



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.135 OF 2018

Teekay Shipping (India) Private
Limited

...Petitioner

V/s.

Union of India and Ors.

...Respondents

*Ms. Fereshte Sethna with Mr. Prkalathan Bathey i/b. M/s. DMD for the
Petitioner.*

*Mr. Ashish Mehta with Mr. Raj Dani and Mr. Yash Kataria i/b. M/s. Ethos
Legal Alliance for Respondent Nos.1 and 2.*

CORAM: S.M. MODAK &

SANDEEP V. MARNE, JJ.

DATED: 24 MARCH 2026.

Judgment (PER: SANDEEP V. MARNE, J.)

1) This is a tragic case where the daughter of a deceased Captain, who lost his wife during the course of his employment, is awaiting death compensation for the last 14 long years. The case involves death of both the parents where the mother has passed away in 2008 due to cancer and her father passed away during the course of his employment on 13 November 2012 after serving for 23 long years leaving behind two children. Petitioner, who is directed to pay the compensation to the daughter of the Late Captain, questions the correctness of the order dated 28 July 2017 passed by the first Appellate Authority directing it to pay compensation to Respondent No.3 as per the terms of the contract executed with her father.

2) The Petitioner is a private limited Company incorporated under the Companies Act, 1956. At the relevant time, it was registered under the Merchant Shipping (Recruitment and Placement Services) Rules, 2005 as a provider of recruitment and placement services in relation to employment on board foreign ships. The case relates to death compensation claim in respect of late Captain Baldev Singh Dhinsa (**Captain Dhinsa**). The claim was preferred by his daughter/Respondent No.3. According to Respondent No.3, her father-late Captain Dhinsa was employed with M/s. Teekay Shipping as Master since the year 1990 and continued to function as such till November-2012. He was assigned to work on the vessel-Orkney Spirit vide appointment dated 29 May 2012. After completing the appointment on the vessel-Orkney Spirit, Captain Dhinsa proceeded on leave from 3 October 2012. While being on earned leave, he was diagnosed with Coronary Artery Disease (**CAD**) and passed away on 13 November 2012. His wife had already pre-deceased him on 29 June 2008. Captain Dhinsa left behind him daughter (Respondent No.3) and son. Respondent No.3 approached the Petitioner-Company for claiming her father's balance dues and also submitted a claim for death compensation in terms of his employment dated 29 May 2012. Other dues of Captain Dhinsa were settled by the Petitioner. However, death compensation claim of USD 2,46,780/- was not cleared by the Petitioner. Respondent No.3 received an email denying liability in respect of death compensation claim. Respondent No.3 accordingly approached Director General of Shipping (**DG**) vide letter dated 26 July 2013. The complaint of Respondent No.3 was forwarded to the Petitioner, who submitted reply dated 3 December

2013 contending *inter-alia* that there is no provision in the contract for death compensation claim when death occurs while on leave. The office of Shipping Master called upon the Petitioner to submit various documents vide letter dated 1 February 2014. The Petitioner submitted the same on 17 February 2014. The DG fixed the date for enquiry vide letter dated 10 June 2014. It appears that during the course of hearing, case of Captain Vivek Kuthiala was cited in support of case of Respondent No. 3, who was paid compensation by Petitioner when he was yet to join after expiry of period of leave. The Petitioner and Respondent No.3 attended the hearing on 1 July 2014. The Petitioner submitted letter dated 10 September 2014 once again raising plea of absence of liability when Captain Dhinsa was on leave. The Petitioner drew distinction in the case of Captain Vivek Kuthiala.

3) Director, Seamen's Employment Office passed order on 1 October 2014 rejecting the claim of Respondent No.3. Aggrieved by order dated 1 October 2014, Respondent No.3 preferred first appeal before the Principal Officer/the first Appellate Authority, which was served on the Petitioner. The Petitioner filed written response vide letter dated 7 July 2017. By the impugned order dated 28 July 2017, the first Appellate Authority has allowed the Appeal of Respondent No.3 and has directed the Petitioner to pay compensation to Respondent No.3 as per the terms of the contract. Aggrieved by order dated 28 July 2017 the Petitioner has filed the present Petition.

