

Chinese survivors' compensation claims following workplace deaths at sea

The families of Chinese seafarers who die at sea face various challenges from labour-supplying companies, shipowners and their liability insurers. The fragmented and transnational nature of employment relationships increases the difficulties that victims' families have to face, which give overseas employers more power to control the claim. Although the families try to seek justice through petitioning, demonstrations and online activism, the current Chinese social and legal environment presents many obstacles.

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Global maritime transport operates almost exclusively with Asian labour. Work in this sector is 10 times more likely to result in a fatal accident.

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About 2.3 million workers are killed every year as a result of work-related ill health and injury all over the world. In 2015, 152 seafarers lost their lives at sea and 199 seafarers went missing in marine casualties. Every death has an impact on at least 20 other people, meaning that, in addition to the estimated global seafarer casualties, 7 020 people would have been affected by workplace fatalities at sea in 2015.

With 650 000 seafarers, China is the largest maritime labour-supplying state. As transnational transport workers, seafarers are subject to labour and maritime laws of multiple jurisdictions, including the flag state of the ship and the labour-supplying state where the employment agreements are established. The structure of employers is complex, including shipowners, operators and multi-level crew agencies. This complexity makes the compensation claims process extremely challenging for the victims' families.

The management of fatalities, including cases of seafarers missing at sea, involves various domestic and overseas organisations and institutions. There are three main parties involved in handling seafarer casualties: *crewing agencies*, who recruited the seafarers on behalf of shipowners; *shipowners* themselves and their representatives, including their liability insurers' claim handlers and lawyers who manage the claims and cover compensation liabilities; and *administrative and judicial authorities*, who act as arbitrators or adjudicators to restore justice.

Victims' families usually have to go through four stages: post-accident communication with crew agencies; negotiating compensation with shipowners' representatives; seeking remedies; settling compensation disputes and obtaining payment from shipowners. This article, drawing on eight Chinese seafarers' families' accounts, reviews the difficulties they face in the claims process.

Post-accident communication

Nearly half of Chinese seafarers do not have long-term employment and have to change their crew agencies frequently to obtain job opportunities. Crew agencies are responsible

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Nan Fan, daughter of a captain.

1. Above 100 000 euros. To convert Chinese yuan into euros, divide by eight.

for informing the families of marine casualties, but they also refuse any liability arising from the accident and are unwilling to help survivors.

As one survivor, Fu Zhang, recalled: "When I arrived at their office, the crew agency told us that they assumed no liability for this casualty. We asked for the foreign shipowner's information, but they refused to tell us and said there was nothing they could do and the shipowner was too busy to meet us. This was extremely outrageous!"

Preserving the dignity of the deceased is another challenge. To minimise compensation liability, some shipowners try to deny the work-related nature of fatalities, as interviewee Tian Zhu said: "One legal adviser and two managers were always emphasising my husband would sign off next morning, but he just died several hours before. [...] What they tried to say was my husband 'almost' died off duty. Later, they told me my husband might have committed suicide, so they would not pay compensation, but only a little humanitarian contribution."

This phenomenon reflects the "blame-the-worker" culture in the workplace, which has been extended to the post-fatalities communication, shifting the balance of power away from families towards management.

Within this culture, the sacrifice of seafarers and the pain suffered by their families are also rarely recognised. From the perspective of family members, company practice is inhumane, with the financial aspect being its only concern.

Nan Fan, a daughter of a captain said: "My father was shot by pirates in Africa. The shipowner has never recognised his sacrifice. For the company, it was an issue of money, so they would not regard us as human. [...] For us, my father was as important as the sky. [...] For the company, it was just a loss of an instrument, a tool, so why would they care about it? If my father could still work for them, they might pay a little attention to us. Now that he had died, it was impossible for them to care about our needs or respect us. The shipowner never sent a representative to visit us. They just ignored us completely. We were so furious that we could not eat or sleep at all."

The concern about costs is an important reason why shipowners are not cooperative in assisting families searching for missing seafarers. There is an inherent tension between shipowners' interests and the needs of the bereaved family members, and families are often powerless, as Fu Zhang explained: "My brother's body had not been found. The crew agency said it was not their business to search for bodies, and then referred us to staff from the shipowner's insurer. We requested that all the bodies should be found, but he told us it was expensive to do so, and it was very difficult to find the body in the high sea. If we insisted that the bodies should be found, all the costs would be deducted from our final death compensation. As you already know, the death compensation is capped at CNY 800 000¹, so we had to give up our requests."

As the weaker party in this dispute, family members are not able to push through

their requests. Faced with the threat of deduction of costs from the damages to be awarded, they are led into giving up their rights and entitlements. Their right to know the facts about the seafarer's accident is not respected in many cases.

