The Challenges for International Seafarers in Claiming Compensation in China

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Desai Shan
SIRC-Nippon Fellow
ShanD@cardiff.ac.uk
Seafarers International Research Centre
School of Social Sciences, Cardiff University
Research Background

- High occupational risk of seafaring jobs.
  - the fatal accident rate in shipping was 21 times that in the general workforce (2003-2012)
- Crew claims:
  - a major claim category covered by P&I Clubs: the second highest claims in terms of amount (29%) and cost (25%).
    - (The Standard P&I Club 2009-2014)
- Worker claimants are vulnerable to secondary harm in the claim process.
Research Background

- China is one of major suppliers of international seafarers:
  - 470,512 registered international seafarers by the end of 2014
  - 125,000 voyages of duty on non-Chinese flag vessels in 2014

Transnational employment relations

- Chinese seafarers
- Crew Agencies approved by MSA
- Serving on non-Chinese flag vessels
Research Question:

Following workplace accidents, whether Chinese seafarers (serving on non-Chinese flag vessels) suffer additional harm from claiming compensation?
Research Methods

Phase 1: Documentary Analysis
- statutes and judgements

Phase 2: 4 months’ fieldwork in 18 cities of 12 provinces in China

- a. 41 In-depth interviews with injured seafarers and surviving families
- b. 33 Semi-structured interviews with managers and legal professionals
(1) Different compensation standards widely exist.

1. Work-related Injuries Insurance Scheme (social security)


3. Employment Contracts (Foreign Collective Bargaining Contracts)
(2) General legal and social challenges.

- Special jurisdiction: maritime courts
- No independent trade union represents seafarers in claim activities.
(3) Mental Pressures.

- Refusal to transport remains
  - ‘The manning company insisted only when an agreement of damages reached, my husband’s body could be transported back. My husband’s sister knelt down begging the company to preserve the remains carefully. [...] We insisted the body must be carried back to our hometown, but the company said during past years, nobody’s remains had been transported back, and they would only arrange transport of ash.’
(3) Mental Pressures.

- Poor preservation of bodies
  - ‘My husband was rotten, as black as coal. My feeling was a mixture of despair, anger, and grief. It was impossible to calm down then. What the company had done to my husband and me is cruel and unacceptable! I was so irritated that I even thought to perish together with the manning company.'
(3) Mental pressures.

- Forcing families to give up search and rescue request
  • 'The manning company said it was not their business to search and rescue, and then referred us to a staff from the insurance company (a P & I Club’s correspondent). We requested that the bodies should be found, but he said it was too expensive to do so, and it was very difficult to find the body in the high sea. If we insisted, all the cost must be deducted from our final death compensation. As you already know, the maximum death compensation is 800,000, so we had to give up our requests.'
(3) Mental pressures

- No condolence and sympathy
  
  ‘My father was killed by the pirate on his duty for the sake of the shipowner, but the shipowner had never appeared to express any sympathy. [...] No sympathy and commiseration were delivered to us. [...] They never treated us as human beings in sorrowness. My father was just regarded as an instrument. They would never care for the loss of an instrument, so the shipowner only sent an insurer to attend the negotiation. For the insurance company, we are just one of their hundreds of cases, and they did not care about our feelings at all. They were very impolite and offensive!’
(4) Restricted access to information.

- Prohibiting victims’ access to shipowners
  - ‘The manning company told us the shipowner was too busy to meet us and they would not help us to contact the shipowner. **They just prohibited us to contact the shipowner, and never told us the name of the shipowner.** We were furious and desperate at that moment. My brother was dead in the casualty, but the manning company refused to tell any information of the shipowner. Even if I wanted to sue them, I had no idea who they were!’
(4) Restricted access to information.

- Restricting victims’ access to the crew management agreement
  - ‘No matter what information I asked, it would be a commercial secret. It was extremely difficult and annoying. Beyond your imagination! I had to hire a lawyer to send lawyer letters. Then they permitted me to read the agreement unwillingly. I took a translator and a lawyer to help me understand the English crew management agreement. We had no knowledge about this.
  - The company gave us an incomplete agreement, so I could not find the compensation standards then. They did not give us the detailed appendices of compensation standards. No photocopying, photo taking and video recording were permitted. We had to copy it by handwriting. We did not obtain any useful information due to the company’s obstruction.’
(5) Stigmatisation

- **Being stigmatised as ‘extortioner’**
  - The company **accused me of extortion**, making money from the injury. They told me to claim an amount, even if it were a million, so I hired a lawyer and calculated an amount of about CNY 100,000. **But then they started to blame me injuring myself on purpose. Although I am from a rural area, I would not exchange my leg for money...**

- **Political Stigma**
  - At that time the negotiation was in deadlock, a police officer came to my home before the 18th National Congress of Party. The police officer’s eyebrows were straight (defiant) and they said ‘I heard you are involved in a dispute’. [...] **Then the police officer told me the company reported to them that I was a socially destabilizing force.**
(6) Lack of administrative remedies.

- ‘I went to the Labour Arbitration Tribunal in [city name], wanted to sue my crew agency. But the Tribunal said they would not deal with the injury occurring overseas.’

- ‘We complained to the petition office of [city name] government. After investigation, they told us that my husband’s case was foreign related, so they took the agency’s words that the local government had no jurisdiction over our dispute.’
(6) Lack of administrative remedies.

- The time bar for seafarers’ claims of workplace injuries is short.

- ‘I was not satisfied with the amount offered by the company, so I visited the Work-related Injuries Insurance Fund to submit my claim, the people there told me my claim had expired. I just realized why the company always advised me not to think about compensation and just wait for recovery during the past one year. I felt I was cheated by the company.’
(7) Distressing litigation process

- Serving litigation documents to a foreign shipowner is time-consuming.
  - ‘More than half year now, the documents are still not delivered! This long waiting period caused serious psychological pressures for me. I could not fall asleep night after night. [...] My mood was terrible at that time, and I could not have any activity during the daytime. I had to take a lot of sleeping pills; otherwise, I would be sleepless for the whole night. [...] Once I closed my eyes, all worries of my claim and litigation came into my mind and woke me up.'
(7) Distressing litigation process

- The cross-examination of evidence is highly adversarial.

- **The most difficult part is the cross-examination of evidence. The company challenged our disability appraisal conclusion, arguing this judicial disability conclusion was not valid and we must obtain another one from Labour Authorities. But it was because their refusal, we were not able to obtain it from the Labour Authorities. They used their fault as an excuse to deny our evidence. Shamelessly!**
Conclusions

(1) The challenges during the claim process infringe victims’ rights.

(2) Serious mental harm arise since victims’ dignities and rights are not respected.

(3) To identify overseas shipowners and access compensation standards are two major obstacles for claimants.

(4) Insufficient administrative remedies and distressing litigation prolong seafarers’ sufferings.
Desai Shan
ShanD@cardiff.ac.uk