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Admiralty - Death on the High Seas Act - Effect on Workmen's Compensation Recoveries

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RECENT DECISIONS

ADMIRALTY—DEATH ON THE HIGH SEAS ACT—EFFECT ON WORKMEN'S COMPENSATION RECOVERIES—Decedent, aboard an airliner in his capacity as flight service supervisor, was killed when the plane crashed into the Pacific. Respondent airlines, decedent's employer, filed an application with the California Industrial Accident Commission to determine its liability under the California Workmen's Compensation Act.[1] The commission awarded decedent's widow a death benefit despite the widow's objection to the commission's jurisdiction. Prior to the award the widow as administratrix of decedent's estate initiated this action under the Death on the High Seas Act[2] (DHSA) in admiralty.[3] On motion for summary judgment in respondent's favor, *held,* motion granted. DHSA is applicable to deaths arising from crashes of aircraft on the high seas,[4] but it was not intended to supersede state workmen's compensation acts. Since the California compensation statute may be constitutionally applied in the present case,[5] and

1 Cal. Labor Code Ann. (Deering, 1953) §3600.

2 41 Stat. 537 (1920), 46 U.S.C. (1952) §§761-768.

3 This court has previously held that admiralty is the exclusive forum for actions brought under DHSA. Wilson v. Transocean Airlines, (N.D. Cal. 1954) 121 F. Supp. 85. This is the majority view, although the courts are not in agreement on the point. See, generally, comment, 23 GEO. WASH. L. REV. 217 (1954).

4 The fact that DHSA was enacted in 1920 indicates Congress probably did not consider its application to aircraft. Nevertheless, the courts have been unanimous in holding the act applicable. But, for an argument that the act should not be so applied, see comment, 55 COL. L. REV. 907 (1955). Some cases have regarded DHSA as applicable by finding as a fact, actually or presumptively, that the impact causing the injury occurred when the aircraft hit the sea, thus meeting the traditional "locality" test of admiralty tort jurisdiction which DHSA was said to adopt. See, e.g., Wilson v. Transocean Airlines, note 3 supra; Lacey v. L.W. Wiggins Airways, (D.C. Mass. 1951) 95 F. Supp. 916. The question whether DHSA also applies where it is shown that the impact occurred above the high seas has generally been avoided. See, e.g., Noel v. Linea Aeropostal Venezolana, (2d Cir. 1957) 247 F. (2d) 677, cert. den. 355 U.S. 907 (1957). But in a recent decision the Court of Appeals for the Second Circuit has held it is immaterial whether the impact was on or above the sea. D'Aleman v. Pan American World Airways, (2d Cir. 1958) 259 F. (2d) 493.

5 It was argued that the application of the compensation act in the present case was unconstitutional under the doctrine of Southern Pacific Co. v. Jensen, 244 U.S. 205 at 216 (1917), where the application of a state compensation act to a maritime worker was disallowed on the ground that it interfered "with the proper harmony and uniformity of [the general maritime] law in its international and interstate relations." The court, however, found that the present case fell within the exception to the general rule, stated in Alaska Packers Association v. Industrial Accident Commission, 276 U.S. 467 at 469 (1928), that where the employee is "not engaged in any work so directly connected with navigation and commerce that to permit the rights of the parties to be controlled by the local law would interfere with the essential uniformity of the general maritime law" the compensation act may be applied. It was said that decedent, a flight service supervisor, was "employed in a non-maritime industry and performed no maritime work." While the decision would undoubtedly stand in light of current judicial hostility to the Jensen doctrine [e.g., Davis v. Department of Labor, 317 U.S. 249 (1942)], the import of the

since its remedy is exclusive,[6] it abrogates the DHSA remedy. *King v. Pan American Airways,* (N.D. Cal. 1958) 166 F. Supp. 136.