Negotiating compensation

The negotiation of compensation is the core battle between victims' families and shipowners, the result of which can determine the future living standards of these families. The families attempt to assertively defend their rights to compensation, but organisations aim to control the loss arising from accidents. Therefore, it is inevitable that the bereaved families and shipowners dispute compensation standards and amounts. However, considering their inadequate knowledge of the law, legal entitlements, skills of negotiation, social resources and political power, seafarers' families are at a disadvantage.

In the first instance, the families' legal knowledge determines the scope of their claims in the negotiations, which means the more families understand about legal entitlements, the higher the compensation that can be claimed during a negotiation. Claimants who are able to conduct legal research are more likely to receive higher compensation, as Tian Zhu, the wife of a chief engineer, said: "I checked the law day and night online. There was a regulation from the Ministry of Transport that said that the dispatched seafarer has three entitlements: the work-related injury insurance, shipowner's P&I club insurance and commercial life insurance. I used this to claim work-related injury insurance and commercial life insurance from the labour supply company. [...] I claimed this amount and the company eventually accepted. Combining these three parts, I justified CNY 1 770 000 as my claim amount."

However, if the families are not able to identify the proper legal instruments, the compensation they obtain will be very limited. The companies are able to take the initiative and decide the compensation amount. Fu Zhang described how they were treated by crew agencies when they did not have sufficient legal knowledge: "The crew agency insisted the death compensation should be calculated according to rural income level, the lowest standard. Our family could only receive CNY 200 000 to CNY 300 000. Someone reminded us that we should use foreign-related legal standards to obtain a higher amount of compensation. I didn't know about this specialised foreign-related maritime law before, but the crew agency should not cheat us. Why did they only insist on using the low domestic rural standards?"

In the second instance, shipowners, charterers, managers and operators of seagoing ships can limit their liability for maritime claims arising from vessel operation accidents. From 1992 to 2013, in foreign-related personal injuries/ incidents of death at sea, Chinese law entitled shipowners to limit their liability to CNY 800 000. This legal regime has created significant obstacles for seafarers' families to pursue satisfactory damages, as Nan Fan said: "We asked for USD 400 000 according to my father's income level. But they argued that CNY 800 000 was the limitation of liability for the shipowner. They insisted that the compensation should not be more than CNY 800 000. Through many efforts made by my father's friends, we achieved an amount of CNY 1 500 000. It was a significant step from CNY 800 000 to 1 500 000. Without their help and encouragement, we could not have achieved it. The CNY 800 000 limitation was set in 1992, and is out of date, but the shipowner still took advantage of it."

The liability limit of CNY 800 000 became a significant obstacle for seafarers' families, with shipowners being protected by this legal "shield" in cases of fatalities between 1992 and 2013. Since the case of the *Spring Merchant*² in 1999, this rule has been criticised as an anachronism because the actual loss can be much higher than CNY 800 000 due to inflation. Nan Fan's family obtained a higher compensation through the political influence of his father's social network. As shown in the case files, a leading official of the Ministry of Transport called the labour supply company to urge the shipowners to settle the compensation dispute responsibly. Meanwhile, the lawyer advised the shipowner that there would be a potential political risk for their future operation in Chinese ports if they insisted on short-changing seafarers' families in this way. Politics thus played a key role in settling this particular dispute.

However, many bereaved families do not have such strong social and political ties as Nan Fan's family. To accept the compensation offered by companies is the only solution for them. The interviewee Nan Chen described his experience of failing to challenge the liability limitation: "We raised an amount of CNY 1 300 000. However, they had better lawyers. Our lawyer was not as dedicated and loyal as theirs was. In the negotiation, we could not achieve more and we just wanted to solve this quickly and did not want to overly immerse ourselves in dispute and grief. We eventually accepted the company's compensation of about CNY 800 000."

In the third instance, the bereaved might be subject to strategic attacks from the companies during negotiations. These strategic attacks involve what can be regarded as "negotiation skills", which are used to increase

the psychological pressure on the opposing parties. These attacks aim to stigmatise claimants, and employ police power to force the claimant to abandon their claim. The effects of these strategic attacks are largely dependent on the social and political power possessed by the company.

Stigmatisation is another typical kind of attack on claimants. In addition to the general stigma of greediness, in China, families of deceased seafarers may have to confront political stigmatisation.

The following example is an illustration: "I sent my claim amount to [the labour supply company's manager], and he replied, 'you are extorting as a greedy lion', and then hung up the phone rudely. [...] The negotiation paused for a while. Several days later, the police officer came to visit me before the 18th National Congress of the Party. At that time, the negotiations were in a deadlock. The police officer's eyebrow was straight [surly] and he 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 destabilising element."

