

SEAFARER SUBJECT GUIDE

PERSONAL INJURIES AND DEATHS IN INDIA

This Guide explains national law when seafarers are injured or killed in a port in India or on an Indian flagged ship. This document is not intended to be legal advice, nor does it constitute legal advice. If a seafarer is injured or killed, then the seafarer or his relatives are strongly advised to consult a lawyer qualified to practise in India.

*A full text version of this Subject Guide including footnotes will become available for subscription in due course. In the meantime if there is a specific inquiry on any Subject Guide, please contact SRI.

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- 1. If a seafarer is injured or killed in a work related incident, does Indian law allow a claim for compensation to be brought?**
 - 1.1. Indian law recognizes the rights of an injured seafarer to claim compensation for injury and family members of a deceased seafarer to claim compensation for the death of the seafarer. Although India has not enacted any specific legislation to deal with compensation for the injury or death of seafarers, the Employees' Compensation Act, 1923 ('ECA') is legislation of a general nature, which allows workmen/employees to claim compensation for death and personal injury of seafarers. The ECA expressly stipulates that 'master, seaman or other members of the crew of a ship' would be considered to be an employee for the purposes of the ECA. The ECA would, however, not apply to Indian seafarers working aboard foreign flagged vessels. Under Indian law, foreign seafarers cannot be employed on Indian flagged vessels unless they obtain prior permission from the Director General of Shipping, which is an agency of the Indian Federal Government.
 - 1.2. The Fatal Accidents Act of 1855 provides compensation to the family of the deceased in an event that the death of the seafarer is caused by a wrongful act, neglect or default, although it is not as comprehensive as the ECA. A claim under the Fatal Accidents Act 1855 can only be made by filing a suit in the Indian Civil Court. It should be noted that litigations before Indian Civil Courts are extremely time consuming and can at times take seven to ten years. Furthermore, the law of tort has not been developed in India and in these circumstances compensation payable for death and injury to seafarers may be minimal.
 - 1.3. In most cases, the terms of the employment agreement between the seafarer and shipowner/manager govern compensation payable to injured seafarers and the family members of deceased seafarers. As a general practice, employment contracts for seafarers incorporate standard form contracts such as the International Transport Federation ('ITF') approved collective agreement or the Indian National Shipowners

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Association ('INSA') and Maritime Union of India ('MUI') agreements. Indian Courts, when interpreting a seafarer's employment contract, have the power to rescind the contract between a seafarer and a shipowner/manager upon such terms as the Court thinks fit. As a general rule, an Indian Court may rescind the specific terms of an employment agreement if it is found to be repugnant to Indian law. The shipowner is allowed to increase his liabilities but cannot reduce liability below the threshold stipulated under Indian law.

- 1.4 The Merchant Shipping Act 1958 expressly provides that the master of an Indian flagged vessel is under an obligation to enter into an agreement with a seafarer and the same must be in compliance with the provisions of the Merchant Shipping Act 1958. Furthermore, the 1958 Act expressly stipulates that the employment agreement with a seafarer should contain terms dealing with the 'payment of compensation for personal injury or death caused by accident arising out of or in the course of employment.'

2. What is the basis for recovery of compensation for personal injury or death claims?

- 2.1 Section 3 of the ECA imposes strict liability upon the employer/shipowner/manager to pay compensation for the death or personal injury of the employee if the death or injury is caused 'by accident arising out of and in the course of his employment.' The only exception to the strict liability would arise in cases in which: (1) the seafarer had been under the influence of alcohol or drugs at the time of his employment; or (2) if the seafarer wilfully disobeyed an order given or a rule that had been framed for the security of the seafarer; or (3) if the seafarer wilfully removed or disregarded any safety guard or other device which he knew had been provided for his safety. In all other circumstances, the employer/shipowner/manager will be strictly liable for injury or death even if the employer/shipowner/manager can demonstrate that he exercised due diligence to ensure the safety of the seafarer.
- 2.2 The Fatal Accidents Act 1855 does not provide for the strict liability of the party alleged to be liable for the injury or death of a seafarer. Instead, it places an onus on the party seeking compensation to establish that there has been negligence on the party from whom compensation is sought. In India, tortious liabilities such as negligence, nonfeasance, etc. leading to the death or injury of a seafarer will have to be established on a balance of probabilities.
- 2.3 In the event that the injured seafarer, or the family members of the deceased seafarer, initiate criminal proceedings for the injury or death of the seafarer, the seafarer or the family members will have to prove beyond reasonable doubt the culpability of the party alleged to be guilty of offences under the Indian Penal Code 1860.

