

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.886 of 1999

[Syed Raza Haider Rizvi v. M/s Gordon Shipping Company Ltd. and another]

Dates of hearing : 14.02.2018, 19.02.2018 & 23.02.2018.

Date of Decision : 02.07.2018.

Plaintiff : Syed Raza Haider Rizvi, through Mr. Arshad Iqbal, Advocate.

Defendant No.1 : Gordon Shipping Company Ltd. through Ms. Asmara Parveen, Advocate.

Defendant No.2 : Terra Marine Agencies (Pvt.) Ltd., through Mr. Aga Zafar Ahmed, Advocate.

J U D G M E N T

Muhammad Faisal Kamal Alam, J: Through the present *lis*, the Plaintiff is claiming compensation from the Defendants on account of injury suffered by the Plaintiff while on duty as Second Officer on the Vessel M. V. MED Venice. Following relief has been claimed_

“a. *Declaring that 25% to 30% permanent disability in Plaintiff’s physical condition is due to the injury sustained by him on 27.05.1996, while on duty at the Port of Abu Dahabi, on board of defendants ship “M.V. Med Venice” as there has been complete negligence on part of both the defendants, as they badly failed to provide proper medical assistance / treatment to the plaintiff and further that, there has been complete loss of earning to the plaintiff, who has been deprived from the benefit of taking up a job on board a ship and beside that, there is loss of increased future income, that plaintiff could have earned after attaining the competency and obtaining Master’s certificate.*

b. *Further declaring that for the reasons mentioned in prayer clause “a” and as per terms and conditions of the contract*

of service dated; 08.10.1995 between plaintiff and the defendants, the plaintiff is entitled to be compensated jointly and severally by the defendants in the sum of Rs.1,17,000,00/- for having failed to provide proper medical treatment to the plaintiff as promised and agreed by the defendants as per as above said contract of service.

- c. Directing the defendants to jointly pay a sum of Rs. 1,17,000,00/- to the plaintiff as damages / compensation along with 15% interest thereon from the date of the decree till full and final payment of decretal amount.*
- d. Cost of the suit.*
- e. Any other relief which this Hon'able Court may deem fit and proper under the circumstances of this case also be granted.”*

2. The Defendant No.1 did not file Written Statement nor has produced any witness during the evidence proceeding, whereas, Defendant No.2 filed a detailed Written Statement.

3. From the pleadings of the parties, the following Issues were framed_

- 1. *Whether the suit is bad for non-joinder of Ocean Marine Insurance / PNI Club?***
- 2. *Whether there was negligence on the part of defendants in providing medical treatment to plaintiff and thus they are responsible for disability caused to the plaintiff?***
- 3. *Whether the plaintiff is not fit for service due to alleged disability?***
- 4. *Whether plaintiff is entitled to the damages / compensation as claimed by him?***
- 5. *What should the decree be?***

4. The Plaintiff and Defendant No.2 led the evidence; whereas, since Defendant No.1 did not file any Written Statement, therefore, it did not

lead any evidence, however, the Legal Team of Defendant No.1 did cross examine the Plaintiff's side.

5. During the course of arguments, Defendants' learned counsel raised the issue of maintainability of present *lis* on the ground that the claim is time barred. Since it is purely a legal Issue, therefore, it should be answered by framing following additional Issue as Issue No.1-A__

6. "1-A. Whether the present suit / claim is barred by time?"

7. The Issue-wise finding is mentioned herein under:

Issue No.1	_____	Negative.
Issue No.1-A	_____	Negative.
Issue No.2	_____	As under.
Issue No.3	_____	As under.
Issue No.4	_____	As under.
Issue No.5	_____	Suit Decreed.

8. **Discussion / Reasons of the Issues;**

ISSUE NO.1:

9. Admittedly, the contract is between Plaintiff and Defendant No.2 and the said Contract of Employment is an admitted document exhibited as P-2 signed by the Plaintiff and Defendant No.2. It is argued by Mr. Aga Zafar Ahmed, Advocate, representing the Defendant No.2, the latter (Defendant No.2-Terra Marine Agencies Pvt. Limited) signed the document only as an agent of Defendant No.1 (Gordon Shipping Company Limited), which was a Swiss company and the Plaintiff was employed on the subject vessel as Second Officer, thus the Defendant No.2 is not liable to pay any purported claim of Plaintiff, as he was the employee of Defendant No.1 and not Defendant No.2.

