreements entered into, are in force for two years and most affiliated union used the ITF, TCC agreement (TOTAL CREW COST). It may be true, however in the present case I do not come across any such evidence and no registered agreement is produced to give effect under the Act. However when the applicability of the documents produced before this Court is disputed by the appellants and there is no clear evidence to show that the appellant foreign vessel was liable to pay as per the agreement before the Court, the order of compensation as demanded cannot be passed. Thus on the point of law the original applicant though succeeded; has failed on the facts.

21. Therefore, it is held that the appeal is partly allowed in the following terms :

(1) The order of the Commissioner awarding amount of compensation to Rs. 3,75,528/- is modified. The amount of compensation is reduced to the originally claimed amount by the applicants and to be paid Rs. 1,87,764/- with interest.

(2) The remaining order including payment of interest is maintained as it is.

(3) Enhanced claim of compensation on cross-objection fails.

(JUDGE)

22. Learned Counsel for the appellants submits that the amount deposited by the appellants if found excess after calculating the amount of interest, be refunded to the appellants. Submissions are accepted. Learned Counsel for the appellants prays for stay of the judgment and order. Considering the legal position, facts & circumstances of the case and the original claim is of 1998, no stay is granted. Prayer is rejected.