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3. Are Indian laws for compensation for personal injury or death of a seafarer applicable only to Indians, or are the laws applicable to foreigners also?

- 3.1 A foreign seafarer can invoke the admiralty jurisdiction of a High Court of a coastal state in India and obtain an order of arrest for a vessel owned and, in some circumstances beneficially owned, by the party said to be liable for the foreign seafarers claim, even in circumstances when the party said to be liable is a foreign party. Upon passing an order of arrest, the Indian Court would, under normal circumstances assume jurisdiction on the underlying merits of the case. If there is an arbitration clause in the employment contract between the seafarer and the shipowner, the Indian Court may refer the dispute to arbitration whilst retaining security for the claim arising from the death or injury of the seafarer.
- 3.2 As a general rule, it may be very difficult for a foreign seafarer to sue a foreign shipowner /manager in an Indian Civil Court (other than an Admiralty Court) if the 'cause of action' does not arise in India or Indian territorial waters.

4. Is Indian law the same throughout the country, or does it change from state to state or from province to province or for any other political or geographical area?

- 4.1 The ECA expressly stipulates that it extends to the whole of India. An interpretation of a provision of the ECA by a High Court of a given state in India may not be binding upon courts in another state. However, the Supreme Court of India's interpretation of the ECA is binding upon all courts in India.
- 4.2 The Fatal Accidents Act 1855, the Indian Penal Code 1860 and the Code of Criminal Procedure 1973 extend to the whole of India except the State of Jammu and Kashmir.

5. Is Indian law the same for all types of seafarers, such as blue water seafarers engaged in international trade, seafarers employed in coastal waters, or fishers?

- 5.1 The law relating to the compensation for the death/injury of seafarers is the same for all types of seafarers- such as blue water seafarers engaged in international trade; seafarers employed in coastal waters; or fishers. The ECA provides an exhaustive definition of 'employee,' which includes:

'the master or as a seaman of any ship which is propelled wholly or in part by steam or other mechanical power or by electricity or which is towed or intended to be towed by a ship so propelled; or any ship of twenty-five tons net tonnage or

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over; or any sea-going ship or any ship provided with sufficient area for navigation under sails alone; or for the purpose of - (a) loading, unloading, fuelling, constructing, repairing, demolishing, cleaning or painting any ship of which he is not the master or a member of the crew, or handling or transport within the limits of any port, or goods which have been discharged from or are to be loaded into any vessel; or warping a ship through the lock; or mooring and unmooring ships at harbor wall berths or in pier; or removing or replacing dry dock caissons when vessels are entering or leaving dry docks; or the docking or undocking or any vessel during an emergency; or preparing splicing coir springs and check wires, painting depth marks on lock-sides, removing or replacing fenders whenever necessary, landing of gangways, maintaining life-buoys up to standard or any other maintenance work of a like nature; or any work on jolly-boats for bringing a ship's line to the wharf; or blue water seafarers engaged in international trade, seafarers employed in coastal waters and fishers'.

The quantum of compensation payable for the death or injury of a seafarer is contingent, *inter alia*, on the wages of the seafarer.

6. Which court would have jurisdiction over a claim for compensation by a seafarer who was injured or killed: (1) on an Indian vessel, or (2) on a foreign flagged vessel in a local port of India or in the territorial seas of India?

- 6.1 On an Indian flagged vessel, any claim under the ECA will have to be made before a Commissioner constituted under the ECA and a civil court will have no jurisdiction to entertain the claim. The injured seafarer or the family of the deceased seafarer can also file a claim with the Commissioner constituted under the ECA within whose jurisdiction the seafarer resides, or the Commissioner constituted under the ECA within whose jurisdiction the registered office of the shipowner/manager is located, or the Commissioner constituted under the ECA where the accident took place which resulted in the injury or death of the seafarer.
- 6.2 A national flagged vessel would be owned by a company in the Indian corporate registry. The court of first instance having territorial jurisdiction in the area in which the registered office of the company is located would normally have jurisdiction. The seafarer can also file a suit in the court within whose jurisdiction the employer/shipowner/manager/ carries on business and has a branch office.
- 6.3 The injured seafarer or family of the deceased seafarer would have a maritime lien over the vessel and can arrest the vessel at any point of time by invoking the Admiralty Jurisdiction of a High Court of a coastal state. The seafarer or family of the deceased

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seafarer can also arrest any other vessel which is owned by the party liable for the claim and in certain limited circumstances arrest a vessel beneficially owned by the party liable for the maritime claim.