10. It is not disputed that the vessel was owned by Defendant No.1 and Plaintiff was serving on the ship as employee under the above

Contract, which was executed by Defendant No.2 and Plaintiff. Whether Defendant No.2 is saddled with any liability will be discussed in the later part of this decision. For determining the nature of controversy involved, all the necessary parties are present in the proceeding and therefore non-impleading of Ocean Marine Insurance / P & I Club (Protection and Indemnity Club) in the present case is not fatal nor the present *lis* is hit by non-joinder of Ocean Marine Insurance. Accordingly, Issue No.1 is answered in **Negative**.

ISSUE NO.1-A:

11. Defendants' side has raised an issue of Limitation Law, that the present claim is barred by time in view of Article 22 of the Limitation Act, 1908. It has been argued by the learned counsel for Defendant No.2, Mr. Aga Zafar Ahmed, Advocate, that the Plaintiff suffered injury in his left hand admittedly on 27.05.1996 while on duty at the above named Vessel, but the present proceeding is filed on 04.06.1999, that is, after three years, whereas, in terms of Article 22, the present claim for compensation should have been filed within one year.

12. On the other hand Mr. Arshad Iqbal, Advocate, the learned counsel for the Plaintiff has controverted this argument by stating that basically the present *lis* is in respect of breach of terms of the Employment Contract (**Exhibit P/2**) committed by Defendants, for which Article 115 of the Limitation Act, 1908 applies and time period for bringing an action of the nature is three years. He has further argued, which is otherwise an undisputed fact, that the Plaintiff underwent medical treatment at Abu Dhabi (United Arab Emirates) London (United Kingdom) and at hospitals in Pakistan including Agha Khan Hospital in Karachi. This medical treatment has consumed a considerable period. The last report of Dr. Pervaiz Hashmi of Agha Khan

University Hospital, Karachi, is of 15.02.1999, produced in evidence as **Exhibit P/8** and the said Doctor was also examined as a witness. This shows that at different times, Plaintiff was being treated at different hospitals in which considerable time was consumed. Finally for his above claim, he has filed the present proceedings. Consequently, the arguments of the legal team of Defendants that the present claim is a time barred one, is misconceived in nature and unacceptable. Issue No.1-A is replied in **Negative**.

ISSUES NO.2 AND 3:

13. In all four witnesses have been examined. P.W.-1 is the Plaintiff himself. The second witness is Dr. Pervaiz Muhammad Hashmi, who also treated the Plaintiff at Agha Khan Hospital, Karachi. The third witness is Captain Naseer Ahmed Tariq, who testified as Shipping Master being one of the competent authorities relating to the employment of Seamen with different shipping companies, whereas, on behalf of Defendant No.2, its General Manager (Field Personnel) has testified.

14. After appraisal of the evidence, it is an admitted fact that Plaintiff was employed as Second Officer in terms of his afore-referred employment contract and while on duty at the said Vessel, Plaintiff suffered injury in his left hand palm when while inspecting the Hydraulic Pipe it burst and high pressure oil leaked from it caused the injury in the left palm of the Plaintiff. It is also admitted by the Plaintiff that he was the only one who suffered injury in his hand and other persons standing near him were not injured.

To answer Issue No.2, it is necessary to determine the causation of the incident. The sole Defendants' witness has specifically deposed that Plaintiff as an Officer did not take necessary precautions while

inspecting / checking the Hydrolic Pipes. In his cross-examination, he was not disproved on this very assertion and his cross-examination was consistent. The said D.W.-1 (Defendants' witness) has categorically refuted the suggestion that the afore-named Ship / Vessel was not seaworthy or the same was arrested at the Abu Dhabi Port. As against this, the deposition of Plaintiff himself is not consistent with his examination-in-chief. In cross-examination, he has admitted that such Hydrolic Pipes are not checked manually, whereas, he was checking them with his (Plaintiff's) palms. When he was cross-examined by learned Counsel for the Defendant No.1 (the owner of the subject Vessel), to a specific question, the Plaintiff could not produce any complaint, which he earlier stated to have lodged with Master of the Vessel about the faulty Hydrolic lines / pipes. To a specific question (during the cross-examination), the Plaintiff has replied in affirmative that it was his duty to take all the safety measures before commencing checking and inspection, though voluntary he stated that he did take safety measures, but, that part of his deposition does not improve his evidence on this particular aspect of the case about causation.

15. The precedents relied upon by Ms. Asmara Parveen, Advocate of Defendant No.1, relating to the negligence and compensation are not applicable to the facts of present case because from the above, it is quite clear that the injury to the Plaintiff was not caused due to the negligent acts of Defendants and particularly Defendant No.1.

