[REPORTABLE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.150 OF 2021

NAWAL KISHORE SHARMA APPELLANT(S)

VERSUS

UNION OF INDIA AND ORS. RESPONDENT(S)

J U D G M E N T

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 oncontract,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 to100% 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 seas as a result of injurywhilst 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 alsocoveran impaired heart. The appellant's counsel relies on anarticle 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 theseveral 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 Personswith 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 alternatejob, 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 diseasesof 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 casedoes not fall in the category of Clause 21 since there is no impediment inhis 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 ofClause 21 covering disability compensation and Clause 25 covering severance compensation are to be considered,bothclauses are extractedbelow:-

"**21. Death and Disability Compensation**:

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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 articled 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 anyaccidental 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 appellantas 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 MrDilipan 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 MrMarkas Ollie Barkarbut 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 MrMarcus 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 studyi.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 passagespeaks 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, thedisability compensationin 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 andClause 25,for the appellant.

16. The appellant's counsel has relied on, *Divisional Controller, NEKRTC vs. Sangamma and Ors.*[1], and *Mackinnon Mackenzie & Co. Pvt. Ltd. vs. Rita Fernandez*[2]. In these cases, the impairment had occurred in the course of employment. For instance, in *Sangamma*case, the bus conductor suffered chest pain while on duty and was admitted to the hospital.Howeverin 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

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1**2005 (2) LLN 776**
2**1969 (2) LLJ 812**

employee’s hospitalization for treatment of cardiac ailment. But in the present case nosuch 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 shortterm 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, “specified disability” as those mentioned in the Schedule to the 2016 Act. In the said Schedule, “physical disability”, “intellectual disability”, “mentalbehaviour”, are specified.The dilated Cardiomyopathy conditionof the appellantis neither a specified disability noris the same relatable to the broad spectrum ofimpairments, which hindershis 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

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.

……J.
[SANJAY KISHAN KAUL]

……J.
[DINESH MAHESHWARI]

……J.
[HRISHIKESH ROY]

NEW DELHI
FEBRUARY10, 2021