Federal district courts have uniformly held that DHSA supersedes state wrongful death statutes,[7] relying generally on a belief that DHSA was enacted to provide a uniform rule for recovery of damages for deaths on non-territorial seas.[8] The wrongful death acts, being inconsistent with the uniformity which Congress sought to create, are therefore superseded. The question raised by the principal case is whether workmen's compensation acts are likewise inconsistent with the degree of uniformity Congress intended DHSA to create. Both DHSA and wrongful death acts give relief only upon a showing of fault, while workmen's compensation requires no such showing and provides a more certain basis for relief. The court in the principal case found that the history of DHSA failed to show an intention to supersede this "unique protection" of the compensation acts, and was unwilling to assume such a purpose, holding in effect that what Congress meant to supply was a uniform remedy for liability based on fault and not a single remedy for all deaths on the high seas. While there is no direct authority with which the present ruling can be compared, there is authority which by way of analogy presents an argument for the

principal decision is not clear. It may be that the court would hold the same in regard to any airline employee, on the ground that such employment is never maritime and that "navigation and commerce" refers only to vessels. Or the court might mean only that the employment in the present case is not so "directly connected with navigation and commerce" because the employee in question, unlike a pilot, spent the major part of his working time on land.

[6] Cal. Labor Code Ann. (Deering, 1953) §3601.

[7] Choy v. Pan-American Airways Co., (S.D. N.Y. 1941) 1941 A.M.C. 483; Echavarria v. Atlantic & Caribbean Steam Nav. Co., (E.D. N.Y. 1935) 10 F. Supp. 677; comment, 25 J. AIR LAW 102 (1958). But see Higa v. Transocean Airlines, (9th Cir. 1955) 230 F. (2d) 780. This has been the ruling in spite of §7 of DHSA, 41 Stat. 538 (1920), 46 U.S.C. (1952) §767, which provides: "The provisions of any State statute giving . . . remedies for death shall not be affected by this chapter." As originally proposed, the provision stated DHSA should have no effect on state remedies within the territorial limits of the state. This was changed by a last minute amendment removing the territorial limitation. Some members of Congress felt the application of state remedies to the high seas would be unconstitutional under the Jensen doctrine, note 5 supra. The courts have therefore reasoned that some voted for the amended version because they felt the territorial limitation superfluous, and not in order to make state remedies applicable. Since Congress' intent was considered ambiguous, courts have set the provision aside. See Wilson v. Transocean Airlines, note 3 supra; note, 28 So. CAL. L. REV. 78 (1954). The argument is equally applicable to workmen's compensation, with which the Jensen doctrine is directly concerned.

[8] This belief is dependent on the history of DHSA. In The Hamilton, 207 U.S. 398 (1907), it was held that a state could apply its wrongful death statute to deaths on the high seas where the vessel involved was owned by a citizen of the state. When it became apparent that the state remedies were neither uniform nor applicable to all cases, DHSA was enacted. For a discussion of the history of DHSA, see Magruder and Grout, "Wrongful Death Within the Admiralty Jurisdiction," 35 YALE L. J. 395 (1926); Hughes, "Death Actions in Admiralty," 31 YALE L. J. 115 (1921).

contrary position. The Supreme Court has held that the Federal Employers Liability Act,[9] which provides a remedy only where fault is shown, was intended to supersede state compensation statutes which do not require such showing.[10] The same view has likewise been recognized in regard to the Merchant Marine Act of 1920[11] (Jones Act), although the Supreme Court has not yet ruled on the question.[12] It would seem, however, that the history of DHSA is sufficiently different from these statutes to justify the holding in the principal case. With regard to FELA, it is the silence of Congress on the subject of workmen's compensation in both the FELA and DHSA which supplies the necessary distinction. FELA was passed in 1908, two years prior to enactment of the first major state workmen's compensation law.[13] At that time the intent to have FELA displace state negligence remedies was in effect the equivalent of an intent to make FELA the sole basis for relief. Congress spoke in terms of exclusiveness and complete uniformity without ever considering the effect on workmen's compensation. The Supreme Court seized on these statements in holding FELA the only basis for relief, there being nothing to show any intent to the contrary.[14] Workmen's compensation acts were superseded, therefore, because Congress failed to say they should not be. But by 1920, when DHSA was passed, workmen's compensation was becoming commonplace.[15] Under such circumstances the assumption from Congress' silence that it intended to displace the fast-growing compensation remedy appears much more dubious, for it is likely Congress would at least have debated the matter had it intended such an effect.[16] The Jones Act decisions may likewise be distinguished on the basis of legislative history. The Jones

9 35 Stat. 65 (1908), as amended, 45 U.S.C. (1952) §§51-60.