To answer the Issue that whether there was negligence on the part of Defendants in providing medical treatment to the Plaintiff, the initial onus is on the Plaintiff. The evidence of the parties is taken into the account. The undisputed fact is that firstly the Plaintiff was admitted to a hospital in Abu Dhabi for his treatment as also acknowledged by him in

his cross examination and then he was flown to Karachi and was treated at A.O. Clinic (Karachi). Later, on recommendation of a local Doctor, he was flown to London, where he was treated at two different hospitals, namely, Unsted Park Hospital and Blackheath Hospital. He remained under treatment of different doctors including Dr. Peter Chapman, who was a consultant in plastic and constructive surgery. In his cross examination, the Plaintiff admits this fact that all his traveling expenses together with medical bills were reimbursed and paid by Defendants and the above-named PNI Club. It is also not disputed that the other dues including wages of Plaintiff were also settled.

16. The Plaintiff's witness has categorically testified that the Plaintiff was shifted to Unsted Park Hospital London for his post surgery treatment or rehabilitation, but he was suddenly sent back to Pakistan and the treatment was stopped on the directions of the said P&I Club and the Defendants because they were not willing to bear the medical expenses further. He has further deposed that due to this act of the Defendants, condition of his left hand deteriorated, which resulted in his partial disability and loss of earning capacity. He has also produced the correspondence of the local counsel of P & I Club as **Exhibit P/10**, which is of 28.04.1997, that is, after 25.03.1997, when the medical treatment of the Plaintiff at London was discontinued as deposed by him. In the entire evidence, no one has questioned the authenticity of the afore-referred **Exhibit P/10**, wherein it has been mentioned that the treatment of Plaintiff was discontinued suddenly. This basically is a document of Defendants about which no cross-examination was done by the latter. To a question, Plaintiff specifically answered that he was discharged from the hospital at London without a discharge certificate

and he has denied the suggestion that as per the agreement, he was given complete treatment.

17. In view of the above, the onus shifted on to the Defendants to disprove the Plaintiff on this very crucial aspect of the case. The Defendant No.1, as stated earlier, did not produce any witness and the sole witness of Defendant No.2 although has deposed in his evidence that Plaintiff returned to Karachi “on completion of his medical treatment”, but did not produce any un-rebutted documentary evidence, for instance, certificate from any of the above named hospitals of the United Kingdom to the effect that the Plaintiff was being sent home after receiving adequate medical treatment. Even if the report of Dr. Peter Chapmen (Exhibit P/4) dated 23.02.1997 is seen, it mentions that the ‘wound is not yet fully healed’, while giving further advice for therapy. The said report in its opening paragraph also mentions the fact that Plaintiff “**sustained high pressure hydraulic oil injury to his left, non-dominant hand.....**”. The other report of Unsted Park Rehabilitation Hospital dated 25.03.1997, produced by the Plaintiff as **Exhibit P/7** in his evidence, also confirms that though he was treated with care and caution but till the time of submitting the above report, the wound of Plaintiff was not healed and he was unable to use his hand in a normal way. The relevant portion of the report is reproduced as under_

“Raza has been given functional activities to do with his hand but is still using left hand mainly to stabilize during activity. The patient is unable to break down selective movements without brining the right side of his body into play, which is contributing to the pain in his left shoulder and neck. He has been encouraged to continue neck exercises and neural tension stretching exercises.”

18. The Defendants neither could produce any subsequent document about the complete recovery of the Plaintiff nor have questioned the

authenticity of the document produced by the Plaintiff; even the expert opinion of local doctors further substantiate the fact that till March, 1999, the Plaintiff was not fully recovered from the injury, which inhibited his pursuit of career.

19. The testimony of Plaintiff and the undisputed documentary evidence produced by him, weighs in favour of the Plaintiff as against the oral evidence of Defendant No.2 that complete medical treatment was given to Plaintiff. Thus, to the extent of negligence shown by the Defendants in providing incomplete medical treatment of the Plaintiff stands proved by the latter.

