

Mr.Shanmugam Rajasekar vs Owners And Parties Interested In The on 28 April, 2023

Author: P.Velmurugan

Bench: P.Velmurugan

C.S.No.89 of 2013 and c
and

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.04.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.S.No.89 of 2013
and
W.P.No.3568 of 2013
and

Application Nos.5717, 4014, 4545, 2899, 5716, 3820, 3584, 1723,
4205, 4207, 4213, 1085, 1713, 1715, 3821, 4015, 4210, 4211, 4220,
4219, 4204 and 4208 of 2013 and 93 of 2014

Mr.Shanmugam Rajasekar,
rep. by his Power Agent Mr.R.Vetrivel .. Plaintiff

Vs.

Owners and parties interested in the
Vessel M.T.PRATIBHA CAUVELRY,
presently berthed at the Port of Chennai
and is represented herein by its Master .. Defendant in

Plaint filed under Order XLII Rules 1, 2 and 3 of the
read with Order VII Rule 1 of the Code of Civil Procedure, praying
judgment and decree against the defendant:

(i) for a sum of Rs.3,59,000/- together with compensat
sufferings from the date of the plaint till date of realization or
Indian Rupees equivalent to the exchange rate prevailing on the dat
judgment whichever is higher and direct the owners of the defendant
effect payment till the last date of discharge.

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<https://www.mhc.tn.gov.in/judis>

C.S.No.89 of 2013 and
and

(ii) for arrest and sale of the defendant Vessel M.T.P in as is where is condition, presently in Indian Waters at Port of wherever available within the territorial waters of India.

(iii) for a direction to adjust the sale proceeds of t M.T.PRATIBHA CAUVERY against the suit claim, and

(iv) for costs of the suit.

For plaintiff : Mr.S.Vasudevan

For defendant: M/s.Shubharanjai Ananth

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M/s.Seaworld Shipping & Logistics Pvt. Ltd.,
"Rowther Chamber", 2nd Floor,
53/54, Rajaji Salai,
Chennai-600 001,
Represented by its Manager

.. Petitioner in W.P.N

Vs.

1. The Board of Trustees,
Port of Chennai, having its
Administrative Office at Rajaji Salai,
Chennia-600 001,
Represented by its Chairman.

2. The Deputy Conservator,
Chennai Port Trust,
Rajaji Salai,
Chennai-600 001.

.. Respondents in W.

Writ Petition filed under Article 226 of the Constitut
for issuance of a Writ of Certiorarified Mandamus to call for the r
respondents herein, culminating in the notice dated 05.02.2013 bear
Ref.No.S4/3077/2012/M issued by the second respondent, quash the sa

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<https://www.mhc.tn.gov.in/judis>

C.S.No.89 of 2013 and
and

to direct the respondents to initiate appropriate action for recove
amounts due to them, if any, towards berth hire charges or any othe
related charges in respect of M.T.Pratibha Cauvery or any other Ves
same ownership, only by invoking Section 64 of the Major Port Trust
against the aforesaid Vessel and/or against M/s.Pratibha Shipping C
Limited, without claiming or recovering such amounts from the petit

For writ petitioner : Mr.S.Raghunathan

For respondents : Mr.R.Karthikeyan

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COMMON JUDGMENT

Civil Suit No.89 of 2013 has been filed invoking the admiralty jurisdiction of this Court, seeking a judgment and decree against the defendant viz., Owners and parties interested in the Vessel M.T.PRATIBHA CAUVERY for recovery of a sum of Rs.3,59,000/- together with compensation for pain and sufferings. The suit is instituted under Order XLII of the Original Side Rules, which deals with the Admiralty Jurisdiction of this Court. The plaintiff in the suit is a crew member, who claims to have been appointed as a Second Cook in the ship in question.

2. The plaint has been filed stating as follows:

<https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications

(a) The plaintiff is a qualified sea-man having obtained Continuous Discharge Certificate (CDC) and STCW Certificate from the Government of India.

The plaintiff has been sailing on various trading Vessels for the past four years. He was appointed as Second Cook by the owners of the defendant-Vessel M.T.Pratibha Cauvery on 31.05.2012 at the Port of Haldia, India, on monthly salary of Rs.10,000/-. The contract was for a period of nine months, with an option to extend it for a further period of 15 days. The defendant-Vessel is more than 30 years old. The Vessel has to be periodically maintained to satisfy the requirements of various statutory authorities contemplated under the Merchant Shipping Act. The defendant-Vessel was carrying crude oil from the Port of Haldia and arrived at the Port of Chennai on 25.09.2012 with a complement of 37 crew on board the Vessel, which is a tanker Vessel. The Vessel is used mainly in coastal navigation for loading oil from various Ports in India and discharging the cargo at different Ports in India. The Vessel had completed discharging the Cargo at the Port of Chennai on 27.09.2012 itself.