4) Ms. Sethna, the learned counsel appearing for the Petitioner submits that the impugned order suffers from gross jurisdictional error on multiple counts. *Firstly*, she submits that provisions of Merchant

Shipping Act, 1958 (**Merchant Shipping Act**) do not apply to the contract of employment of late Captain Dhinsa or to the vessel in question. That he was employed on a foreign ship named- Orkney Spirit and with Bermuda based Company-Teekay Shipping Limited. She relies on provisions of Section 2 of the Merchant Shipping Act in support of her contention that the Merchant Shipping Act does not apply to a vessel which is not registered in India or which is not required by the Act to be so registered or which is not owned wholly by any entity covered by clauses (a), (b) and (c) of Section 21 of the Act. She submits that vessel-Orkney Spirit is not an Indian Ship as the same is not owned by a citizen of India, or by a company or a body established by or under any Central or State Act which has its principal place of business in India. She submits that since the provisions of the Merchant Shipping Act are not applicable to the vessel in question or to the contract of employment dated 29 May 2012, the Seamen's Employment Office or the first Appellate Authority did not have any jurisdiction to adjudicate death compensation claim of Respondent No.3. She therefore submits that the impugned order suffers from serious jurisdictional error.

5) Secondly, Ms. Sethna submits that the Seamen's Employment Office lacked any adjudicatory powers under Section 95 of the Merchant Shipping Act. She submits that under Section 95, the Seamen's Employment Office can only perform the enumerated acts, which does not include power to adjudicate death compensation claim.

6) Thirdly, Ms. Sethna submits that assumption of jurisdiction by Seamen's Employment Office in the present case is otherwise without jurisdiction in view of the fact that Captain Dhinsa was Master Mariner

and did not fit into definition of the term 'seaman' under Section 3(42) of the Merchant Shipping Act. That therefore no scope arose for exercise of power by the office of Shipping Master constituted under Section 11 of the Merchant Shipping Act, much less the appellate powers could have been exercised by the Principal Officer (first Appellate Authority).

7) In support of her contention that jurisdiction of writ court can be invoked when the authority wrongfully assumes existence of jurisdictional fact and that existence of jurisdictional fact is a *sine qua non* and a condition precedent for exercise of power of the Court by an authority of limited jurisdiction, Ms. Sethna relies on judgment of the Apex Court in **Arun Kumar and Others V/s. Union of India and Others**¹. Ms. Sethna accordingly prays for setting aside the impugned order on the above three jurisdictional grounds.

8) Ms. Sethna further submits that the Petitioner's business activities were restricted to only recruitment and placement at the material time and was regulated under the provisions of Merchant Shipping (Recruitment and Placement Services) Rules, 2005. That the said Rules could not be invoked against the Petitioner in purported liability to pay death compensation in relation to late Captain Dhinsa. Ms. Sethna submits that present Petition can be entertained by ignoring availability of any alternate remedy of any further appeal on account of serious objection to jurisdiction of the Seamen's Employment Office and of Principal Officer. She relies on judgment of the Apex Court in **Whirlpool Corporation v/s. Registrar of Trade Marks, Mumbai and ors.**²

1 (2007) 1 SCC 732

2[AIR 1999 SC 22]

9) Without prejudice to the objection of jurisdiction, Ms. Sethna submits that adjudication done by the Principal Officer (first Appellate Authority) is erroneous and that his order suffered from non-application of mind. That there is no casual connection between the employment of Captain Dhinsa with his demise. That false and fabricated documents relating to PEME were relied upon by Respondent No.3, which was incapable of adjudication in summary proceedings. On above broad submissions Ms. Sethna would pray for setting aside the impugned order.