- 6.4 As stated earlier, the injured seafarer or family members of the deceased seafarer can file a criminal complaint with the police within whose jurisdiction the maritime casualty took place.
- 6.5 In certain circumstances, the injured seafarer or family members of the deceased seafarer can file a writ petition seeking compensation in the High Court in the Indian state in which the cause of action arose.
- 6.6 With regard to injury or death on a foreign flag vessel in an Indian port or in the territorial seas of India, the injured seafarer or of the deceased seafarer must immediately invoke the Admiralty Jurisdiction of the High Court and arrest the vessel. The Bombay High Court and Calcutta High Court can exercise admiralty jurisdiction throughout the territorial waters of India. The High Court of Karnataka, Kerala, Madras, Andhra Pradesh, and Orissa exercise admiralty jurisdiction over the territorial waters of that state.
- 6.7 The seafarer or the family of the deceased seafarer would have a maritime lien over the vessel and can arrest the vessel in which the injury or loss of life took place even after the change in ownership of the vessel. The seafarer or family of the deceased seafarer can also arrest any other vessel in the ownership or beneficial ownership of the shipowner/manager.
- 6.8 In certain circumstances, the seafarer can file a criminal complaint in the police station against the master and other officers for offences under various sections of the Indian Penal Code 1860 if it can be demonstrated that their gross negligence led to the death or injury of the seafarer. Consequently, the Criminal Court under whose jurisdiction the offence has taken place may in certain circumstances award compensation to the victim of the Code of Criminal Procedure 1973.

7. Would the Indian court uphold a jurisdiction and/or law clause in the employment contract of a seafarer who had been injured or killed in a work related accident?

- 7.1 The Supreme Court of India has upheld a forum selection clause in a bill of lading which provided that disputes would be submitted to a foreign court and held that the same was enforceable as a matter of Indian law and hence the Indian court should decline exercising jurisdiction. The Calcutta High Court has held that Indian courts should

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relinquish jurisdiction in circumstances where both the plaintiff and defendant are foreign parties, with part of the cause of action in a foreign country, and a forum selection clause with that foreign place as the chosen forum.

- 7.2 The Supreme Court of India has held that Indian courts would have jurisdiction in relation to a dispute arising out of an agreement which provided that 'the terms and conditions as stipulated above shall be interpreted in accordance to the laws of the Hong Kong Special Administrative Region.'
- 7.3 It is submitted that the Indian Court in commercial contracts will uphold a foreign jurisdiction clause and refuse to entertain the suit. That said, the mere fact that parties provide for a foreign law to govern their rights and liabilities will not be sufficient to oust the jurisdiction of the Indian Court. Notwithstanding the above, it is submitted that an Indian Court in construing employment contracts when dealing with humanitarian issues surrounding compensation for death and injury to seafarers may be reluctant to enforce foreign jurisdiction clauses if that is likely to cause substantial inconvenience to the injured seafarer or the dependants of the deceased seafarer.
- 7.4 The Supreme Court of India ('the Modi Entertainment case') in the context the factors to be taken into account whilst passing an order for an anti-suit injunction *inter alia* held that:
- 'in a case where more forums than one are available, the Court in exercise of its discretion to grant anti-suit injunction will examine as to which is the appropriate forum (*forum conveniens*) having regard to the convenience of the parties and may grant anti-suit injunction in regard to proceedings which are oppressive or vexatious or in a *forum non-conveniens*. Where jurisdiction of a Court is invoked on the basis of jurisdiction clause in a contract, the recitals therein in regard to exclusive or non-exclusive jurisdiction of the Court of choice of the parties are not determinative but are relevant factors and when a question arises as to the nature of jurisdiction agreed to between the parties the Court has to decide the same on a true interpretation of the contract on the facts and in the circumstances of each case.'
- 7.5 Whilst the Modi Entertainment case dealt with the issue of an anti-suit injunction, it is submitted that the observations made in this case may be applicable in a case in which an Indian court is interpreting a foreign jurisdiction clause in an employment contract in a case dealing with compensation payable to the injured seafarer or dependents of the deceased seafarer. Indian courts may on humanitarian grounds refuse to enforce a forum selection clause in an employment contract of a seafarer in an event the court finds that the may be inconvenient for the parties and that litigating in a foreign

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jurisdiction is likely to be oppressive and vexatious. That said, should there be an arbitration clause in the employment contract between the seafarer and the shipowner the same may be upheld and may be enforceable under the Indian Arbitration and Conciliation Act 1996 and the 1999 Arrest Convention.