(b) It is further stated in the plaint that the owners of the defendant- Vessel have not paid the salary to the plaintiff. It is the duty of the owners of the defendant-Vessel to maintain the Vessel in good order and condition so as to keep the Vessel in sea-worthy condition. The defendant-Vessel, though arrived at Chennai Port on 28.09.2012, ought to have sailed as early as on 29.09.2012 <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications itself, but it did not do so. The Vessel had not met the statutory requirements of the Mercantile Marine Department under the Merchant Shipping Act and was found to be un-seaworthy. The certificates including insurance, safety certificate for the equipments and the sea-worthiness certificate of the classification society, got expired and was therefore waiting at the outer anchorage of the Chennai Port for obtaining clearance.

(c) It is also stated in the plaint that the provisions, fresh water, etc., required on board the ship for the survival of the crew, got depleted and on information to the Chennai Port authorities, the defendant-Vessel was shifted to inner anchorage of the Chennai Port and only after two days, i.e. on 10.10.2012, the Vessel received the provisions and other necessities on board for survival of the crew and for maintenance of the Vessel and the Vessel was waiting for further instructions from the owners of the defendant-Vessel to proceed for further voyage. In the meantime, the marine diesel oil supplied got depleted and the Master and the other crew requested the owners of the defendant-Vessel to effect supplies on 18.10.2012. There was no response from the owners and several e-mails starting from 18.10.2012 till 28.10.2012 were sent to the owners of the Vessel, inspite of which, there was no response from the owners of the Vessel. This led to an emergency situation being created by the owners of the defendant-Vessel, forcing the crew to switch-off the Generator to save <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications fuel to meet out any emergency requirements.

(d) It is further stated in the plaint that all the crew do not have access to the certificates of the ship, which are always in safe custody of the Master. On expiry of the above said certificates, it is the duty of the owners of the Vessel to renew the same by filing necessary application with the concerned authorities and get them validated for smooth sailing of the Vessel and also to maintain sea- worthy condition. As the owners of the Vessel had not taken steps to renew the said certificates in time, the Vessel was lying idle without proper attention for more than 45 days, i.e. above 1-1/2 months.

(e) There was forceful employment that is being thrust on the plaintiff and the other sea-men without even paying the accrued/arrears of wages. The crew had no option but to remain on board the Vessel which was anchored at the outer anchorage of the Chennai Port. There was a cyclonic storm on 27.10.2012, named as "Neelam" cyclone, which set in due to depression about 800 kms. of Madras Coast. Had the Vessel been in good condition with all valid navigational certificates for sailing the Vessel and sufficient Marine Diesel Oil (MDO) was also available to the plaintiff, the plaintiff and other crew would have proceeded to the open Sea to avoid the cyclone "Neelam", which had struck the Vessel and it drifted towards the shore. Due to improper instructions of the Master, the crew jumped out with life-jacket to board the life boat to reach the <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications shore to save their lives, one of whom is the plaintiff. The life boat capsized because of which many crew fell into the Sea and some of whom even drowned. Fortunately, the plaintiff was rescued by the Coast Guard only on 01.11.2012. All the crew had entrusted their necessary qualification certificates, which they were carrying such as Passport, Continuous Discharge Certificate and other documents to the Master, who in turn handed over the same to the Junior Officer in the life boat and all these certificates got washed away by the high tides, leaving the plaintiff and the other crew in lurch.

(f) In the above circumstances, it is the case of the plaintiff as is evident from the plaint that, had the owners of the defendant-Vessel acted diligently, the problems detailed above would have been solved on board the Vessel by the crew. It is very pathetic that the plaintiff was a witness to some of his colleagues being drowned in the sea and some of them escaped. Only on 01.11.2012, the plaintiff and other crew were rescued by the Coast Guards. As the certificates as stated above, have been washed away in the sea tides, it was very difficult for the persons affected by the sea including the

plaintiff to secure a job in any ship for another 5/6 months and they could not eke out their livelihood, as the plaintiff's family was facing financial crisis due to want of wages. The accident had occurred due to negligence of the owners of the defendant-Vessel. It is the grievance of the plaintiff that there was no proper response from the owners of <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications the Vessel to take to the crew and help them, as the plaintiff was not paid till the date of cyclone. The owners of the defendant/Vessel are liable to pay salary to the plaintiff, apart from the other crew, who were on board the ship. The plaintiff has got maritime lien over the defendant-Vessel for arrears of salary due and payable to the owners of the defendant-Vessel. A batch of Writ Petitions were filed by the families of the deceased crew members and so also, the plaintiff and some crew who survived, filed similar Writ Petitions seeking payment of salary and compensation. The details of the claim filed by the crew, who survived, are as follows:

Sl.No. Name of the crew Writ Petition Claim amount Number 1 P.G.Gopikrishnan 31801 of 2012 68,10,000 2 K.Narendra Kumar 31941 of 2012 68,12,000 3 Shanmuga Rajasekar (plaintiff) 31942 of 2012 51,09,000 4 Jiwan Prakash 31943 of 2012 95,20,000 5 Somireddy Kotilingeswara 31944 of 2012 51,58,500 Reddy 6 L.Bhuvanesh 31945 of 2012 52,67,064 7 Jayant P.Narkar 31946 of 2012 54,46,666 8 Joy Herman Corda 31947 of 2012 53,33,333

(g) This Court, by common order dated 21.12.2012 in the abovesaid Writ Petitions, directed the sixth respondent in the Writ Petitions, who is the owner of the defendant-Vessel, to pay arrears of salary within a period of four weeks from <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications the date of receipt of a copy of the common order. This Court further directed that the owners of the defendant-Vessel are bound to pay compensation to be determined by appropriate forum. In spite of the said common order of this Court, the owners of the defendant-Vessel had not paid the amounts due to the plaintiff and other crew. The rest of the crew who also have a claim for wages against the owners of the defendant-Vessel, have chosen to implead themselves as parties by filing suitable intervention application at the appropriate time. This Court also directed the owners of the defendant-Vessel to pay the arrears of salary due as on October 2012 within four weeks from the date of receipt of a copy of the order.