10 New York Central R. Co. v. Winfield, 244 U.S. 147 (1917).

11 38 Stat. 1185 (1915), as amended, 46 U.S.C. (1952) §688.

12 See Gahagan Construction Corp. v. Armao, (1st Cir. 1948) 165 F. (2d) 301, cert. den. 333 U.S. 876 (1948), note, 29 BOST. UNIV. L. REV. 116 (1949); Occidental Indemnity Co. v. Industrial Accident Commission, 24 Cal. (2d) 310, 149 P. (2d) 841 (1944). *Contra:* Maryland Casualty Co. v. Toups, (5th Cir. 1949) 172 F. (2d) 542, cert. den. 336 U.S. 967 (1949); Beadle v. Massachusetts Bonding & Ins. Co., (La. App. 1956) 87 S. (2d) 339, note, 31 TULANE L. REV. 655 (1957). See also Lindgren v. United States, 281 U.S. 38 at 47 (1930), containing often-cited dicta stating that the Jones Act supersedes all state laws on the subject.

13 New York passed the first major workmen's compensation statute in 1910. This was declared unconstitutional in 1911, but was reenacted in 1913 following the amending of the New York Constitution. 1 LARSON, WORKMEN'S COMPENSATION §5.20 (1952).

14 See New York Central R. Co. v. Winfield, note 10 supra, at 150.

15 By 1920 all but eight states had enacted compensation statutes. 1 LARSON, WORKMEN'S COMPENSATION §5.30 (1952).

16 This is particularly true in light of the fact Congress spent considerable time debating the effect of DHSA on state wrongful death acts with apparently no consideration given to compensation statutes. See 59 CONG. REC. 4482-4486 (1920).

Act was enacted in 1920, the same year in which DHSA was enacted and three years after FELA had been held to supersede workmen's compensation acts. Congress then incorporated FELA into the Jones Act, in effect manifesting an intention that the Jones Act should have the same effect. The courts so holding have therefore a much stronger basis for finding an intention to supersede than is present in regard to DHSA, and those holdings should not be regarded as applicable to the principal case. In the absence of more explicit proof that Congress intended DHSA to supersede the dissimilar and more certain workmen's compensation remedy, the assumption of such a purpose would be but doubtful judicial conjecture. The court in the principal case refuses justifiably to engage in such activity.

But while the court was justified in its finding, it need not follow that it was correct in holding that such a compensation act, though made exclusive by its language, abrogates DHSA. Congress might have meant DHSA and workmen's compensation to be concurrent remedies. The present decision leaves the applicability of DHSA, in areas where compensation acts are constitutionally applicable, to the discretion of the states. The court reaches this result by relying on Supreme Court decisions holding that state compensation acts abrogate general admiralty jurisdiction where the injury involved is a matter of local concern.[17] Yet these decisions in regard to the abrogation of general maritime law remedies came after DHSA was enacted in 1920. To assume from its silence that Congress intended to have DHSA displaced by state compensation statutes because the general maritime law was *later* held to be displaced by such statutes is unwarranted,[18] particularly where the practical effect is the suspension of a federal statute. There is, however, analogical authority in support of the court's holding to which it made no reference. Decisions holding that the Jones Act does not supersede state workmen's compensation acts have generally held that the compensation acts, if exclusive, do abrogate the Jones remedy.[19] While this may not be the better rule, the analogy would at least support the principal case, for on this question the histories of the Jones Act and DHSA are indistinguishable.

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[17] Millers' Indemnity Underwriters v. Braud, 270 U.S. 59 (1926); Grant Smith-Porter Ship Co. v. Rohde, 257 U.S. 469 (1922).

[18] Prior to 1920 at least one federal court had ruled that an "exclusive" state workmen's compensation act did not abrogate a seaman's remedy under the general maritime law. Riegel v. Higgins, (N.D. Cal. 1917) 241 F. 718.

[19] Woods v. Merrill-Stevens Dry Dock & Repair Co., (S.D. Fla. 1936) 14 F. Supp. 208; Fuentes v. Gulf Coast Dredging Co., (5th Cir. 1931) 54 F. (2d) 69. The court deciding the principal case has so held. Surgeon v. Alaska Packers Assn., (N.D. Cal. 1939) 26 F. Supp. 241.