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In the

Supreme Court of the United States

JULIAN VELLA,

Petitioner,

v.

FORD MOTOR COMPANY

Respondent.

No. 73-1994

Washington, D. C.
February 18, 1975

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JULIAN VELLA, Petitioner,	:	
v.	:	No. 73-1994
FORD MOTOR COMPANY, Respondent.	:	

Washington, D. C.,

Tuesday, February 18, 1975

The above-entitled matter came on for argument at 2:32 o'clock, p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

LEONARD C. JAQUES, ESQ., 1325 Penobscot Building, Detroit, Michigan 48226; on behalf of the Petitioner.

JOHN A. MUNDELL, JR., ESQ., Foster, Meadows & Ballard, 3266 Penobscot Building, Detroit, Michigan 48226; on behalf of the Respondent.

C O N T E N T S

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in 73-1994, Vella against Ford Motor Company.

Mr. Jaques.

ORAL ARGUMENT OF LEONARD C.JAQUES, ESQ.,

ON BEHALF OF THE PETITIONER

MR. JAQUES: Mr. Chief Justice, if it please the Court:

In 1962, an intoxicated seaman was going back to his ship in Louisiana. He fell asleep on a railroad track before he got there.

QUESTION: Does the record show he was intoxicated, Mr. Jaques?

MR. JAQUES: Yes, Your Honor.

The record shows that the particular case I'm citing --

QUESTION: This was before he got to the railroad track, or what?

MR.JAQUES: Got to the railroad track, couldn't get to the ship. Laid down on a railroad track. A train came along, amputated both legs. The question arose: what duty did the shipowner have with regard to payment of maintenance and cure?

The Fifth Circuit held, in Myer vs. Quinn-Manhattan Fisheries, 302 Fed 2d 146, that the duty of the shipowner did

terminate at the time that there was provided for the seaman a fitting of artificial legs.

The Sixth Circuit would hold, in 1975, that there was no duty at all, to provide any cure, any maintenance for the seaman, in its holding on the Vella case.

The Sixth Circuit had indicated that one who was afflicted by trauma with a vestibular labyrinthine disorder had actually reached the maximum cure at the time that the incident occurred.

This is borne in the opinion on page 29 of the brief -- of the Appendix. And there the Court stated:

"The record in this case does not permit an inference other than that plaintiff's condition was permanent immediately after the accident."

To look at the Sixth Circuit holding with regard to this case, it would necessarily follow that there could be no manner by which a seaman who had reached that point of maximum medical cure, as was enunciated by this Court in Farrell vs. United States, where there had been, in fact, a declaration that there had been a maximum cure rendered for the treatment of the seaman.

For, indeed, if, once that particular declaration is made by a medical authority, according to the Sixth Circuit, relating back the very onset of the incident which created the injury or the illness would have been, in fact,

incurable.

Well, looking on these cases relative to maintenance and cure, the cure aspect, while it doesn't mean cure in the medical sense solely, it means care.

The question arises to what extent? This Court has never indicated that where there is treatment to provide a cure an amelioratory nature, would not permit a seaman to come within the scope of the doctrine. This Court has never addressed itself to that very particular question.

It recognized that in Farrell and also in Vaughan vs. Atkinson, that the majority held that a seaman is not entitled to maintenance and cure payments for a lifetime.

But, indeed, the circuits have interpreted Farrell, since it came down in 1949, the Third Circuit and the Fifth Circuit has consistently held -- and I must point out that these two circuits, the Third and the Fifth, are quite active maritime circuits, much more than the Sixth Circuit.

But with regard to test, I cite the case of Smith vs. Dale Hart, Incorporated, that's 315 Fed Supp 1162, or 1969 AMC 2400; I cite it for the language.

In that case the Court held that the maximum medical care does not mean to the point where a seaman has the ability to return to work, but to restore the seaman to the status of a functional human being.

Now, in that case, it's very similar to the case of

Vella.