10) Petition is opposed by Mr. Mehta, the learned counsel appearing for Respondent Nos.1 and 2. He submits that Petition cannot be entertained in the light of availability of alternate remedy of filing further appeal under the provisions of Rule 19 of the Merchant Shipping (Recruitment and Placement of Seafarers) Rules, 2016 (**Seafarers Rules, 2016**). He submits that the Petitioner has already submitted itself for adjudication of matter on merits under the provisions of Seafarers Rules, 2016 before the Director, Seamen's Employment Office. That Petitioner further participated in appeal proceedings before the Principal Officer without raising any objection as to jurisdiction. That the Petitioner did not raise even the objection of late Captain Dhinsa not falling within the definition of the term 'seaman' before either of the authorities. That therefore Petitioner is now estopped from raising the issue of jurisdiction after having participated in the proceedings before the two authorities without any demur.

11) Mr. Mehta further submits that in the definition of 'seaman' under Section 3(42) of the Merchant Shipping Act, a 'master' is also included. That under Section 148 of the Merchant Shipping Act, a Master of the ship also has remedies for recovery of wages as a 'Seaman' under the Merchant Shipping Act. That therefore for the purpose of claims against ship owners/ Manager/RPSL agent, the Master is to be treated as Seaman. Mr. Mehta submits that Petitioner has conveniently disowned its own employee, who has served the Company for 23 years, by keeping the family engaged in litigation and by not paying compensation despite passage of period of 14 long years. He would accordingly pray for dismissal of the Petition.

12) None has appeared on behalf of Respondent No.3 though represented by an Advocate.

13) We have given our anxious consideration to the submissions canvassed by the learned counsel appearing for the rival parties. We have gone through the impugned order. We have also perused the records of the case filed along with the pleadings.

14) Respondent Nos.1 and 2 have raised preliminary objection to the maintainability of the Petition by relying on provisions of Rule 19 of the Seafarers Rules, 2016. The impugned order dated 28 July 2017 has been passed by the Principal Officer under Rule 19(1) of the Seafarers Rules, 2016. Under Rule 19(3), a person aggrieved by order passed by the

Principal Officer can prefer further appeal to Director General. Rule 19 of the Seafarers Rules, 2016 provides thus:-

19. Appeal-(1) Any person aggrieved by any order passed under rule 18, may, within a period of thirty days of the date of receipt of such order, appeal to the concerned jurisdictional Principal Officer, Mercantile Marine Department.

(2) The officer referred to in sub-rule(1), shall, after hearing both the parties, pass an order thereon within a period of sixty days from the date of receipt of such appeal.

(3) Any person aggrieved by any order passed under sub-rule (2) may, within a period of thirty days of the date of receipt of such order, appeal to the Director-General, who shall after hearing both the parties, pass an order thereon, within a period of sixty days.

15) The Petitioner has thus failed to avail the alternate remedy of appeal before the Director General under Rule 19(3) of the Seafarers Rules, 2016. However, Petitioner contends that the impugned order of the first Appellate Authority suffers from jurisdictional error and that therefore this Court can entertain the present Petition directly ignoring availability of alternate remedy as held by the Hon'ble Apex Court in *Whirlpool Corporation* (supra). We accordingly proceed to consider whether the Petitioner has made out any case of serious jurisdictional error in the order of the Principal Officer (first Appellate Authority) for this Court to ignore availability of alternate remedy for entertaining the present Petition.

16) The first objection of jurisdiction raised by Ms. Sethna during the course of her oral submissions is that provisions of the Merchant Shipping Act do not apply to the Vessel in question and that therefore office of Seaman's Employment Office or of Principal Officer did not

have jurisdiction to adjudicate death compensation claim of Captain Dhinsa. She has relied upon contract of the employment dated 29 May 2012 in support of her contention that Captain Dhinsa was appointed in services of Teekay Shipping Limited, based in Hamilton, Bermuda on a vessel-Orkney Spirit registered in Bermuda. However, perusal of the averments in the Petition would indicate that this ground is not raised by the Petitioner in the present Petition. Ms. Sethna contests this position and submits that paragraph 19(c) raises the ground of inapplicability of provisions of the Merchant Shipping Act to the death compensation claim of Captain Dhinsa. We are unable to agree. Ground clause (c) in paragraph 19 of the Petition reads thus:-