(h) It is the further case of the plaintiff that the crew are entitled for salary up to the last date of discharge. The plaintiff and other crew were discharged only on 24.12.2012 and therefore, the total salary payable to the plaintiff at the rate of Rs.10,000/- per month, works out to Rs.69,000/-, which was not paid. Due to negligence on the part of the owners of the defendant- Vessel, the Vessel got struck in the "Neelam" cyclone, which had caused huge damage, mental agony and shock to the plaintiff and other crew who were on board the ship. It is the averment of the plaintiff that, under the provisions of the Merchant Shipping Act, the plaintiff is entitled for three months salary as compensation towards improper discharge. The plaintiff claims that he is entitled <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications for the following amounts:

Sl.No. Head under which the claim is made by the Amount claimed plaintiff (in Rs.) 1
Salary from 31.05.2012 till 24.11.2012 (7 months) 69,000 2 3 months compensation
for improper 30,000 discharge 3 Loss of employment for 6 months 60,000 4
Compensation for pain and sufferings 2,00,000 Total amount due and payable by the
owners 3,59,000 of the defendant

(i) As the owners of the Vessel had not paid the amount as sought for by the plaintiff, the plaintiff is constrained to file the present suit for enforcing the maritime lien over the defendant-Vessel, which was at the Port of Chennai at the relevant point of time after cyclonic effect.

(j) The plaintiff further states that the owners of the defendant-Vessel are also in great financial crisis. All the Vessels belonging to them were either arrested or detained by authorities. The plaintiff further states that the owners of the Vessel have not complied with the order passed by this Court in W.P.No.31942 of 2012 etc., batch cases. Hence, the present suit is filed for the relief stated supra and that the cause of action to file the suit arose on 24.05.2012 itself when the plaintiff and the owners of the defendant-Vessel signed the agreement for employment on 31.05.2012, when the plaintiff boarded <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications the defendant-Vessel at the Port of Haldia on 28.09.2012, when the defendant-Vessel arrived at the Port of Chennai for discharging the oil on various dates when the owners of the defendant-Vessel failed to provide necessities for survival of the crew and also the Vessel in the month of October and when the owners of the defendant-Vessel paid advance of Rs.1,000/- towards allotment money on 31.10.2012, when the defendant-Vessel was struck in "Neelam" cyclone on 01.11.2012 when many of the crew on board the ship died while trying to rescue themselves due to the improper command of the captain of the defendant-Vessel in the month of November 2012, when the plaintiff approached this Court on the Writ Jurisdiction in W.P.No.31942 of 2012 on 24.12.2012, when this Court directed the defendant, who is the fourth respondent in the Writ Petition to pay the admitted arrears of wages and also directed them to pay compensation as may be decided by the competent forum and also subsequently.

(k) Hence, the plaintiff filed the present suit for the following reliefs:

(i) for recovery of a sum of Rs.3,59,000/- together with compensation for pain and sufferings from the date of the plaint till the date of realisation or such higher sum of Indian Rupees equivalent to the exchange rate prevailing on the date of the judgment, whichever is higher and direct the owners of the defendant-Vessel to effect payment till the last date of discharge;

<https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications

(ii) for arrest and sale of the defendant-Vessel M.T.Pratibha Cauvery in 'as is where is' condition in Indian Waters at Port of Chennai or wherever available within the territorial waters of India.

(iii) for a direction to adjust the sale proceeds of the defendant-Vessel against the suit claim, and

(iv) for costs of the suit.

3. The defendant (Vessel owned by Pratibha Shipping Company Limited) filed written statement averring as follows:

(a) The defendant is a coastal run Vessel M.T. Pratibha Cauvery, registered in India and carrying an Indian Flag represented by the HR Manager.

The Vessel is owned by the said Company, incorporated under the Companies Act, 1956 and having Registered Office at No.1201/02, Arcadia Building, 12th Floor, NCPA Road, Nariman Point, Mumbai-400 021.

(b) The claim for compensation and explanation in support thereof are untenable. The instant suit by the crew for wages arises out of the contract of employment. The wages due to the crew on board the Vessel, were cleared up to June 2012. Due to non-receipt of charter hire from the charterers, the owners, were facing acute cash flow problems, because of which, payments to the crew <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications could not be effected on time. Since the annual charter contracts with the charterers were coming to an end in July/August 2012, the charterers were starting to with-hold large amounts of the charter hire to adjust the cost of bunkers remaining on board at the time of re-delivery. The charterers had called for fresh tender commencing from September 2012, which was scrapped for the reasons unknown. In the absence of timely finalisation of next charter by the Oil Industries, the Vessels continued to be idle after their respective re-delivery, thereby resulting in heavy loss of charter hire.

