

(2021) 02 SC CK 0019

In the Supreme Court Of India

Case No : Civil Appeal No. 150 Of 2021

Nawal Kishore Sharma

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 10-02-2021

Acts Referred:

Personswith Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Act, 1995 — Section 2(i), 2(s), 2(zc), 47
Workmen Compensation Act,1923 — Section 3

Citation : AIR 2021 SC 886 : (2021) 4 SCC 487 : (2021) 5 JT 260 : (2021) 2 Scale 441

Hon'ble Judges : Sanjay Kishan Kaul, J;Dinesh Maheshwari, J;Hrishikesh Roy, J

Bench : Full Bench

Advocate : V. Chitambresh, Kumud Lata Das, Rajiv Kumar Sinha, C. Govind Venugopal, Gurmeet Singh Makker, Shikhil Suri, Shiv Kumar Suri

Final Decision : Dismissed

Judgement

Hrishikesh Roy, J

1. The appellant challenges the judgement dated 26.03.2019 in the Civil Writ Jurisdiction Case No.3160/2012, whereunder, the High Court of

Judicature at Patna had rejected the seaman's Claim for disability compensation[under clause 21 of the National Maritime Board Agreement

(hereinafter referred to as 'the Agreement')] and thereby endorsed the order dated 07.10.2011 (Annexure P21) of the Shipping Corporation of

India (hereinafter referred to as the 'SCI' for short).According to the SCI, the appellant's was not a case of accidental injury during duty

on the vessel and therefore,only severance compensation is payable to the appellant. This is because the Seaman is capable of performing other kinds

of job and his day-to-day normal work is not affected.

2. The appellant was earlier registered in the SCI's offshore fleet service but at the relevant time he was released at his own request with effect

from 19.08.1996 and transferred to the SCI's foreign going seaman's roster, with fresh registration. Those in seaman's roster category,

are engaged on contract, specific for the sea going vessel. The appellant joined as a crew on the foreign going vessel on 18.09.2009 and he was

discharged on 18.06.2010 with the declaration of being permanently unfit for sea service, due to Dilated Cardiomyopathy.

3. On the above facts, Mr. V. Chidambresh, the learned Senior Counsel argues that seaman is entitled to 100% disability compensation under Clause

21 of the Agreement. According to the Senior Counsel, Dilated Cardiomyopathy or heart's reduced blood pumping capacity, should be understood

as an internal injury covered by Clause 5.9.F (ii) of the Agreement which speaks of 'A rating on being medically unfit for sea service at sea as a

result of injury whilst in employment'. The term 'injury', according to the counsel should cover anything impairing the health of the appellant. Mr.

Chidambresh argues that injury need not be manifested externally or blood oozing kind but should also cover an impaired heart. The appellant's

counsel relies on an article on Marine Safety, by Mr. Dilipan Thomas and also the writings of Mr. Markas Ollie Barker to argue that cardio vascular

disease is one of these several occupational diseases about which, the seafarers have been cautioned by the authors. The failure by the SCI to

accommodate the seaman in an alternative job (suitable for the appellant's medical condition) is next contended to be in contravention of Section

47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'the

Disability Act').

4. Mr. Shiv Kumar Suri, the learned counsel for the SCI per contra contends that the seaman never suffered any accidental injury during the sea

voyage on the vessel and since the disability compensation is restricted only to cases of incapacitation resulting from injury during the voyage, the

claim for disability compensation was rightly rejected by the High Court and the SCI authority. Mr. Suri highlights that the Claimant's heart

condition does not fall within the contours of an 'injury' for the purpose of Clause 5.9.F (ii). It is, therefore, argued that the appellant is covered

by Clause 25, which applies to cases of persons declared medically unfit for sea service instead of Clause 21, which is triggered in cases of 100%

disability suffered during and in course of employment. According to the SCI's counsel, a person may be unfit for Seaman's duty but may be

100% fit for doing another job of general nature. Refuting the appellant's argument on the footing of the Disability Act, Mr. Suri argues that

Dilated Cardiomyopathy is nowhere mentioned in the Disability Act and therefore an alternate job, suitable for the seaman's medical condition,

cannot be claimed under the Act. Adverting to the temporary nature of the appellant's engagement as a freelance seafarer and his contractual

engagement for about 9 months (from 29.09.2009 to 18.06.2010), the SCI counsel contends that the short stint on the vessel cannot reasonably be the

basis for the impaired heart function, particularly when, no injury was suffered during the sea voyage. The medical condition of the appellant is

attributed by the counsel to excessive liquor consumption and the same has nothing to do with the seaman's work on the vessel.