- (c) The Petitioner's business activities, within the realm of 'recruitment and placement', at the material time, i.e. during 2012, were governed by and regulated under the Merchant Shipping (Recruitment and Placement Services) Rules, 2005. The Merchant Shipping (Recruitment and Placement Services) Rules 2016 superseded the erstwhile rules, with effect from 15 February 2016. The Merchant Shipping Act, 1958 does not contemplate liability for death compensation being imposed upon the Petitioner, and in the circumstances, neither the Merchant Shipping (Recruitment and Placement Services) Rules, 2005/2016 nor the Merchant Shipping (Seamen's Employment Office) Rules, 1986 are capable of invocation against the Petitioner in relation to any purported liability to death compensation in relation to late Capt. Baldev Singh Dhinsa;

17) Perusal of ground clause (c) in paragraph 19 does not indicate that ground of inapplicability of provisions of Merchant Shipping Act to the vessel in question has been raised by the Petitioner. What is raised in paragraph 19(c) is the point that the Merchant Shipping Act does not contemplate liability for death compensation being imposed on the Petitioner, whose activities are merely in the realm of recruitment and

placement. Ground clause 19(c) does not raise the issue of inapplicability of the Merchant Shipping Act to the vessel in question or to the contract of employment of Captain Dhinsa.

18) Apart from not raising any pleading relating to inapplicability of the Merchant Shipping Act to the vessel or to the contract of employment in question, the Petitioner has participated before the two Authorities without raising this objection. This is discussed in greater details in the latter part of the judgment.

19) So far as the second objection of absence of jurisdiction is concerned, Ms. Sethna contended that Section 95 of the Merchant Shipping Act does not confer power of adjudication on Seamen's Employment Office and that therefore the adjudication made by the Director General, Seamen's Employment Office vide order dated 1 October 2014 and the appellate powers exercised by the Principal Officer, while passing order dated 28 July 2017, are without jurisdiction. Here again, we do not find any specific ground in this regard being raised in the memorandum of the Petition. Once again Ms. Sethna contests this position and submits that grounds are raised in this regard in clauses (a) and (b) of paragraph 19 of the Petition. We are once again not able to agree. Ground clauses (a) and (b) of paragraph 19 read thus:-

(a) The Seamen's Employment Office, constituted under Section 12 of the Merchant Shipping Act, 1958, performs statutorily prescribed duties, detailed within section 95 of the Merchant Shipping Act, 1958, read with the related Merchant Shipping (Seamen's Employment Office) Rules, 1986, whereunder there is no right, power or authority thereunder to adjudicate upon a claim for death compensation in relation to a master mariner, who is specifically

excluded from the definition of a 'seaman' under section 3(42) of the Merchant Shipping Act, 1958.

(b) In light of ground(a) above, no scope arose for exercise of powers by the Office of the Shipping Master, constituted under section 11 of the Merchant Shipping Act, 1958, much less any exercise of appellate powers by Respondent No.2, in pursuance of Merchant Shipping (Seamen's Employment Office) Rules, 1986;

20) Thus, what is raised in paragraph 19(a) is the ground about right, power and authority to adjudicate the claim for death compensation in relation to a 'master mariner', who is excluded from definition of 'seaman' under Section 3(42) of Merchant Shipping Act. There is no specific ground that Section 95 of the Merchant Shipping Act does not confer adjudicatory powers on Seamen's Employment Office. Ground clause 19(a) is relatable to adjudication of claim of 'master mariner', who is not a 'seaman'. What is contended essentially is that Seamen's Office, whose adjudicatory powers are confined to a seaman alone, has erroneously exercised the powers in relation to a Master. Even in respect of ground clause 19 (b), we are unable to trace any objection about absence of adjudicatory power in Seamen's Employment Office under Section 95 of the Merchant Shipping Act. Once again, Petitioner did not raise objection of absence of adjudicatory powers with Seamen's Employment Office and participated in the proceedings before both the Authorities under express admission that Seamen's Employment Office has the adjudicatory powers.