(c) Masters and crew of all the Vessel were explained this problem at the time of joining, as also on phone, with the Master and appeal was made to all of them to bear with the owners for some time and that assurances were given that all the dues would be cleared early and crew member should not have any apprehension in that regard. The defendant is ready and willing to settle the entire dues in the nature of arrears of wages and salary payable to the crew on determination of actual dues. However, the claim for compensation for any damage or loss is the making of the plaintiff himself and cannot therefore be countenanced. A claim for compensation unsupported by proof of actual loss and how such loss had been directly occasioned by the defendant, is untenable and the compensation is not axiomatic to unpaid wages.

(d) The relationship between the crew and the ship owners arises out of <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications the Articles of Agreement (employment contract). The Articles of Agreement govern the entire scheme of claims/grievances inter-se the ship owners and the crew. The wages and other terms and conditions of service of sea-farers (such as hours of work, over-time, leave, holidays, leave travel, medical benefits, compensation for death or disability, procedure for settlement of grievances or disputes, etc.) are settled by negotiations between ship owners and sea-farers at bilateral level. In India, there are about five Unions which represent the interest of sea-farers including the Maritime Union of India (MUI). The aims and objects of these Unions are mainly to improve the working and living conditions of sea-farers, both ashore and on board and generally to look after the interests of sea-

farers. These Unions are stable organisations and are representatives of the large majority of Indian sea-farers. The Government of India has recognised these Unions, which have functioned effectively in collective bargaining and as a result, the sea-farers have had their service conditions bettered in a continuous process. Generally, grievances and disputes are settled by negotiations between the Indian National Shipowners Association and un-resolved grievances and disputes are referred for Arbitration.

(e) In the case of Officers, negotiations take place between the Maritime Union of India (MUI) and a negotiating Committee appointed by the Indian National Ship Owners' Association (INSA). The ship-owners then enter into <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications individual Agreements with the Union on the basis of the agreement signed by the negotiating Committee of the Association. In the case of Sea-men serving on foreign going ships, the terms and conditions of service are determined by the National Maritime Board, which is a bi-partite body of ship-owners (Indian as well as foreign ship-owners employing Indian sea-men on Indian Articles of Agreement).

(f) In the case of sea-men, individual Agreements are not entered into between ship-owners and the Union, except on local matters. In the case of sea-men serving on home trade ships, negotiations are conducted between the negotiating Committee of INSA and the Unions representing the home-trade sea-men. As the wages and conditions of service are negotiated and revised from time to time at bilateral level, a Clause is incorporated in the Articles of Agreement to the effect that the terms of the NMB Agreement in regard to wages and conditions of service are deemed to be embodied in the former. The terms of the NMB agreement are given bilateral contractual effect. Therefore, the claim of the crew for compensation can be only in terms of the Articles of Agreement assuming without admitting that they are entitled to any compensation firstly. The crew has not pleaded any basis for the claim. The claim is too fanciful and is beyond the accepted contract between the crew and the ship-owners. The claim appears to be an instigated claim of speculative <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications nature.

(g) On 28.09.2012, the Vessel had arrived at Chennai Port with Cargo from Haldiawith charter for IOCL with valid clearance certificate and a satisfactory Flag State Report in respect of various surveys concerning the Vessel. Subsequently, she had discharged all the Cargo. The Vessel did not set sail for Mumbai as alleged. The Vessel was stationed at the outer anchorage. The owners were in talks with dock-yards, because the Vessel required dry docking facility. The Vessel came back on 08.10.2012 for availing dry docking facilities, while her owners were arranging to fix the same, and she also awaited re-validation of her class certificates and the Class surveyor to board. On 11.10.2012, the Vessel was brought to the inner anchorage for supply of provisions, fresh water and fuel. The certificates of the Vessel had expired on 01.10.2012. The defendant had initiated the process for re-validation of certificates as early as in September 2012. Incidentally, she also came back on 11.10.2012 for provision and bunkers.

(h) The allegation of the plaintiff that the bunker and MGO had depleted, is denied by the defendant. As per the Standard Operating Manual provided to the Master of any Vessel, any requisition for bunkers have to be sent to the defendant by telex, e-mail or fax to the relevant

business Unit under copy to the Fleet Operations Department and that such request for bunker is to be made at <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications least 7 working days in advance. This excludes Saturday, Sunday and public Holidays. Due to the critical nature of the requirement, the Master is well advised to place search requests as soon as possible. On 22.10.2012, the Master of the Vessel placed request for bunker delivery, following which, 24.10.2012 was a Holiday on account of Vijaya Dasami, 26.10.2012 was also Holiday (Bakrid) and 27.10.2012 and 28.10.2012 were not working days (Saturday and Sunday). On 30.10.2012, which was the fourth effective working day and the bunkers were arranged and ready, but could not be delivered to the Vessel at anchorage due to bad weather conditions. The requisition of Master for bunker, followed by the request from the defendant to the Charterer (IOCL) for supply of bunker against adjustable outstanding and the Bunker although available, could not be supplied readily only due to adverse weather. There were enough bunkers on board to run aux engine for further four days (excluding unpumpable) and main engines. It is false on the part of the plaintiff to state that the owners of the Vessel created an emergency situation.