An action was brought for negligence under the Jones Act. In addition to unseaworthiness of the vessel, it was held that there was no unseaworthiness of the vessel, no negligence under the Jones Act.

A third count, however, was with regard to maintenance and cure.

In that case the seaman suffered from a rheumatoid arthritic condition, a degenerative spinal condition. The orthopedic surgeon said: I can operate on him. I can't cure him to the point where he will go back to sea, but I can cause him to be alleviated the pain and nothing more.

And there the Court held that this would be compensable. And this is in line with the cases of the Third Circuit, such as Ward --

QUESTION: Mr. Jaques, do you think that kind of a question is raised by our -- the question we granted certiorari on? Where we just granted one of your three questions that you presented in your petition; that was whether a seaman is entitled to maintenance and cure during the interim between the occurrence of the incident and the time the disease was medically diagnosed and declared incurable.

MR. JAQUES: Indeed, Your Honor, indeed. Because embodied within that question, as it was framed, would be the question as to when, at what time -- at what time does the

seaman -- no. The scope and duration, under what circumstance does he come within the scope, and once he is within the scope, what is the duration.

And here in the Sixth Circuit opinion, under a very novel pronouncement, the Sixth Circuit said: There is more than a one-step proposition.

Such as this Court held in The Oceola, back in 1898, where a seaman was required to show that he actually sustained injury or became ill in the service of the vessel, and at that time it meant, Your Honor, that he must have been actually performing work activities on the vessel.

Now, this Court, in the Calmar vs. Taylor case, extended that and put the seaman ashore, and where he is in fact injured ashore or sustains injury ashore, that is construed to be in the service of the ship even though it's on a personal basis.

QUESTION: But your man was injured aboard the ship, though, wasn't he?

MR. JAQUES: Very true.

QUESTION: Doing his work, wasn't he?

MR. JAQUES: Indeed he was. But the Sixth Circuit held that that wasn't enough, that showing, in and of itself, is not enough, Your Honor.

The Sixth Circuit held, just as the shipowner argued, that he must not only show that he was injured while

in the service of the vessel, and indeed there's no question, and they concede that, the shipowner indeed concedes that he was injured, that the jury did find that he was injured while in the service of the vessel.

But the Sixth Circuit holds that the seaman has an additional duty: that he must go forward and show that he has, that whatever he is afflicted with is curable.

This is why it is, indeed, important to make a determination as to whether or not this additional step that's required in accordance with the law, take that situation alone.

A seaman who is saddled with the responsibility to go forward to get medical authority to indicate that whatever he is afflicted with is curable in this day, with the special problems that the physicians have now.

It would be very difficult. When I say problem, I'm talking about physicians having problems with regard to malpractice insurance. And for a physician to diagnose someone with a specific type of disability and for the shipowner to require the physician to indicate that he does in fact have a curable ailment may be construed by doctors as a contract to cure, with the inherent -- and I don't mean this disparagingly -- but with the inherent tendency of medical practitioners to act on a conservative basis, it's doubtful that any seaman could ever get any doctor to make such a declaration.

QUESTION: Mr. Jaques, as I understand it, the jury awarded your client maintenance and cure for a period of two years from the time he was discharged from the vessel until a period two years later?

MR. JAQUES: That's correct. That's right.

QUESTION: What does maintenance and cure consist of? Is it basically room and board?

MR. JAQUES: Maintenance means sustenance; cure means care.

It has been established by collective bargaining contracts that this is set at a rate of eight dollars per day; rather unrealistic because it is supposed to be the kind of care and treatment and lodging that he would have received aboard the ship; no better, no worse.

QUESTION: Is this on the assumption that he's disabled and in the hospital during this period?

MR. JAQUES: On the assumption that he is disabled. On not -- more than an assumption, Your Honor; but then, indeed, the fact that he is disabled and unfit for sea duty.

QUESTION: Well, isn't the actual practice now for an injured or an ill seaman to go into a public hospital?