21) The third and the last aspect of jurisdictional error in the impugned order of the first Appellate Authority is referable to the status /post of 'Master' held by late Captain Dhinsa and the fact that he

is not covered by the definition of term 'Seaman' under Section 3(42) of the Merchant Shipping Act. This ground is pleaded in paragraph 19(a) of the Petition. However, this objection was not raised before the Director, Seamen's Employment Office or before the Principal Officer.

22) Before we proceed to examine the third objection of jurisdiction relating to late Captain Dhinsa not being a 'Seaman', it would be apt to take quick note of various responses given by the Petitioner before the Authorities.

23) After Respondent No.3 filed a claim before the DG on 26 July 2013, Petitioner's response was sought by the Deputy Shipping Master, Mumbai, vide letter dated 20 November 2013. Petitioner gave following response on 3 December 2013:-

In response to your letter dated Nov 20, 2013, I have consulted with my principals Teekay Shipping Limited and can provide the following comments regarding its declination of death benefits in the case of the unfortunate sudden passing of Capt. Baldev Dhinsa while on leave.

Capt. Dhinsa's employment was subject to Teekay Shipping Limited's standard employment contract, which extends death benefits to earned leave periods in certain circumstances of injury or ongoing illness. While the company is only obliged to provide these benefits during periods of actual service, the contractual death benefit clause was extended to earned leave periods with the intention being to provide such benefits in cases where a protracted injury or illness (eg. cancer) resulting in death could have originated during the service period preceding the earned leave period. There is, however, no provision for death benefits *per se* in all cases of sudden death while on leave. In fact, clause 15 of the contract ("Insurance While On Leave") explicitly advises seafarers to obtain their own life insurance to cover leave periods.

After careful consideration of the documentation submitted by Captain Dhinsa's survivors, it is the view of my principals that the subject case does not qualify for benefits under the contract.

24) The Deputy Shipping Master, thereafter summoned various documents, which were provided by the Petitioner without any demur. After conduct of hearing on 1 July 2014, Petitioner gave one more response on 10 September 2014, which reads thus:

We sincerely appreciate the time given by your good selves to undersigned on 5th July and as desired enclosed please find the correspondence from our P & I club regarding death Compensation claim made by Ms. Ambika Dhinsa.

After further discussions with our Principal's on the subject matter, We would further like to draw your attention to Clause 4 of STC 2010 that contains an obligation to supply the PEME doctor with a "true and complete statement listing all details pertinent to your past and present state of health"

Any Breach of this obligation, the remedy is termination and renders STC 2010 as null and void with immediate effect.

- The intention of the clause 13 was also to deal with cases of sudden illness occurring while on leave, not longstanding & undisclosed medical conditions.
- There is evidence that Capt. Dhinsa was hiding three longstanding medical conditions for which he was taking medications and not declaring it on the Pre-Employment Medical Examinations (PEME).
- No reference to any medical condition of such type was found on any of his PEME.
- Ambika initially tried to portray it as a sudden illness diagnosed within one week of Capt. Dhinsa's death.
- Then she provided prescriptions dating back several years.
- Then she provided a PEME with a second page disclosing the hypertension medication. This

second page was disavowed by the doctor at the clinic where it was issued.

Taking the evidence in entirety, it appears that Ambika had the second page of the PEME manufactured to get around the Clause 4 disclosure obligation and that this was non-disclosed longstanding medical issue in breach of the employment contract. It is then up to Teekay as employer as to whether contractual benefits are applicable, not the P &I club.

We hope the above clarifies the matter further and we are hopeful that appropriate steps will be taken by your good office regarding this matter.