5. In his turn, Mr. Viramjit Banerjee, the learned ASG contends that there is no causal connection between the Claimant's medical condition with

the nature of his employment in the sea going vessel. The Counsel submits that unless proximate connection between the seaman's work on the

vessel and his medical condition is established, disability compensation cannot be allowed.

6. While rejecting the claim for disability compensation, the SCI recorded in the impugned order dated 07.10.2011 (Annexure P21) that this was not a

case of a seaman becoming incapacitated on account of an accidental injury suffered on the vessel. Since, the relevant Clause 5.9. F(ii) specifically

speaks of being medically unfit as a result of injury while in employment and the claim was not based on injury, the disability compensation was held to

be unmerited.

7. The High Court while considering the challenge to the SCI's rejection order, considered the literature relied upon by the appellant. The learned

Judge while appreciating that reduced blood pumping capacity of the heart could be one of the occupational diseases of the seafarer, the disability

compensation is not merited unless 100% incapacity is found in course of employment on the vessel. Here however, there is nothing to show that the

seaman was not fit for another job of general nature. The High Court interpreted both Clause 21 and Clause 25 and found that the appellant's

case does not fall in the category of Clause 21 since there is no impediment in his performance of normal day to day affairs. In other words, the sea-

faring work may not be feasible but the person is capable of discharging duty of another job of general nature. The High Court, therefore, found no

basis to overturn the SCI's rejection of the claim for Disability compensation.

8. It would be appropriate at this stage to extract Clause 5.9.F (ii) of the Agreement providing for 100% disability compensation. The same reads as

under:

"A rating on being medically unfit for sea service at seas as a result of injury whilst in employment shall be paid 100% compensation".

9. The above Clause is part of the National Maritime Board Agreement which governs the parties.

The National Maritime Board Agreement is the outcome of collective bargaining between Indian Ship Owners Association and the Seafarers' Union,

governing the terms and conditions of a seaman.

10. Since, the purport of Clause 21 covering disability compensation and Clause 25 covering severance compensation are to be considered, both clauses

are extracted below:-

21. Death and Disability Compensation:

"A rating on being medically unfit for sea service at seas as a result of injury whilst in employment shall be paid 100% compensation".

"A rating on being medically unfit for sea service at seas as a result of injury whilst in employment shall be paid 100% compensation".

Death compensation-Rs.12.85 Lacs.

100% disability compensation-Rs.14.85 Lacs.

In case of rating declared partially incapacitated whilst in employment above Disability Compensation shall be paid on proportionate basis. This Death

& Disability Compensation shall not be paid if the death and/or disability has resulted due to the rating's own wilful act.

25. Severance Compensation:

With effect from 01/04/2006, a Rating borne on a Company's Roster continuously for a period of not less than 5 years if declared permanently

medically unfit for sea service by Company's Medical Officer, severance compensation to be paid to such Rating as under:

For Ratings below age of 55 years:

@3 months Basic Wages per year of articulated service including applicable leave periods on Company's vessels and @1 ½ months

Basic Wages per year of prospective service subject to a minimum compensation of Rs.2,75,000/-.

For Ratings between age of 55 to 58 years:

@ 3 months Basic Wages per year of prospective service subject to 4 months Basic Wages of Compensation of Rs.1,75,000/- whichever is higher.

For Ratings above age of 58 years:

@3 months Basic Wages per year of prospective service subject to 4 months Basic Wages or Compensation of Rs.1,25,000/- whichever is higher.

The above provision of compensation will not be applicable to a rating dealt with under the provisions Death and Disability Compensation.

11. As can be seen from above, 100% compensation is payable to a seaman under Clause 5.9. F (ii) in a situation where a seaman is found medically unfit for sea service, as a result of injury, while in employment. But it is not the case of either side that the appellant had suffered any accidental injury

in course of his engagement in the sea vessel. The question then is, whether the term "injury", should be construed in the manner suggested by

the appellant's counsel as anything which diminishes the health status of a seaman. Such broad interpretation in the context of the specific

expression in the agreement would in our view, efface the intent of the agreement between the parties. Merely because of the beneficial objective, the

clear expression in the agreement must not be ignored to give another meaning which could not have been the intention or the understanding, of the

contracting parties.

