



Hong Kong: Personal injury settlements for mentally incapacitated seafarers

Settlement proposals in Hong Kong must be fair and realistic taking into account the prevailing conditions. This Insight looks at how best to achieve court approval for settlements involving mentally incapacitated crew.

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From time to time, severe personal injuries may occur on board a vessel leaving a seafarer mentally incapacitated. When a personal injury claim is pursued against the shipowner in these circumstances, and a settlement is offered - most jurisdictions will require the settlement to be approved by a court.

We are aware of a recent case involving a crew member of a Hong Kong registered vessel, who had sustained an injury resulting in him becoming 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. This is believed to be as a result of ongoing rent increases in the local housing market. The parties could renegotiate the settlement terms but this inevitably meant incurring additional time and costs.

It is important for ship owners and operators involved in such personal injury claim settlements in Hong Kong to be aware of the court's requirements. These are set out in Order 80 Rules 10 and 11 of the Rules of the High Court (Cap 4A) (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.

The Rules apply even when court proceedings have not been instituted for the claim.

The court will not *rubber stamp* the settlement simply based on counsel's recommendations. Rather, the parties to a settlement are required to explain how they have arrived at the settlement and to set out the reasons why the court should grant its approval.

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Where the settlement is approved, the settlement funds are usually paid into court pending the court's directions as to how the funds should be applied. In exercising such a function, the court may also rely on Part II of the Mental Health Ordinance (Cap 136), under which the court's power is much wider, it may order the appointment of a committee to manage and to administer the property and affairs of the mentally incapacitated person. The costs of appointing the committee are usually required to be paid by the paying party to the settlement.

Where settlement approval is refused, the court must issue directions as to the further conduct of the matter. If proceedings for the claim have been commenced, it may give directions to bring the action to trial. Alternatively, it may order that the proceedings be continued as if begun by writ.

Costs

A settlement which does not include an agreement for costs is unlikely to be approved by the court as it is not a full compromise of the claim. Similarly, the court may not approve a settlement where there is an uncertainty that a settlement sum may be reduced by a liability for costs. Normally, where a settlement provides for costs on a common fund basis, the plaintiff's solicitors would be expected to waive any claim for further costs and no issue should arise.

Comments

In Hong Kong a settlement out of court does not bind a mentally incapacitated plaintiff unless it can be proved to have been for their benefit. It is therefore sensible for a shipowner defendant to negotiate a settlement which is fair and realistic in the current economic climate rather than risk refusal by the court. Once the court has approved the settlement the liability of the shipowner defendant is formally discharged.