25) After the Appeal was filed by Respondent No. 3 before the Principal Officer, Petitioner gave response on merits, without questioning the jurisdiction.

26) Thus, at no point of time the Petitioner ever objected to the jurisdiction of either Seamen's Employment Office or of the Principal Officer to adjudicate the death compensation claim in respect of late Captain Dhinsa. The Petitioner participated in the proceedings before both the Authorities by admitting their jurisdiction.

27) Thus, in respect of first two objections of jurisdiction, the same are raised directly during the course of oral submissions in absence of the same being pleaded in the Petition. Thus, the objections relating to inapplicability of provisions of the Merchant Shipping Act and absence of adjudicatory powers to Seamen's Employment Office were neither raised before the two Authorities nor are pleaded in the present Petition. Only the third ground relating to late Captain Dhinsa not

being a 'Seaman' is pleaded in the Petition, though not raised before both the Authorities.

28) Since the ground of late Captain Dhinsa being a Master Mariner and not a Seaman is raised in the Petition, we proceed to examine the same keeping in mind the fact that the same was not raised before the two Authorities below. Under Section 3(42) of the Merchant Shipping Act, the term 'seaman' has been defined as under:-

3(42) "seaman" means every person (except a master, pilot or apprentice) employed or engaged as a member of the crew of a ship under this Act, but in relation to sections 178 to 183(inclusive) includes a master;

29) Thus, for the purpose of applicability of provisions of Sections 178 to 183 of the Merchant Shipping Act, a 'Seaman' also includes a 'Master'. More importantly, under Section 148 of the Merchant Shipping Act, a Master can exercise remedies relating to wages, disbursements, etc. as if he is a Seaman. Section 148 of the Merchant Shipping Act provides thus:-

148. Remedies of master for wages, disbursements, etc.

(1)The master of a ship shall, so far as the case permits, have the same rights, liens and remedies for the recovery of his wages as a seaman has under this Act or by any law or custom.

(2)The master of a ship and every person lawfully acting as a master of a ship by reason of the decease or incapacity from illness of the master of the ship shall, so far as the case permits, have the same rights, liens and remedies for the recovery of disbursements or liabilities property made or incurred by him on account of the ship as a master has for recovery of his wages.

(3) If in any proceeding in any Court touching the claim of a master in respect of such wages, disbursements or liabilities any set-off is claimed or any counter-claim is made, the Court may enter into, and adjudicate upon, all questions and settle all accounts then arising or outstanding and unsettled between the parties to the proceeding and may direct payment of any balance found to be due.

30) Thus a Master, while being in service or even during disease or incapacity can exercise all remedies under the Merchant Shipping Act for recovery of wages as if he is a Seaman. In the peculiar facts of the present case, his daughter, after his death, had filed a claim relating to his services. We are therefore not inclined to entertain the objection of absence of jurisdiction to the Seamen's Employment Office to adjudicate the death compensation claim of a Master sought to be raised by the Petitioner directly before this Court, particularly after submitting to the jurisdiction of the Seamen's Employment Office and the Principal Officer.

31) Petitioner's reliance on judgment of the Apex Court in *Arun Kumar* (supra) is inapposite. It cannot be concluded in the facts of the present case that the jurisdictional fact for exercise of jurisdiction by Seamen's Employment Office or by Principal Officer did not exist. As observed above, a Master can also be included in definition of the term 'seaman' for certain purposes and the Master is also entitled to exercise remedies under the Merchant Shipping Act as if he is a seaman in respect of certain grievances. The Petitioner never questioned the capacity of late Captain Dhinsa for adjudication of death compensation claim in his respect. On the other hand, the Petitioner specifically submitted to the jurisdiction of Seamen's Employment Office and that of the Principal Officer by defending its action of not awarding