MR. JAQUES: Yes, Your Honor.

QUESTION: NIH hospital in Norfolk or New York, Philadelphia, wherever --

MR. JAQUES: Marine hospital, United States Marine

Health Service Hospital; that is correct.

QUESTION: A Public Health hospital.

MR. JAQUES: Right.

QUESTION: And is that covered generally by collective bargaining agreements or not?

MR. JAQUES: That's covered by statute, Your Honor.

QUESTION: Unh-hunh. And that's where he goes, that's where he gets his maintenance and cure generally, isn't it?

MR. JAQUES: Well, he gets maintenance and cure while he's in a --

QUESTION: Unless he's an -- until he becomes an outpatient?

MR. JAQUES: That's correct. He's not entitled to payments until -- well, until he's an outpatient if, in fact, he had been interned in the medical facility.

QUESTION: Unh-huh.

MR. JAQUES: Oftentimes they are not. Oftentimes they are simply treated as outpatients, but unfit for duty.

QUESTION: Unh-hunh.

QUESTION: Mr. Jaques, could I translate this into the facts of your case? Your third cause of action, of course, is rather wide open in this request for relief; but what would you be satisfied with? With the per diem up to the time of the rendition of the medical judgment of the inner ear problem?

MR. JAQUES: I would be -- well, with regard to maintenance and cure benefits inured to my client, I would be satisfied for maintenance and cure payments up to the time where there had been a diagnosis and declaration by a medical authority that the disease was in fact incurable. And that would --

QUESTION: Well, suppose that had come within a week of the accident?

MR. JAQUES: If that had come within a week of the accident -- now, I must say, Your Honor, when I answered this question, I had put it on strictly the hypothetical basis that -- or predicated on exactly as you phrased it.

Now, if it happened within one week, I would say that the test would go to what I had set forth in my brief on page 17, which I -- and I did propose the test to show as follows:

A seaman who has contracted by trauma -- but I'll change that: A seaman who has become ill, and the illness or injury is of a permanent nature, while in the service of the vessels comes within the scope of maintenance and cure benefits and shall continue to be entitled to those benefits until cured or until the disease is diagnosed and declared by medical authority that the maximum degree of improvement of the seaman's health has been reached.

Now, that would take care --

QUESTION: When did you reach that in this case, according to the Sixth Circuit?

MR. JAQUES: Well, the Sixth Circuit said it was reached when it happened, and that's not keeping within the purpose of the doctrine.

QUESTION: You mean as soon as it was done, when it was diagnosed that it was incurable, it always had been incurable, and no maintenance and cure?

MR. JAQUES: That's what the Sixth Circuit said.

QUESTION: The Sixth Circuit's posture is that you have to ride until that diagnosis was made, and it happened a good bit of time afterward.

MR. JAQUES: I follow this -- I would follow, Your Honor, what this Court has set forth, particularly in the Farrell vs. United States case, and in that case it says this Court adopted the treaty -- well, the draft convention, which really was a treaty -- in 1939. And that treaty is set forth in the brief in the precise language, on page 11:

"The shipowner shall be liable to defray the expense of medical care and maintenance until the sick or injured seaman has been cured, or until the sickness or incapacity has been declared of a permanent character.

QUESTION: You think Farrell is authority for applying that on the Great Lakes?

MR. JAQUES: Why, absolutely, Your Honor. This

Court has never made a dichotomy with regard to maintenance and cure benefits with reference to high seas and the Great Lakes.

And I concede, Your Honor, that this particular treaty did not have bearing on Great Lakes seamen, indeed, by its language it meant only persons on the high seas. But in this --

QUESTION: Now, you're asking for a remand to the trial court for the entry of an amended order of judgment; which is to say you're not satisfied with the verdict you got from the jury.

MR. JAQUES: I think that the jury verdict, under the proper test in the instructions of the court was not correct.