7.6 Notwithstanding what is contained in the employment contract, the Commissioner constituted under the ECA would always have jurisdiction to deal with compensation payable under the ECA with respect to claims of Indian seafarers employed aboard an Indian flagged vessels. Parties by agreement cannot oust the jurisdiction of a quasi-judicial forum created by a statute *per* section 28 of the Indian Contract Act 1872.

8. What is the time limit for bringing a claim after the occurrence of an incident?

8.1 Claims for compensation can be brought before the Commissioner constituted under the ECA within two years of occurrence of the accident or within two years from the date of the death of the employee.

8.2 If a suit is instituted under the Fatal Accidents Act, 1855 the limitation period is two years from the date of the death of the person.

8.3 The limitation period stipulated for filing a general civil suit is three years.

9. Is a seafarer's claim for compensation for injury or death a maritime claim that can be secured by arrest of a ship? If so: (1) which ship can be arrested; and (2) in what circumstances can the ship be arrested?

9.1 Under Indian law a claim for compensation for the death or injury of a seafarer gives rise to a maritime lien over the vessel. In these circumstances, a claimant can arrest the vessel even after there has been a change in the ownership of the vessel. An injured seafarer or family members of the deceased seafarer can arrest any vessel owned by the party liable for the claim and in certain circumstances may be able to arrest a vessel beneficially owned by the party liable for the death/injury of the seafarer.

9.2 The Supreme Court of India through its various judgments has given force to international conventions relating to the arrest of the vessels. Article I (1) (b) of the 1952 Brussels Convention provides that a claim arising out of 'loss of life or personal injury caused by any ship or occurring in connection with the operation of any ship' will constitute a 'maritime claim.' Article I (1) (b) of the 1999 Geneva Convention provides that a claim arising out of 'loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship' will constitute a maritime claim. Article 4 (1) b of the 1993 International Geneva Convention on Maritime Liens and Mortgages provides 'claims in respect of loss of life or personal injury occurring, whether

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on land or on water, in direct connection with the operation of the vessel' give rise to a maritime lien.

- 9.3 India recognizes sister ship arrest if a single company owns more than one ship and that company is liable to the injured seafarer or family of the deceased seafarer in terms of a claim for injury or death. However, in certain limited circumstances, certain Admiralty Courts in Indian allow the arrest of ships if the beneficial owner of the ship is liable for the claim, albeit that the registered owner of the ship may not be liable for the claim.

10. What types of damages are recoverable?

- 10.1 Under the ECA the damages awarded are merely contingent on the age of the seafarer and the remuneration of the seafarer. Courts do not take into account various heads of damages. However, in civil suits the courts may be willing to consider other heads of damages. The court can take into account *inter alia* the number of dependents, the age of the dependents, the earning capacity of the dependent, the earning capacity of the deceased, the possible increase in the earning capacity of the deceased, and inflation etc. The court determines the compensation payable to the deceased on the facts and circumstances of each case. Indian courts will not award damages for emotional trauma or stressed caused to the dependents of the deceased.

- 10.2 The Kerala High Court has held that:

'In personal injury cases there are three categories of general damages. Consolatory damages, compensatory damages and damages for loss of expectation of life. Consolatory damages are awarded on the basis of the plaintiffs pain and suffering (past, present and future) and mental distress in order to console the plaintiff for the enforced acceptance of a state of affairs which cannot be altered, the cause of which is the accident. Compensatory damages are awarded to provide the good services of a plaintiff, but for his injuries, would either have been able to provide for himself or would not have needed. This is what is commonly known as pecuniary loss. This is in the nature of *restitutio in integrum*. The term "loss of expectation of life" refers to the number of years the injured person is likely to live.'

- 10.3 The Supreme Court of India considered the appropriateness and legality of an award of punitive damages for a tort. The Court observed:

'that the measure of compensation in the kind of cases referred to in the preceding paragraph must be correlated to the magnitude and capacity of the enterprise because such compensation must have deterrent effect. The larger and

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more prosperous the enterprise the greater must be the amount of compensation payable by it, for the harm caused on account of an accident in carrying on all the hazardous or inherently dangerous activity by the enterprise.'