12. To secure coverage of Clause 5.9.F (ii), the incapacity must relate to injury being suffered whilst in employment. In the present case, the appellant

never claimed to have suffered any injury during his ship duty. Moreover, the impaired heart function cannot reasonably be attributed to his nine month

engagement. In such circumstances, although the seaman commenced his engagement with a fitness certificate, it would be unreasonable, in our

view, to relate the medical condition of the appellants having causal connection with his sea voyage engagement.

13. In the above context, we have also perused the extracted passage from the article on marine safety and cardiovascular disease of Mr Dilipan

Thomas.

According to the author, “Cardio-vascular disease is as commonly found in seafaring community as in the general population”. Thus, it can at best

be a general observation relating to both seamen and people in general and not specific for the seafaring community.

14. Insofar as the other extract relied by the appellant’s counsel, there is some confusion. This is because the extract was attributed to Mr Markas

Ollie Barkar but a search on the origin of the quoted portion revealed that this was actually lifted from the abstract of the article titled “Risk of

Cardiovascular Diseases in Seafarers” by Mr Marcus Oldenburg, in the International Maritime Health, 2014. Since the concerned passage was quoted

in the High Court’s judgment and also relied upon by the appellant, we have examined the context in which it was written. It is then seen that

subject of the study i.e. German seafarers, were only assumed to have slightly increased risk of coronary disease, even though they displayed similar

predicated risk as the reference population for comparison. The concerned passages speak of job-related cardio risk factors for seafarers. But in the

present case no material is produced to correlate the appellant’s impaired heart function with the 9 month engagement in the ship. In the absence

of any connecting link between the job and the medical condition, the disability compensation in our opinion is not merited.

15. The Clause 21 applies to a case of total disability but this is not a case of 100% disablement. To say it another way, the Dilated Cardiomyopathy

condition may prevent the man from performing sea service but the same will not be an impediment for him to perform other jobs. With this

interpretation, the High Court held that only severance compensation under Clause 25 is payable for the seaman. We see no reason to reach another

conclusion on the implication of Clause 21 and Clause 25, for the appellant.

16. The appellant’s counsel has relied on, Divisional Controller, NEKRTC vs. Sangamma and Ors. 2005 (2) LLN 776, and Mackinnon Mackenzie

& Co. Pvt. Ltd. vs. Rita Fernandez 1969 (2) LLJ 812. In these cases, the

impairment had occurred in the course of employment. For instance, in Sangammacase, the bus conductor suffered chest pain while on duty and was admitted to the hospital. However in the case in hand, no linkage between the on ship duty and the appellant's medical condition, could be established. Thus, the first cited case will be of no assistance to the appellant.

17. In the Rita Fernandez (supra), which related to a seafarer's cardiac ailment, the log-book of the ship had recorded entry relating to the employee's hospitalization for treatment of cardiac ailment. But in the present case no such log entry from the vessel had been produced. In Rita Fernandez judgement, the Court itself had highlighted the need for establishing the causal connection for considering compensation under Section 3 of the Workmen Compensation Act, 1923. But in the present case, the appellant's medical condition could not be linked to his short term engagement. Therefore, the cited ratio is of no assistance for the disability compensation claim.

18. Let us now deal with the appellant's argument that his heart ailment should be understood as a disability under the Disability Act and consequential benefits be accorded to him. Section 2(i) of the Act takes into account visual disability, locomotor disability, mental illness, mental retardation, hearing impairment and leprosy. A heart ailment is not covered within the definition of disability in the Act and we would hesitate to import words, which the legislature chose not to, in their definition of disability. When the 1995 Act was replaced by the Rights of Persons with Disabilities Act, 2016, a person with disabilities was defined under Section 2(s) as a person with long term physical, mental, intellectual, or sensory impairment which prevent his full and effective participation in society. Section 2(zc) defines, a specified disability as those mentioned in the Schedule to the 2016 Act. In the said Schedule, physical disability, intellectual disability, mental behaviour, are specified. The dilated Cardiomyopathy condition of the appellant is neither a specified disability nor is the same relatable to the broad spectrum of impairments, which hinders his full and effective participation in society. Therefore, we are of the considered opinion that Dilated Cardiomyopathy condition of the appellant does not bring his case within the ambit of either the 1995 Act or of

the 2016 Act. The High Court, therefore, was correct in concluding that

Dilated Cardiomyopathy condition

Â would not facilitate any benefit to the appellant under Section 47 of the Disability Act.

19. For the reasons aforesaid, the appeal is found devoid of merit and is dismissed leaving the parties to bear their own cost.