QUESTION: Well, can you ask us to do that? You didn't appeal the jury verdict yourself to the Court of Appeals, did you?

MR. JAQUES: I simply indicate here that the question as to the additur of the verdict was not brought before the Court of Appeals; but I submit --

QUESTION: Well, how can you ask us to do it if you didn't appeal to the Court of Appeals yourself?

MR. JAQUES: Well, I concede, Your Honor, that this is a circumstance where the Court may, under the proper condition, be loath to grant that which was not sought.

QUESTION: As I understand it, what you got from the jury was for two years, was it, from June 29, 1968?

MR. JAQUES: That's correct, Your Honor.

QUESTION: And you're asking for almost four years, from June 29, '68 to April 27, 1972. Is that correct?

MR. JAQUES: That's correct. And that's because of the test that the Court has established.

QUESTION: Well, you see, our difficulty -- at least my difficulty is that I don't see how you can ask us to do that, when you didn't appeal, cross-appeal to the Court of Appeals.

MR. JAQUES: I realize, but the Court in retrospect would recognize that the Sixth Circuit would not lend any credence or even address itself to that proposition, had it been raised in the appellate court below.

QUESTION: Well, that's ordinarily not a reason for not raising it, because you make an advance evaluation that they won't pay any attention to it; which is what I understood you to say.

MR. JAQUES: I don't make an advance evaluation. And I agree now, under the circumstances, indeed, it is questionable whether or not this Court would grant the relief sought, particularly with regard to the additur of the verdict relative to the maintenance and cure.

QUESTION: What about the issue of attorney's fees?

MR. JAQUES: Well, that was raised. The attorney's fees was raised --

QUESTION: Well, again, were they denied by the district court?

MR. JAQUES: That's correct. The trial court denied the attorney's fees.

QUESTION: And again you didn't appeal that denial, did you?

MR. JAQUES: I did not appeal that to the Sixth Circuit.

The two-step criteria of the Sixth Circuit -- and really what the Sixth Circuit is saying: first, the seaman must show that he was injured while in the service of the vessel; and then he must show that whatever cure he undertakes, that will be the -- that will result into his return to a fit-for-duty status.

This is novel. This is something this Court has never held. With regard to the duration, the Sixth Circuit has criticised in a footnote the Third Circuit relative to what was held in Ward vs. the Barge Line, where the Third Circuit indicated that maintenance and cure would go on so long as there was some type of amelioratory relief.

And the question I would pose would be: How then can the Sixth Circuit square itself with Farrell in this particular case, because Farrell has indicated that maintenance

and cure must be paid until there had been a declaration by medical authority that the disease was incurable. And that was not done until the time of the trial. But the Sixth Circuit did not even allow the two years that was granted by the jury.

I'll reserve time.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Jaques.

Mr. Mundell.

ORAL ARGUMENT OF JOHN A. MUNDELL, JR., ESQ.,

ON BEHALF OF THE RESPONDENT

MR. MUNDELL: Mr. Chief Justice, and may it please the Court:

In the case of The Booker No. II, 241 Fed 831, the Court stated, at page 835:

The limits of care or cure, both as to kind of treatment and kind of continuance, must always depend on the facts of each particular case.

Respondent in this case contends the facts are of special significance in the resolution of the issue now before the Court.

And I would ask the Court to bear with me momentarily as I recite briefly the facts, because I believe they have a very special significance.

The petitioner in this case was an oilerron the S.S. ROBERT S. MacNAMARA. He claimed that while replacing a deck plate in the lower engine room he slipped and fell and bumped

his head. There was some doubt as to whether the petitioner reported that accident at the time.

Thereafter, petitioner claimed that he suffered from dizziness, headaches, imbalance, and fear of falling. But he continued to perform his regular duties until June 28, 1968. The alleged accident occurred some time, a date unknown to the petitioner, in early April of '68. That meant he was on the ship for a period of almost ninety days doing his regular work.