Consequently, it can be argued that in certain circumstances, a greater amount of damages can be claimed in the event that the party liable for the death or injury of the seafarer has considerable financial resources. The Supreme Court of India may direct the government to pay punitive damages.

11. What are the principles for calculating compensation for a claim by a seafarer or his next of kin for: (1) a work related injury; and (2) a work related death?

- 11.1 If the seafarer is claiming under the ECA, then the quantum of compensation can be easily determined. However, in the event that the seafarer is claiming under the civil law of tort the quantum of compensation payable would be contingent on numerous factors which includes *inter alia* the number of dependents, the age of the dependents, the earning capacity of the dependent, the earning capacity of the deceased, the possible increase in the earning capacity of the deceased, inflation etc. The court determines the compensation payable to the deceased on the facts and circumstances of each case.

Compensation under the ECA

- 11.2 The ECA sets out a relevant table assigning a numerical factor to the age of each seafarer. The lesser the age of the seafarer the more the numerical factor assigned. For example, if the seafarer is 35 years old the numerical factor is 197.06. Compensation for death and injury is computed on the basis of the wages of the seafarer. For the computation of compensation the maximum amount of monthly wages would be fixed at INR 8,000 (USD 130).

Compensation for death

- 11.3 Section 4 of the ECA provided that compensation shall be computed on the basis of 50% of monthly wages of the seafarer multiplied by the relevant factor or an amount of INR 1,20,000 (USD 1,936), whichever is greater.

Compensation for permanent total disablement resulting from the injury

- 11.4 Section 4 of the ECA provided that compensation shall be computed on the basis of 60% of monthly wages of the seafarer multiplied by the relevant factor or an amount of INR 1,40,000 (USD 2,258), whichever is greater.

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Compensation for permanent partial disablement resulting from the injury

- 11.5 Part II of Schedule I sets out the percentage of the loss of earning capacity depending on the nature of the injury.
- 11.6 Section 4 of ECA provides that the injured seafarer would be entitled to payment of such percentage of the loss of earning capacity in the event of a total disablement resulting from the injury.

Compensation for permanent partial disablement resulting from the injury

- 11.7 Where permanent partial disablement results from the injury, first a reference will be made to the Schedule I to Part II of the Employee's Compensation Act, 1923 to determine whether the injury is covered therein. Thereafter, a percentage of the compensation that would have been payable in the event of permanent total disablement would be calculated and paid depending on the percentage of the loss of earning capacity caused by that injury.
- 11.8 In the event that the nature of injury is not listed in Schedule I to Part II, the percentage of the loss of earnings would be completed by a qualified medical practitioner. While assessing the loss of earning capacity of the workman, the qualified medical practitioner shall have due regard to the percentage of loss of earning capacity in relation to different injuries specified in Schedule I.
- 11.9 In the event that there are more than one injury that has been caused by the accident, the amount of the compensation that will be payable will be aggregated, but in any event would not exceed the amount that would have been payable if permanent total disablement had resulted from the injuries.

Compensation for temporary total or partial disablement resulting from the injury

- 11.10 Section 4 (d) of ECA provides that the injured seafarer would be entitled to payment of 25% of his monthly wages on the sixteenth day from the date of disablement where such disablement lasts for a period of 28 days or more after which the seafarer would get half monthly payment during the disablement or during a period of five years.
- 11.11 While fixing the amount of compensation payable to a seafarer in respect of an accident occurring outside India, the Commissioner will have to take into account the amount of compensation that was awarded to a seafarer in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the employee in accordance with the law of that country.

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Compensation awarded under general law of torts

11.12 The question as to what factors should be kept in view for calculating pecuniary loss to a dependant under the Indian Fatal Accidents Act 1855 came up for consideration before the Supreme Court. It was held by the Court that:

'In calculating the pecuniary loss to the dependants many imponderables enter into the calculation. Therefore, the actual extent of the pecuniary loss to the dependants may depend upon data which cannot be ascertained accurately, but must necessarily be an estimate, or even partly a conjecture. Shortly stated, the general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependent by the death must be ascertained.'

The Supreme Court of India, when interpreting the Indian Fatal Accidents Act 1855, has held that:

'Compulsory damages under Section 1A of the Act for wrongful death must be limited strictly to the pecuniary loss to the beneficiaries and that under Section 2, the measure of damages is the economic loss sustained by the estate. There can be no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations but the amount recoverable depends on the particular facts and circumstances of each case. The life expectancy of the deceased or of the beneficiaries whichever is shorter is an important factor. Since the elements which go to make up the value of the life of the deceased to the designated beneficiaries are necessarily personal to each case, in the very nature of things, there can be no exact or uniform rule for measuring the value of human life. In assessing damages, the court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable.'

