

**(2021) 4 Supreme Court Cases 487 : 2021 SCC OnLine SC 74**

**In the Supreme Court of India**

(BEFORE SANJAY KISHAN KAUL, DINESH MAHESHWARI AND HRISHIKESH ROY, JJ.)

NAWAL KISHORE SHARMA . . Appellant;

*Versus*

UNION OF INDIA AND OTHERS . . Respondents.

Civil Appeal No. 150 of 2021<sup>+</sup>, decided on February 10, 2021

**A. Maritime and Admiralty Law — Seamen/Crew, Rights of — Service Conditions/Wages, etc. — Disability pension — Essentials for — Causality**

— Appellant, who joined as crew on foreign-going vessel on 18-9-2009, discharged on 18-6-2010 declaring him to be permanently unfit for sea service due to Dilated Cardiomyopathy — Appellant not incapacitated on account of accidental injury suffered on vessel — Under Cl. 5.9.F (ii) of the National Maritime Board Agreement, 100% compensation is payable where seaman is found medically unfit for sea service, as a result of “injury” while in employment — “Injury” — Whether Dilated Cardiomyopathy can be considered as internal injury covered by Cl. 5.9.F(ii) — Contention that anything that diminishes health status of seaman should be construed as “injury” — Tenability of

— Held, such broad interpretation in context of specific expression in agreement would efface intent of agreement between parties — Merely because of beneficial objective, clear expression in agreement must not be ignored to give another meaning which could not have been intention or understanding of contracting parties — To secure coverage of Cl. 5.9.F(ii), incapacity must relate to injury being suffered while in employment — Appellant never claimed to have suffered injury during his ship duty — Moreover, impaired heart function cannot reasonably be attributed to his nine-month engagement so as to have established causal connection though he commenced engagement with fitness certificate in absence of any material produced to correlate the two — Moreover, Dilated Cardiomyopathy not being case of 100% disablement since it does not prevent appellant from performing jobs other than sea service, High Court was justified in finding appellant entitled to only severance compensation under Cl. 25 of the Agreement — National Maritime Board Agreement, Cls. 21, 25 and 5.9.F(ii)

**(Paras 11 to 17)**

*Nawal Kishore Sharma v. Union of India*, 2019 SCC OnLine Pat 383, affirmed

*North East Karnataka RTC v. Sangamma*, 2004 SCC OnLine Kar 279 : (2005) 2 LLN 776; *Mackinnon Mackenzie & Co. (P) Ltd. v. Ritta Fernandes*, (1969) 2 LLJ 812 (SC), distinguished



**B. Human and Civil Rights — Rights of Persons with Disabilities Act, 2016 — Ss. 2(5) and 2(zc) r/w S. 2(i) of the 1995 Act — Dilated Cardiomyopathy — Whether disability**

— S. 2(i) of the 1995 Act taking into account visual disability, locomotor disability, mental illness, mental retardation, hearing impairment and leprosy but not heart ailment — Under S. 2(s) of the 2016 Act, “a person with disabilities” is defined as a person with long term physical, mental, intellectual or sensory impairment which prevented his full and effective participation in society — S. 2(zc) defines “specified disability” as those mentioned in Schedule to the 2016 Act which envisage “physical disability”, “intellectual disability” and “mental behaviour” — Dilated Cardiomyopathy condition neither specified disability nor relatable to broad spectrum of impairments, which hinders full and effective participation in society — Thus, Dilated Cardiomyopathy condition of appellant does not bring his case either within ambit of 1995 Act or the 2016 Act — High Court was justified in finding that appellant was not entitled to benefit of “disability” under S. 47 of the Disability Act — Persons with Disabilities (Equal Opportunities,

**Protection of Rights and Full Participation) Act, 1995 — S. 2(i) — Words and Phrases — “Disability”**

**(Para 18)**

P-D/67381/C

Appeal dismissed

Advocates who appeared in this case:

Vikramjit Banerjee, Additional Solicitor General, V. Chidambresh, Senior Advocate (Shiv Kumar Suri, Advocate), for the appearing parties.

**Chronological list of cases cited**

**on page(s)**

1. 2019 SCC OnLine Pat 383, *Nawal Kishore Sharma v. Union of India* 488f, 48
2. 2004 SCC OnLine Kar 279 : (2005) 2 LLN 776, *North East Karnataka RTC v. Sangamma* 492g-h, 49
3. (1969) 2 LLJ 812 (SC), *Mackinnon Mackenzie & Co. (P) Ltd. v. Ritta Fernandes* 492g-h, 493a-b, 49

The Judgment of the Court was delivered by

**HRISHIKESH ROY, J.**— The appellant challenges the judgment dated 26-3-2019 in *Nawal Kishore Sharma v. Union of India*<sup>1</sup>, 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 7-10-2011 (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 19-8-1996 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 18-9-2009 and he was discharged on 18-6-2010 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 seas 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 cardiovascular

disease is one of the 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<sup>1</sup> 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 29-9-2009 to 18-6-2010), 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 Vikramjit 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 7-10-2011 (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 seafaring 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."

(emphasis supplied)

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.



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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**

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Death compensation—Rs 12.85 lakhs.

100% disability compensation—Rs 14.85 lakhs.

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 1-4-2006, 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 @1½ 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 of 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 appellant as 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 on 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 passage concerned 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 passage concerned speaks 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.** 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, *North East Karnataka RTC v. Sangamma*<sup>2</sup>, and *Mackinnon Mackenzie & Co. (P) Ltd. v. Ritta Fernandes*<sup>3</sup>. In these cases, the impairment had occurred in the course of employment.



For instance, in *Sangamma case*<sup>2</sup>, 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 *Ritta Fernandes*<sup>3</sup>, which related to a seafarer's cardiac ailment, the log-book of the ship had recorded entry relating to the employee's hospitalisation for treatment of cardiac ailment. But in the present case no such log entry from the vessel had been produced. In *Ritta Fernandes*<sup>3</sup> judgment, 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, "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 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 costs.

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<sup>†</sup> Arising from the Judgment and Order in *Nawal Kishore Sharma v. Union of India*, 2019 SCC OnLine Pat 383 (Patna High Court, Civil Writ Jurisdiction Case No. 3160 of 2012, dt. 26-3-2019)

<sup>1</sup> *Nawal Kishore Sharma v. Union of India*, 2019 SCC OnLine Pat 383

<sup>2</sup> *North East Karnataka RTC v. Sangamma*, 2004 SCC OnLine Kar 279 : (2005) 2 LLN 776

<sup>3</sup> *Mackinnon Mackenzie & Co. (P) Ltd. v. Ritta Fernandes*, (1969) 2 LLJ 812 (SC)