(i) The owners had taken appropriate steps to renew the certificates of the Vessel within the time stipulated therefor. At the time of the natural occurrence--Cyclone "Neelam", the Vessel had a valid P & I Insurance cover, gas free certificate, etc. The Vessel was awaiting re-validation of some of her certificates. The owners were in the process of fixing the dry-docking service for <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications the Vessel. Ordinarily, while Vessels await re-validation of certificates, and/or awaiting dry-docking, they remain within the inner anchorage of the Port of call. The allegation of the plaintiff that the Vessel was remaining idle and unattended, is denied by the defendant. The expiry of the Certificates of the Vessel has a bearing only on the trading operations of the Vessel and would not per-se render the Vessel itself "unseaworthy". The Engineering Circular, dated 15.02.2013 of the Director General of Shipping, lays down the guidelines for carrying out Annual/Intermediate/Renewal Surveys outside window period. As per the said Circular, if the Vessel's dry-docking survey due date/extension expires at sea and the Vessel is under-way directly to the dry-docking facility, no special permission is required from the Directors to commence the dry- docking survey.

(j) The defendant denies that the crew was forced to work. The plaintiff has not filed a statement of wages duly certified by the Master of the Vessel on the exactness of the salaries payable to them as per the Merchant Shipping Act, 1958. The claim is not as per the Articles of Agreement and cannot be countenanced.

(k) On 31.10.2012, the Port authorities had instructed all the Vessels within the limit of Chennai Port to go into the outer anchorage in the face of the approaching cyclone "Neelam". The boiler was wantonly put-off after receiving <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications bad weather forecast. The standard practice is that when there is cyclonic warning, the Vessel must keep boiler and main engine in ready condition to sail out to sea at short notice if need arises. As soon as the warning was received, all the Vessels in the Port immediately went out to sea, except Pratibha Cauvery for the reasons known only to the Master, who was acting contrary to the interest of the Vessel and the ship-owners, appear to have provided false information to the owners, Port control as well as to the Agent.

(l) While so, due to adverse weather conditions, the Vessel began drifting towards the shore. The depth of water at the ground position was about 6.2 mts. at that point of time. Therefore, the Vessel could not have sunk at all, since the breadth of the Vessel itself was more than 25 mts. The Vessel is so designed that even if two compartments are flooded during fully loaded condition, the Vessel could not have sunk. The Vessel was in ballast condition and therefore, being a double hull tanker, water could not have seeped into the cargo tanks. Due to heavy tide, it was only natural that the Vessel had listed 4 to 6 deg towards sea side and the subsequent listing to the sea side was only due to falling tide on grounding. There was no risk of breaking of the Vessel, nor its sinking. This is a fact known to the Master of the Vessel and the crew.

(m) It was a deliberate act to have lowered the life boat with junior most crew members, without any Deck Officer, when the Vessel was in the eye of <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications cyclone. There was no necessity whatsoever for a panic. It is common knowledge that in a cyclonic condition, a grounded ship is safe, especially when the Vessel is grounded on the soft, muddy and sandy sea bed. Often, loaded tankers get grounded at various places like Kandla and Chittagong. As per the standard safety instructions issued to the Master and Crew, the life boat is to be lowered only in the event of failure or non-operation of the engines. Such an emergency had not befallen, nor the plaintiff has so claimed to justify the act of lowering the life boat. The crew left a safe haven like the Vessel for no plausible reason. After certain distress message to all concerned authorities including the Coast Guard and Port control, the crew ought to have awaited for rescue operations, as the Port control had advised that due to cyclonic weather conditions, they were unable to provide any assistance. There was absolutely no risk to either explosion, shipping wreckage, nor sinking of the Vessel. Cyclone is not a distress situation. The decision to lower the life boat and abandon the Vessel, appears to have been taken for some motive other than safety.

(n) It is further stated by the defendant in the written statement that of 22 members who had lowered the life boat and dis-embarked, only 6 sailors lost their lives. 15 members who remained on board the Vessel were successfully rescued the next morning including the Master of the Vessel who had purportedly issued the direction to lower the life-boat. An unlawful direction of <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications the Master endangering the life of the crew is not an act within the scope of authority granted by the owners to the Master. An act beyond the scope of employment of the Master does not bind the ship-owner. The crew has chosen to pass on the blame for an unlawful attempt to abandon the Vessel on to the Master.

(o) The defendant denies the version of the plaintiff that the life-boat was not in working condition. Only some days prior to the incident, a mock-drill exercise had also been undertaken in respect of the life-boat. A deceased crew member, by name Anand Mohandoss whose kin is a claimant before this Court, had absented himself for the life boat drill.