11.13 The Supreme Court of India has set out the factors which the Motor Vehicles Tribunal should take into account to determine compensation to be paid to the dependants of the deceased. Although the Motor Vehicles Act is not applicable to compensation for injury or death to seafarers, the courts may nonetheless keep these principles in mind in dealing with a case involving compensation for death and injury (except where the ECA is applicable):

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'Basically only three facts need to be established by the claimants for assessing compensation in the case of death: (a) age of the deceased; (b) income of the deceased; and (c) the number of dependents. The issues to be determined by the Tribunal to arrive at the loss of dependency are (i) additions/deductions to be made for arriving at the income; (ii) the deduction to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference of the age of the deceased. If these determinants are standardized, there will be uniformity and consistency in the decisions. There will lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay. To have uniformity and consistency, Tribunals should determine compensation in cases of death, by the following well settled steps:

Step 1 (Ascertaining the multiplicand)

The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier)

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.

Step 3 (Actual calculation)

The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the 'loss of dependency' to the family.

Thereafter, a conventional amount in the range of Rs. 5,000/- to Rs. 10,000/- may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of 5,000/- to 10,000/- should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.

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The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also added.'

12. What damages might be awarded in the following circumstances:

(1) 30 year old seafarer, injured aboard a vessel, who is now totally disabled. Medical expenses of US\$15,000 per year for the remainder of his life?

12.1 In the instant case, being unaware of the salary of the seafarer, the calculation would take the maximum monthly salary computed under the ECA, which is INR 8,000 i.e. USD 130. Schedule IV to the ECA stipulates a factor of 207.98 for a seafarer of 30 years. In these circumstances, the compensation payable to the seafarer can, under no circumstance exceed 60% of INR 8,000 multiplied by 207.98 = INR 9,98,304 (USD 16,106). Under the ECA the medical expenses incurred by an injured seafarer is of no relevance.

(2) 30 year old seafarer, who dies as a result of an accident on board a vessel, who is survived by a 29 year old wife and 2 children, ages 2 years and 4 years old?

12.2 In the instant case, being unaware of the salary of the seafarer, the calculation would take the maximum monthly salary computed under the ECA, which is INR 8,000 i.e. USD 130. Schedule IV to the ECA stipulates a factor of 207.98 for a seafarer of 30 years. In these circumstances, the compensation payable to the seafarer can, under no circumstance exceed 50% of INR 8,000 multiplied by 207.98 = INR 8,31,920 (USD 13,422). Under the ECA the number of dependents and their age is of no relevance.

12.3 As stated earlier it would be very difficult to quantify the exact amount of compensation payable to an injured foreign seafarer or dependents of a deceased foreign seafarer in the event that they raise a claim in tort before a civil court. If the foreign seafarer raises a claim under the ECA before the Commissioner, the amount of compensation would be relatively low albeit the liability of the shipowner/manager for the same would be strict. Injured foreign seafarers and dependents of seafarers may be able to claim a greater amount of compensation if they proceed in tort before the civil courts. However, the drawback of moving the civil court for a claim in tort is that this may result in an extensive delay in recovering compensation and an unascertainable amount of compensation.

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13. How efficient are the local courts and what would be an average estimated time for hearing and ruling on a seafarer's claim for compensation for injury or death?

13.1 The Indian judicial system has been notoriously slow. That said, the Commissioner constituted under the ECA is a *de facto* court. The Commissioner would be able to pass an order of compensation in approximately one year. Indian civil courts can take a considerable amount of time to adjudicate a case for compensation; but the courts may adopt a humanitarian approach and pass judgment within a few years.

14. On what basis will a lawyer generally charge a seafarer for handling a claim for compensation?

14.1 The Bar Council of India has framed rules regulating the Code of Conduce and Etiquette for Advocates (Indian lawyers). Rule 20 of the same provides that: 'An advocate shall not stipulate for a fee contingent on the results of litigation or agree to share the proceeds thereof.'

14.2 It appears that Indian lawyers are prohibited from working on a *no cure - no pay* basis or contingency or conditional fee basis. However, there have been many instances where unscrupulous Indian lawyers have worked on a *no cure - no pay* basis or on a percentage of the compensation payable. A lot would depend on the lawyer that the injured seafarer or family of the deceased seafarer is instructing.