The stigma of being a "socially destabilising element" relates to Weiwen (social stability maintenance) activity. If a person defends his/her civil rights for a long time and tries to attract public attention to obtain

2. In this case, one pilot was seriously injured due to the pilot ladder of the vessel *Spring Merchant* was broken unexpectedly. The pilot lost 90% work capacity and the medical expenses exceeded CNY 800 000. The Ningbo Maritime Court awarded CNY 3 685 581 as the compensation, including medical expenses, further medical and nursery care expenses, and earning loss.

The more families understand about legal entitlements, the higher the compensation that can be claimed during a negotiation.

justice, he/she may be labelled as a socially destabilising element threatening political stability. Therefore, in this case, the company made use of political stigmatisation to impose extra pressures on the claimant. Through this strategy, the seafarer's family may be forced to abandon further claims, or just accept the compensation offered by the company in order to free themselves of the stigma.

Seeking justice

The compensation process makes the rights of family members secondary to the interests of shipowners. Some families choose to bring their grievances to authorities, such as their local police station or the petition offices of the local government. Fu Zhang recounted their experience of petitioning: "At the beginning, the labour supply company just ignored our requests, so we called the police. It was useless. The police said the marine casualty was beyond their jurisdiction. Then we went to the petition office of our provincial government. They sent a message to the company, and the company agreed to negotiate with us, but it was not very helpful because they were still perfunctory. All these methods were useless."

Lately, many claimants have taken up the defence of their rights online. Family members can post their experiences on online communities and social websites, such as Tianya, Sina Blog and Weibo (China's equivalent of Twitter). By using social media, claimants hope that the government will take their requests seriously. Tian Zhu wrote posts on the Tianya online community and Sina Blog. However, these posts were deleted three times by the website administrator.

She commented: "The labour supply company had the money to bribe the website administrator to delete my online posts on the defence of my rights, but was unwilling to improve our compensation a little bit."

Nan Yang also tried to post comments on a news page to attract public attention to her nephew's death on board: "There was news on the shipping website regarding the disputes between shipowners and their insurance companies. I attached my nephew's story as a comment on that news, hoping more people would pay attention to it."

Nan Chen also wrote a post in a seamen's online community to seek help for his cousin's disappearance. However, these efforts have not been successful.

Demonstrations, sit-down protests and occupations have been adopted as forms of resistance to unfair compensation offers and mistreatment in negotiation. Following the first round of negotiation, Tian Zhu wore mourning dress and exhibited her banner at the labour supply company to highlight the



company's unfair treatment of her family. She purchased paper money and burned it in front of the company in memory of her husband. The company called the police to stop her demonstration. Nan Chen adopted a sit-down protest at the company's premises. She and her parents wore mourning dress and sat down quietly at the labour supply company.

She said: "We sat there quietly every day. No fight, no complaint and no noise. We did not disturb their business violently so they could not call the police. All seafarers coming to the company would know our grievance. This imposed heavy pressures on the manager."

According to the accounts of the families, the experience of seeking assistance from governments and society to restore justice is disappointing and frustrating. The difficulties met by Chinese seafarers' families reflect the lack of government oversight of the organisational behaviours of shipowners and labour supply companies. In contrast, the law granted shipowners the right to limit their liability for maritime claims. As a consequence, the imbalance of power between shipowners and surviving families has been exacerbated.

Settling compensation claims

Making compensation payments through instalments is another way to reduce financial pressures for companies, as Qing Wu said: "The total compensation for my aunt was CNY 600 000 and the first instalment of CNY 150 000 was paid instantly. Now two years have passed, yet the compensation has not been paid completely."

Payment by instalments makes the settlement unpredictable. Therefore, some victims even sacrifice some compensation in exchange for an instant lump-sum payment, as Nan You said: "It is hard to trust the company, and undue delay may bring troubles. Therefore, even if they would promise a higher compensation by instalments, I asked them to pay me cash instantly."

The wording of settlement agreements is final, but the agreements are usually drafted in favour of shipowners' interests aiming to diminish their liability. Nan Chen expressed her anger about the settlement agreement: "The terms and conditions were unfair. They only wrote down things favourable to themselves and harmful to us. I was so angry that I did not want to sign it at all." Fu Zhang explained his feeling of helplessness when he signed the agreement: "I was bullied in the agreement. However, if I did not sign it, we could not get the compensation, so I had no choice."

Labour supply companies' deduction of costs from the compensation payable to seafarers' families causes further harm. It has become a common practice for labour supply companies to deduct the company expenditure incurred in hosting families, including transport and accommodation, from the amount due for the death compensation.

Fu Zhang said: "After the deduction of the labour supply company, the CNY 800 000 became CNY 650 000. We did not know the breakdown of this deduction. Is it enough to raise my brother's kid? It is impossible to pay the education of my nephew and support my parents in the future." ●