20. To answer the remaining limb of this Issue, the Report dated 15.02.1999 and the evidence of above named Dr. Pervaiz Muhammad Hashmi, who was Senior Instructor (Orthopaedics), Department of Surgery at Agha Khan Hospital, Karachi, is relevant. The original Report has been exhibited as **P/12**. It is stated that the patient (Plaintiff) in spite of aggressive rehabilitative exercises, could not recover completely and he had persistent swelling and stiffness of fingers. The Report also mentions the fact that Plaintiff could not get Magnetic Resonance Imaging (MRI) C-spine due to financial constraint. Per this Medical Report, the Plaintiff was suffering from total functional disability between 18-20% while further evaluating that if recommendations are followed the disability would be reduced but not completely cured. Relevant portion is reproduced herein under_

“But there will be certain amount of permanent disability (10-15%) regarding range of motion, strength, dexterity, coordination and normal physical work”

21. The above named Doctor was examined and he reiterated the contents of his Report but was not cross-examined, which means his

testimony is to be accepted as it is. The third witness-Captain Nasir Ahmed Tariq testified primarily on the treatment received by Plaintiff. To a question, the said witness No.3 (Shipping Master) has shown his ignorance about the time when the Plaintiff was discharged from the Hospital in United Kingdom. The said witness has produced Reports of Medical Board constituted on the request of Plaintiff for assessing his injury including that of a Civil Surgeon (Central), Government of Pakistan, whose Report is of 09.12.1998 produced in the evidence by the said witness as well as by Defendants' side as **Exhibit D/3/A**, in which the Plaintiff was declared fit for duty. The above witness No.3 (Shipping Master) has also produced a correspondence of 20.10.1998 from the side of Defendant No.2 to the Shipping Master, requesting him to make an arrangement for examination of Plaintiff by a Civil Surgeon in order to evaluate the claim of Plaintiff.

22. The Report of Civil Surgeon together with the Certificate of Medical Board has already been mentioned hereinabove, which found the Plaintiff fit for duty. However, the said Medical Board did not consider the degree of disability, if any, existing in the case of Plaintiff and also requested to be assessed by the Defendant No.2 in its above correspondence of 20.10.1998, therefore, on the request dated 16.01.1999 of Shipping Master, a Medical Appellate Board was constituted to assess the injury and fitness of Plaintiff. This being an undisputed document was also produced by the Plaintiff as **Exhibit P/11**. The Appellate Medical Board vide its correspondence of 27.03.1999 (available at page-305 of the evidence file) was of the opinion that to assess the fitness of Plaintiff for job at sea, a further surgery is required. Notwithstanding this, the Reports from two other

independent Doctors / Surgeons have been produced and relied upon by the Plaintiff, which are exhibited as P/13 and P/14 respectively. The Exhibits P/13 is an opinion dated 04.03.1999 from the Naval Staff Surgeon with regard to fitness of Plaintiff, wherein, it has been mentioned that even after surgery a desirable outcome may not be achieved; consequently, the Plaintiff was considered as permanently unfit and his functional disability was ranging (at the relevant time) between 20-25%. The Exhibit P-14 is yet another independent opinion by Doctor Shoukat Ali, the Assistant Professor Department of Neurology, Jinnah Postgraduate Medical Centre, Karachi (JPMC) and according to him, after examination of Plaintiff, his functional disability is 25%. It is also pertinent to mention here that both these opinions were of the same period when the above Appellate Medical Board given its recommendation. On these material documents, Plaintiff was never cross-examined, but in rebuttal, the defence of Defendant No.2 is that once the Medical Board in its Report of 09.12.1998 (Exhibits D/3/A) had declared the Plaintiff fit for duty then other opinions of different Doctors lose their significance.

23. Mr. Agha Zafar Ahmed, the learned counsel representing the Defendant No.2 has vehemently argued that the stance of Plaintiff is contradictory and he cannot approbate and reprobate at the same time. He has also referred to another document-Exhibit D/4 of 29.12.1998 produced by the defence witness, which is an application by Plaintiff to Defendant No.2, wherein, Plaintiff has shown his willingness to join job. It has been argued by learned counsel for Defendant No.2 that since the Plaintiff was not offered the job, therefore, he filed the present claim.

24. On the other hand, Mr. Arshad Iqbal, Advocate for Plaintiff has refuted the above stance and stated that Plaintiff remained out of

employment for a considerable period as also reflected in the referred application/Exhibit D/4 to Plaintiff, therefore, request for a job by Plaintiff through the above correspondence cannot absolve the Defendants from their liabilities.

25. What is required here is to draw a distinction between a permanent disability of a person, who is unfit to do any job and a partial permanent disability. The appraisal of the evidence and the opinions given by different doctors / specialists (as discussed in the forgoing paragraphs) it can be safely concluded that Plaintiff was suffering from a partial disability of permanent nature. Admittedly, the Plaintiff was not bedridden but he suffered injury in his left hand, which was treated at different Hospitals of Pakistan and the United Kingdom but unfortunately could not be cured because of the intervening lapse rather negligence on the part of Defendants because his medical treatment in the United Kingdom was discontinued and he was sent back to Pakistan. Specific question was put to witness No.3 (Shipping Master) by Plaintiff's counsel that whether a person having 30% disability is fit for service on a Ship; the said witness did not reply in Affirmative and instead stated, that it entirely depends on Doctor's recommendation with regard to injury of the person. It means that Plaintiff though was found fit for duty by the Medical Board, being an undisputed position, but his functional disability was there. Thus, the Issues No.2 and 3 are answered accordingly; that there was negligence on the part of Defendants to provide medical treatment to Plaintiff, which cause the disability and though the Plaintiff was considered fit for service / duty, but that fitness was coupled with the disability, which has / had reduced the option of Plaintiff to find a suitable employment while further inhibiting his future career growth.