(p) The owners had acted diligently and they took several steps before and after the incident. The owners made several attempts to organise the bunker supply even on 29.10.2012. However, the same could not be supplied at outer anchorage due to very bad weather. The claim of compensation

for loss of lives, would only lie, if it was caused by any act of commission/omission directly attributable to the defendant. The defendant has not committed any act or omitted any act that would be attributable to the decision of the crew members to lower the life-boat in such inclement weather. The very fact that the remainder of the crew who remained in the Vessel, dis-embarked safely the following morning, which shows that the decision to lower the life-boat was not <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications due to any causative factor attributable to the Vessel or the defendant. The capsizing of the life-boat due to cyclone "Neelam" which is an Act of God, cannot be the basis for compensation against the defendant. In view of the absence of a causative factor in the Vessel attributable to the decision of the crew to lower the life-boat, the case of the plaintiff is clearly one of Volenti-Non-Fit-Injuria.

(q) The employment of sea-man is naturally subject to the inherent perils of the sea. As aforesaid, the INSA/NMB and the MUI have laid down standard terms of the contract governing engagement of different cadres of sea-men. The sea-farers and ship-owners, after due deliberations and assurance of protection of their respective interest and out of their own volition, entered into a contractual set-up to govern any/all liabilities in the event of death/discharge and retirement. This has necessitated, so that in the event of death/discharge/retirement, the next of kin of the sea-farers do not have to run from pillar to post or litigate to receive their monies. The standard employment contracts also ensure that the ship owners are not exposed to exorbitant claims. Only after the sea-farers agreed and are bound by the terms of the contract, does their employment with the defendant commence at all. Hence, if at all any compensation/liability arises on account of loss, it will necessarily have to be in terms of the contract between NMB and MUI. At page No.3 of the said contract, the parties have specifically agreed that 'service terms and conditions are as per <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications NMB agreement in force'. The plaintiff and other crew want to benefit from a tragedy. The claim for compensation for mental agony/shock is untenable. The owners vehemently deny that they did not even come personally to talk to the crew/console them and in fact, the owners even tendered money in cash to the families of the deceased for immediate purpose. The death compensation is specifically excluded in case of the sea-man wilfully causing his own death.

(r) As for the maritime lien of the crew, the same is next only to the maritime lien of the salvors--Smit & Co., which has carried out extensive salvage operations to save the Vessel in terms of an LOF that was executed on 31.10.2012 itself. The salvage operations of Smit India Co. were of great significance in preserving life also; since the Vessel had drifted from the Elliots Beach to near the Foreshore Estate in Chennai. The said Foreshore Estate houses several families of fishermen very near the coast and therefore, the salvage operations of Smit India Co. Pvt. Ltd. were vital. It is only against the sale proceeds of the salvaged Vessel, all claimants before this Court have raised their claim.

(s) The Vessel was berthed at the Port of Chennai as per the order dated 21.12.2012 passed in W.P.Nos.22948, 30197, 30900, 30991 to 30993, 31801, 31941 to 31947 of 2012. The Vessel was detained and her release was made subject to deposit of a sum of Rs.5 crores or a Bank Guarantee for a period of <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications three years or immovable property as security worth Rs.5 crores. Aggrieved by the said direction and

inter-alia, the defendant preferred Writ Appeal Nos.738 to 751 of 2012. By order dated 09.04.2013, this Court, in the said Writ Appeals granted liberty to the defendant to seek any direction against the said order of detention. By order dated 18.04.2013 in Application No.1086 of 2013, in the instant suit, this Court ordered sale of the Vessel, subject only to the terms and conditions laid down in the said order dated 18.04.2013.

(t) As far as the claim by the remaining members of the crew who have intervened in the suit claiming monetary reliefs against the defendant, is concerned, the same is untenable. The application by the intervenor can only bring on record the claim of the intervenor, but cannot fructify into a relief in the absence of a regular suit. The intervenors ought to pay the appropriate Court fee and only then, the claim of such intervenors can even be adjudicated. The claim by the crew for compensation for improper discharge, is denied. It is incorrect to state that the claim is not as per the contract between the parties and the owners had even arranged for the signing off of the crew including some of the claimants before this Court before the incident.

(u) The claim of the intervenors ought to be adjudicated only upon payment of appropriate Court fee. Any claim of money can only be by way of a regular suit and upon payment of appropriate Court fee. The intervenors cannot <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications evade payment of Court fee and seek relief in the guise of an intervention application. The intervenors ought to institute an appropriate suit and seek a decree upon payment of necessary Court fee.

(v) The intervenor in Application No.1084 to 1086 of 2013 is M/s.Seaworld Shipping and Logistics Private Limited. The said intervenor was the local agent of the owners in respect of the defendant-Vessel. The claim of the intervenor is denied. As an agent, the intervenor failed and neglected to act diligently and are not entitled to the monies claimed. The allegation of unseaworthiness by the Agent is reckless and the allegations relating to sale of another Vessel of the defendant in C.S.No.696 of 2012 are inappropriate. The said suit was an action in-rem.

(w) The claim by the surviving crew are in Application Nos.850 to 852 of 2013 and is denied mutatis-mutandis in terms of the above averments made in the written statement.

(x) The claim by the kin of the deceased crew are in Application Nos.851 of 2013 and 1672 to 1675 of 2013 and 1711 to 1724 of 2013. The said claim of the intervenors is denied mutatis-mutandis in terms of the averments made in the written statement.

