

Circular From GARD**Date: 12 November 2015****Hong Kong: Personal injury settlements for mentally incapacitated seafarers**

Severe personal injuries may occur on board leading a seafarer mentally incapacitated eventually. It is common that a personal injury claim is filed against shipowners for compensation. Under most jurisdictions, the settlement should be approved by a court.

Recently, there is a vessel registered in Hong Kong which a crew had suffered injury and finally in mentally incapacitated. When the settlement offer came before the Hong Kong court, it was rejected on the basis that the ship owner had failed to provide for alternative accommodation costs in its settlement offer. The settlement terms were re-negotiated with additional time and expenses incurred unavoidably.

Shipowners who encounter such personal injury claim should comply with the requirements which set out in Order 80 Rules 10 and 11 of the Rules of the High Court (Cap4A)(the RHC).

Order 80 Rules 10 and 11 of the RHC

These rules provide that a settlement in relation to money claims by or on behalf of a mentally incapacitated person shall not be valid unless approved by the court. A mentally incapacitated person is defined under Order 80 Rule 1 of the RHC as a mentally disordered or mentally handicapped person who, by mental disorder or mental handicap, is incapable of managing and administering property and affairs.

The purposes of the rules are to:

1. Ensure that the person under disability is protected from the lack of skill and experience of their legal advisers which might lead to an imprudent settlement.
2. Ensure that the settlement is fair and for the benefit of the person under disability.
3. Provide a means by which a defendant may obtain a valid discharge from the mentally incapacitated person's claim.
4. Ensure that a legal adviser acting for the mentally incapacitated person is not influenced to recommend an unfavourable settlement by a defendant's offer to agree his costs.
5. Ensure that the settlement money is properly looked after and applied.
6. Ensure that the interests of all dependants entitled to a possible share in the settlement are properly protected.

Counsel's comment is not automatically awarded court approval. Instead, explanation on how the settlement arrived and supporting reasons should be provided in order to gain grant from the court.

In Hong Kong, the settlement proposals must be fair and realistic. In any event, there is any uncertainty with the settlement sum which will be reduced by a liability for costs, such as the costs for disability assessment, appointing lawyer, etc, the court may not approve the settlement. The court has the power to

reject or approval the settlement. Should the settlement is approved, the court may rely on Mental Health Ordinance (Cap 136) to direct the committee to manage and administer the property and affairs of the mentally incapacitated person. Should the settlement is refused, the court must issue the directions for further conduct of the matter.

Source of Information: Gard P&I Club

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