compensation on merits rather than questioning the capacity of late Captain Dhinsa. The Petitioner defended its action mainly on the ground that the death occurred at that time when late Captain Dhinsa was on leave. In such circumstances, this Court is unable to infer absence of jurisdictional fact for the purpose of holding that assumption of jurisdiction by the Seaman's Employment Office or by Principal Officer could not have acted in the matter or that their orders are nullity. The objection of non-application of provisions of the Merchant Shipping Act also does not inspire confidence in the facts of the present case where the Petitioner appears to be merely an Indian arm of Teekay Shipping Limited. It appears that the company is based at Hamilton, Bermuda and it is the Petitioner, who had executed contract of employment on behalf of Teekay Shipping Limited on 29 May 2012. The details of employment of late Captain Dhinsa produced by the Petitioner indicates that he has worked at various vessels during 23 years of his employment. The said details are provided by the Petitioner against a query raised by the Deputy Shipping Master under the head "details of service of officer with the Company". The Petitioner readily provided the said details creating an impression that he was employed with the Petitioner. This appears to be the reason why Petitioner never questioned applicability of provisions of the Merchant Shipping Act before the two Authorities nor has pleaded the said ground in the present Petition. This therefore appears to be a classic case where every possible obstacle is sought to be created for avoiding payment of death compensation claim. In the present case, the Petitioner is growing wiser at various hierarchical levels of the litigation. The case therefore does

not involve total absence of jurisdictional fact so as to render the impugned order without jurisdiction.

32) The Petitioner has invoked writ jurisdiction of this Court under Article 226 of the Constitution of India. The jurisdiction is both extraordinary as well as discretionary. The jurisdiction cannot be invoked as a matter of right and High Court, at times, is justified in refusing to exercise jurisdiction considering the peculiar facts of the case. In our view, the present case is such that this Court would be loathe to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India for aiding the Petitioner in somehow avoiding payment of compensation by raising jurisdictional grounds after submitting to the jurisdiction of the Authorities. The Petition is filed with the sole objective of somehow avoiding liability to pay death compensation claim to the daughter of the deceased Master, who has served with the Petitioner for over 23 years. It is not that Petitioner is an independent entity from that of its alleged foreign holding company of Teekay Shipping Limited. It is just an Indian arm of foreign based company.

33) The death of late Captain Dhinsa has occurred on 13 November 2012 and by now period of almost 14 long years has passed. The mother of Respondent No.3 had already passed away on 29 June 2008 before the death of father. She and her younger brother are the legal heirs, who have been fighting for death compensation claim for the last 14 long years. Even though the impugned order is passed on 28 July 2017, the Petitioner has failed to pay the amount of compensation to Respondent No.3 in absence of any stay granted by this Court. As a matter of fact,

this Court noticed absence of averments/ grounds relating to inapplicability of provisions of Merchant Shipping Act. Faced with this situation, Ms. Sethna initially prayed for grant of leave to amend the Petition for incorporation of the said ground in the Petition. This Court accordingly dictated order granting leave to amend the Petition subject to deposit of the awarded amount of compensation. After the order was dictated, it was urged on behalf of the Petitioner that leave to amend is not necessary since the jurisdictional grounds are already pleaded. This sudden change of stand after dictation of the Order is obviously to avoid the order for deposit of awarded amount of compensation. This Court takes adverse notice of the manner in which the Petition is prosecuted before this Court by the Petitioner.

34) No doubt, objection as to jurisdiction can be permitted to be taken at any stage of proceedings. However the same cannot be permitted to be raised causally without pleadings. One of the main objectives of pleadings is to provide an opportunity for the opposite party to prepare the defence in advance. The opposite side cannot be taken by surprise by presenting lengthy and complex verbal arguments relating to jurisdiction without even bothering to plead the same. While writ court can show certain degree of latitude to the parties and may relax the technical rules of pleadings and in a given case and may even permit incorporation of additional averments and grounds in the petition at any stage of the proceedings, it does not mean that the case which was neither raised before the adjudicatory authorities nor set up in the memo of Petition can be permitted to be argued by taking the opposite side by surprise.