On June 28, the petitioner was discharged from the vessel for failing to obey the orders of a superior officer. When the vessel arrived back at Dearborn, the following day, on June 29, he was paid off and left the vessel.

During the course of the preparation of his discharge papers, the third assistant engineer was doing this, the petitioner said, and informed the third assistant engineer, that he had fallen back in April of '68, and an accident report was prepared.

Petitioner also requested and was issued a master's certificate, permitting him, or a hospital ticket permitting to go to the United States Public Health Service hospital, where free care is provided for merchant seamen.

Immediately upon leaving the vessel, the petitioner was examined at respondent's plant hospital. This hospital is staff by 15 physicians and 89 nurses, and headed by Dr.

Charles David Laderach.

Based upon the information supplied by the petitioner, Dr. Laderach gave a diagnosis of alleged left parietal contusion.

Inasmuch as the petitioner denied visual difficulties, nausea, vomiting, dizziness or headaches, in the Romberg Test, which is the test where you close your eyes and if you sway back and forth it indicates that you have a balance problem, that test was negative; and similar tests, finger-to-finger tests with your eyes closed, finger-to-nose with your eyes closed, again a balance test, these tests were all normal, Dr. Laderach ruled out vestibular damage. But based upon the petitioner's description that there was something electrical in his head, decided that the complaint could relate to a tiny nerve branch contusion.

This he considered minor, and he ordered a cold pack applied to that area where he described this hot or electrical sensation, and discharged as able to work.

From that day, June 29, 1968, petitioner went to the U. S. Public Health Service Hospital in Detroit on three occasions: July 9, July 16, and September 30.

On each of those occasions, he was declared fit for duty.

It is to be noted in the Appendix, which sets forth these visits to the Public Health Service Hospital, that the

petitioner, when he went there, he denied he had sustained any unconsciousness, he had no headaches, dizziness or other neural problems, and nothing of an objective nature was found.

The final day that he was there, final visit --

QUESTION: Mr. Mundell, are you arguing that there's insufficient evidence in the record here to justify the jury's finding against you?

MR. MUNDELL: Yes, sir.

QUESTION: But is your argument that there was never anything wrong with him, or that whatever he did have wrong with him, by way of illness or injury, didn't occur while he was in the service of the ship?

MR. MUNDELL: Both, if the Court please.

It was our contention that when the man left the ship he was fit for duty.

Now, the jury in this case did give the man two years' maintenance. There was never a specific finding --

QUESTION: And thereby found that he had a physical condition that occurred while he was in the service of the ship, necessarily, if the instructions were correct?

MR. MUNDELL: Yes.

QUESTION: And found that as a fact.

MR. MUNDELL: Well, that's why, if the Court please, we appealed the maintenance verdict.

QUESTION: Unh-hunh.

MR. MUNDELL: We felt there was no basis for this jury to grant maintenance and cure to this man.

QUESTION: Did the Court of Appeals ever pass on this part of your contention?

MR. MUNDELL: Yes, on -- as to whether or not he actually was fit for duty or not, or --

QUESTION: As to whether or not there was evidence, whether there was evidence to support the verdict.

MR. MUNDELL: I think the words of the Court were: presumably the jury found that the man had sustained an injury.

QUESTION: So they -- so at least they didn't reverse on the ground you're urging now?

MR. MUNDELL: No.

QUESTION: And they, in effect, rejected that ground?

MR. MUNDELL: I would believe --

QUESTION: That you've got two courts saying that there was evidence, the Court of Appeals and the trial judge?

MR. MUNDELL: Well, --

QUESTION: Well, he said it to the jury, didn't he?

MR. MUNDELL: Oh, yes.

MR. CHIEF JUSTICE BURGER: I think we will resume there at ten o'clock tomorrow morning.

MR. MUNDELL: Very well, Your HOnor.

[Whereupon, at 3:00 p.m., the Court was recessed, to reconvene at 10:00 a.m., Wednesday, February 19, 1975.]