(y) The capsizing of the life-boat due to cyclone "Neelam" cannot be the basis for compensation against the defendant, since the same is an Act of God <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications (Vis-Major). Therefore, in view of the absence of a causative factor in the Vessel attributable to the decision of the deceased crew/kin of the intervenors to lower the life-boat, is clearly one of Volenti-non-fit-injuria. The owners deny that there was no food/water/fuel as alleged or at all. The said intervenors have not produced even a Legal Heirship Certificate to lend any credibility to the claim and the claim ought to be dismissed on this score itself. The allegations regarding lack of fuel, water, food, medicine, etc., are denied by the defendant.

The allegations relating to starvation have been created for the purpose of the case and are an after-thought. Any computation of compensation assuming there is a liability at all to the said intervenors, has to be on the following basis:

(i) Compensation fixed as per the agreement between NMB and MUI.

(ii) Due credit of Rs.87,45,300/- already deposited by the defendant including the sum of Rs.30 lakhs already received by the applicants.

(z) The purported computation worked out by the intervenors is fanciful, exaggerated, speculative and impossible. The same is baseless and unfounded in law. The owners are not liable to pay the extremely imaginative claim of the intervenors. The claim for compensation has to be proved. The owners dispute both the quantum as well as the entitlement to compensation.

(aa) The Chennai Port Trust is the applicant/intervenor in Application <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications Nos.2899 to 2891 of 2013. This claim of the Chennai Port Trust is inflated and misconceived. From the manual bill appended to the application, it emerges that the applicant has reckoned the Vessel as a foreign going Vessel and on that basis, the charges were levied and under the column 'Tariff', it is mentioned 0.2047. As per the Tariff Schedule of the applicant, the said 0.2047 is in respect of a foreign-going Vessel, whereas the Vessel-MT Pratibha Cauvery was a coastal-run Vessel and had navigated only in the territorial waters of India.

Therefore, the said intervenor has wrongly reckoned charges in respect of the Vessel under the head 'foreign going vessel'.

(ab) The owners do not admit the claim of the Shipping Corporation of India.

Accordingly, for the reasons stated above, the defendant prays to dismiss the suit.

4. In the written statement filed by M/s.Seaworld Shipping and Logistics Private Limited (intervenor in Application No.1084 of 2013), it is stated as follows:

(a) The intervenor (Seaworld Shipping and Logistics Pvt. Ltd.) is a Company registered under the Companies Act and had acted as agents of Pratibha Shipping Company Limited being the owners of the Vessel M.T. Pratibha <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications Cauvery and certain other Vessels since 2008 and are rendering services like arranging crew sign on and sign off; arranging for crew's medical attendance as and when required; to make transport arrangements for crew to travel to/from Airport and hotel; to arrange hotel accommodation for crew; to arrange for customs clearance of spares and delivering cash requirements to the Master from Pratibha

Shipping Company Limited.

(b) While rendering such services, they had incurred certain expenditure on behalf of and on specific instructions from the owner/Master of the said Vessel. They defaulted in payment of the amounts due to the intervenor. On account of the owner's alleged failure to maintain their ships and to provide in time certain necessities for the maintenance of such Vessels and the crew on board, the same had resulted in the Vessel running aground on 31.10.2012, due to which, criminal prosecution was launched not only against the Directors and certain Executives of the owner, but also against certain employees of the intervenor. On account of the default committed by the owners with regard to the payments due to the intervenor, the intervenor ceased to be their agents.

Such fact was communicated to all concerned including the statutory authorities in November 2012.

(c) Application No.1086 of 2013 has been ordered by this Court on 05.03.2013 and consequently, the intervenor has been permitted to intervene in <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications the present suit and to file the written statement. The relief sought for in Application No.1086 of 2013 has been granted by this Court, inasmuch as the sale of the Vessel has been ordered by this Court, subject to certain terms and conditions, and a sum of Rs.19 crores had been deposited in this Court, pursuant to the order of this Court in A.Nos.1086 of 2013 and 1529 of 2013. The sale proceeds are lying in Court deposit. Application No.1086 of 2013 filed by the intervenor to declare and determine the amount due and payable to the intervenor is pending along with various other similar applications, which are decided infra in this suit.

(d) Inasmuch as the intervenor has been permitted to intervene in the present suit, pursuant to the order dated 05.03.2013 and since the present suit is an Admiralty action in-rem, each of the claimants including the plaintiff, the intervenor and other intervenors are not only entitled to contest the claims of each other, but also the claims of various other creditors/claimants. Such a course of action is permissible under the Shipping and Admiralty Law, and as the claimants are permitted to intervene and establish their claims, this Court proceeded to determine the priorities amongst various claims. Such of those claimants whose claims are in the nature of maritime liens, would have priority over the claims which are in the nature of maritime claims. Each of the claimants has to not only establish their claims, but also to contest the claims of the other <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications creditors.

(e) The intervenor does not admit that the plaintiff was appointed as Second Cook by the owners of the defendant-Vessel with effect from 31.05.2012 on a monthly salary of Rs.10,000/- and that the contract was for a period of 9 months with an option to extend it for a further period of 15 days. The plaintiff has to establish his claim in accordance with law, and unless it is done, he would not be entitled to a decree as claimed for. The said Vessel was called at Chennai on 25.09.2012 for the purpose of discharging certain cargo, and it is not clear as to what are the circumstances under which the said Vessel ran aground. Six crew members, with a view to save themselves, had jumped into a life-boat and could not be saved. The death of the six crews was only on account of an

imprudent decision taken by the Master of the Vessel and six crew members who were drowned, could not be rescued.