35) The Petition is pending since the year 2018 and Petitioner has not bothered to take any steps for incorporating the first two jurisdictional grounds by amending the same. Even during the course of hearing of the Petition, this Court was willing to permit the amendment, which opportunity is not availed by the Petitioner. Only the third ground of jurisdiction is pleaded in the Petition, which is dealt with by Respondent Nos. 1 and 2 in the Affidavit-in-Reply. However when the first two grounds of jurisdiction were orally argued for setting at naught the impugned order by presenting complex submissions based on various provisions of the Act and the Rules, the minimum that is expected is that the opposite side gets an opportunity to prepare itself for dealing with the same. It bears mention that the entire thrust of arguments of Ms. Sethna during the course of her submissions have revolved only around the objection of jurisdiction. Since the opposite parties did not have an opportunity to know in advance the first two grounds of jurisdiction, we proposed to grant an opportunity to the Petitioner to amend the Petition, which is not availed by it. We are unable to accept the submission of Ms. Sethna that the first two grounds of jurisdiction can be discerned from various pleadings in the petition. Neither this Court nor Respondent Nos. 1 and 2 have been able to discern the same, which is the reason why Respondent Nos. 1 and 2 have dealt with only the third ground of jurisdiction in the their reply. Therefore, it would be unfair to the Respondents to let the Petitioner press the first two grounds of jurisdiction in absence of they being pleaded in the Petition.

36) Considering the above circumstances, this is not a fit case where this Court should exercise extraordinary jurisdiction under Article 226

of the Constitution of India for aiding the Petitioner to create more obstacles in payment of death compensation to the daughter of the late Captain Dhinsa. It is another matter that Petitioner has ventured to file the present Petition before this Court without exercising right of appeal as observed above. We have nevertheless considered and decided the Petition on merits ignoring the objection as to maintainability.

37) So far as the merits of the case are concerned, this Court is satisfied with the reasons recorded by the first Appellate Court while upholding death compensation claim. The only defence raised by the Petitioner before the two Authorities was about death taking place while late Captain Dhinsa was on earned leave. The first Appellate Authority has relied upon Section 13 of the Contract of Employment, which provides for payment of lumpsum compensation as detailed in Appendix-C in the event of sustenance of any illness or injury resulting in death or permanent total incapacity 'while being on earned leave'. The said clause was applicable even in respect of death by natural causes or due to illness occurring while being on earned leave.

38) Therefore, mere death of late Captain Dhinsa during the course of his earned leave cannot be a ground for not awarding death compensation claim to his heirs. The first Appellate Authority has also taken note of sanction and payment of similar claim in respect of late Captain Vivek Kuthiala, which is paid by the Petitioner (*and not by Teekay Shipping Limited*). If Petitioner is only a recruitment and placement agent, why it paid the death compensation claim in that case is beyond comprehension and this aspect strengthens the belief that the Petitioner is just an Indian arm of the foreign based shipping

company and not an independent placement agency. The Petitioner sought to distinguish the case of Captain Vivek Kuthiala by contending that his leave period was over and that he was directed to report on the assigned vessel. However, in the case of Captain Vivek Kuthiala though the leave period was over and he was directed to join the assigned vessel, he succumbed to illness before he could join duties after leave. Thus, the death occurred before he could join duties. Also, he was a 'Captain' whose death compensation claim was entertained and settled by the Petitioner without raising an objection of he not being a Seaman. Therefore, the case of Captain Vivek appears to be on similar lines as that of Captain Dhinsa.

39) Considering the overall conspectus of the case, we are not inclined to interfere in the impugned order passed by the first Appellate Authority. Writ Petition is devoid of merits and deserves to be dismissed.

40) Considering the fact that the Petitioner has not obeyed order of the first Appellate Authority for the last 9 long years, the Petitioner is directed to make payment of the awarded compensation to Respondent No.3 within a period of 8 weeks alongwith simple interest at the rate of Rs 6 % p.a. from 28 July 2017 till the date of payment.

41) Writ Petition is accordingly **dismissed**. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]

[S.M. MODAK, J.]