ISSUES NO.4 AND 5:

26. In his evidence, the Plaintiff has produced a document of 24.10.2000 as **Exhibit P/15**, which is a correspondence by International Transport Workers' Federation to Plaintiff, containing a Disability Provision in respect of partial and permanent disability, as was applicable and acceptable globally at the relevant time. For permanent medical unfitness, a compensation of eighty thousand US Dollars [USD 80,000/-] is mentioned but for **other kind of disability that results in reducing the ability to work, a table is given Under Clause 21 mentioning compensation amount per degree of disability.** This document too has not been disputed by any of the parties. There is variation of degree of disability as mentioned in different legal opinions given in the matter and has already been discussed in the preceding paragraphs. The Clause-21 of the above Exhibit P/15 clearly states that if a seafarer suffers injury as a result of an accident, regardless of his fault but excluding injuries caused by a seafarer's wilful act, whilst in the employment of the Company, *inter alia*, then the employer is liable to pay the compensation. In this Clause, due importance is given to the opinion of doctor. Now it is an uncontroverted / proven fact that the injury was caused as a result of an accident but it is nobody's case that it was result of a wilful act on the part of Plaintiff. Clause-13 of the Contract of Employment (Exhibit P/2) also extends benefit of medical treatment to Plaintiff, but limiting the liability of the company, in the instant case, the Defendant No.1. If ***Clause-21 of Exhibit P-15 and Clause-13 of Exhibit P/2 are read in conjunction***, then they appear to be supportive of each other. Clause-13 discusses about limited liability of employer and that limitation has been mentioned in Clause-21. If little variation in the degree of disability mentioned in all medical opinions are reconciled then the degree of partial disability of permanent nature in the

Plaintiff's case comes to twenty percent (20%) for which a compensation of USD 16,000 (Sixteen Thousand US Dollar) is mentioned. The decision of this Court handed down in the case of *M/s. Overseas Marine Trading Agencies (Pvt.) Ltd. And others v. The Board of Trustees, Employees Old-Age Benefits Institution and another* as reported in **2005 P L C page-175**, relied upon by the counsel of Defendant No.2, I am afraid is not applicable to the facts of present case, as the entire premise of that reported case and the present one is altogether different. The reported decision relates to payments of contribution to Employees' Old Age Benefits Institution (EOBI); it was held that the Petitioners (of the reported decision), who were engaged in the business of recruiting seamen for different foreign Vessels under the license issued by the Director of Shipping, Ministry of Ports and Communication, were not liable to pay contribution in respect of seamen employed to perform different services on foreign Vessels, *whereas*, the present contract was admittedly executed by Defendant No.2 on behalf of Defendant No.1, with the Plaintiff and other undisputed facts show that Defendant No.2 was actively involved in the entire episode. However, in his cross-examination by the counsel for both Defendants, the Plaintiff has stated that all the expenses and medical bills were reimbursed by the Defendants and particularly Defendant No.2. This statement was never contradicted by any of the parties. The Plaintiff though has claimed a sum of US \$ 1,17,000,00/-towards damages / compensation because of failure of the Defendants to provide medical assistance/ treatment to the Plaintiff, but the Plaintiff could not successfully prove the quantum of damages. The Plaintiff has not brought any evidence on record that he was refused employment by some other Shipping Company on account of his disability, or, any other evidence that all doors of future employment are completely closed on him. Conversely, the deposition of

Defendants' sole witness that Plaintiff is employed as a marine surveyor in an organization has gone unchallenged in the evidence, means, that Plaintiff is not unemployed.

27. In view of the above, I decree the suit of Plaintiff to the extent of US Dollar 16,000 (US Dollar Sixteen Thousand) or the equivalent amount of Pak Rupees as per the present foreign exchange rate together with 10% mark-up from the date of decree till realization of the amount. Issues No.4 and 5 are answered accordingly.

Judge

Karachi, Dated: 02.07.2018.

Riaz / P.S*