(f) Even assuming without admitting that the plaintiff was employed in the defendant-Vessel, only his claim for wages/salary would fall within the purview of a maritime lien and the plaintiff cannot claim any priority in respect of compensation either for improper discharge or for loss of employment or for pain and suffering. The claim of the plaintiff has not been substantiated and it is arbitrary and exaggerated. The plaintiff is called upon not only to establish the quantum of such claim, but also the fact that the entire claim in the suit and in <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications particular, the claim for compensation would fall within the purview of maritime lien so as to claim priority over other claimants. As per Admiralty Law and Practice, the claim for wages alone would be in the nature of maritime lien and not the claim for compensation under various heads of account as contended by the plaintiff.

(g) The allegation of the plaintiff that the owners of the Vessel had failed to maintain the Vessel in a fit and sea-worthy condition or that they had failed to provide necessary fuel, bunkers, provisions, food, etc., is concerned, they are all matters which are within the knowledge of the crew members and the owners of the vessel. As per the Merchant Shipping Act, it is entirely the responsibility of the owners of the Vessel to maintain the Vessel in a sea-worthy condition and to supply the necessities to the crew members.

(h) It is for the respective crew to not only establish their claims in accordance with law, but also convince this Court that their claims for compensation would also have priority like their claim for wages. The allegations regarding the non-maintenance of the Vessel or regarding the non-supply of food, provisions, etc. are disputed by the intervenor. The entitlement of the plaintiff to a sum of Rs.3,59,000/- or any other sum, is disputed by the intervenor. The allegations contained in the affidavit of R.Vetrivel that seven crew members/intervenors are entitled to a sum of Rs.4,94,56,563/- as set out in <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications paragraph 10 or to a sum of Rs.1,46,40,834/- as set out in the affidavit filed in support of the applications for intervention, are denied. Mr.P.G.Gopalakrishnan and six other intervenors are not entitled to claim compensation either under the provisions of the Merchant Shipping Act or towards the loss of income, because of the Certificates that were allegedly lost or towards mental agony.

(i) All the said crew members including the plaintiff in the suit, are unduly taking advantage of the fact that the said Vessel ran aground and claiming as though the certificates are lost. Even assuming without admitting that the documents were lost on board, they still have to establish and substantiate their claims in accordance with the provisions contained in the Indian Evidence Act.

(j) All the crew members are only entitled to claim the arrears of salary, if any and not claim huge amounts of compensation. Only the claims for wages/salary which are substantiated, would rank in priority as a maritime lien and not the rest of the fanciful claims. The plaintiff and the other intervenors are not entitled to claim the amounts claimed by them in the present proceedings. Thus, the intervenor-Company (Seaworld Shipping and Logistics Pvt. Ltd.) prayed to dismiss the suit.

5. From the facts of the case enlightened above, the following are forthcoming:

<https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications The Defendant Vessel was used as Cargo and it was taking crude oil. The Vessel arrived in Chennai on 25.09.2012 with 37 employees on board and the Vessel ought to have sailed to the next port of call for trading purposes and in fact, the Vessel proceeded to Mumbai from Chennai, however, the Vessel was directed to go back to Chennai Port. The crew members then only came to know that the Vessel was not sea-worthy and it did not have valid certificates as required under the provisions of the Merchant Shipping Act. After performing a part of voyage to Mumbai, the Vessel returned to Chennai and was kept in outer anchorage of the Chennai Port from 08.10.2012 to 31.10.2012. The Vessel was not in good condition. There was no required fuel; salary was not paid to the crew members; there was no proper food and water for crew members. One of the intervenor's son Anand Mohandoss and other crew members contacted the Chennai Port Trust Authorities and their company stating that the Vessel was kept in outer anchorage without any proper food, water, medicine and other needed amenities for the crew members and the salary was also not paid to them. But there was no response from the authorities concerned.

6. In the meantime, the Vessel was caught in the eye of cyclonic storm named "Neelam" around 27.10.2012, and the Vessel drifted towards the shore. Several crew members had jumped into the sea. The plaintiff, who was among <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications the said crew members, was rescued on 01.11.2012 by the Indian Coast Guard. The plaintiff in this Suit is a crew-man in the said Vessel and he has laid this suit claiming that he has not been paid wages.

7. Earlier, it is seen from the records that a Writ Petition in W.P.No.31942 of 2012 was filed by the plaintiff in C.S.No.89 of 2013, seeking an enquiry into the incident in respect of the Vessel M.T.PRATIBHA CAUVERY and to take appropriate action against the owner of the said Vessel. There were also other Writ Petitions filed by various employees of the Vessel. An interim order came to be passed on 28.11.2012, wherein, the undertaking of the owner of the Vessel to the effect that the company would deposit Rs.30,00,000/- by 05.12.2012 was recorded by this Court.

8. On 21.12.2012, this Court had heard almost all the parties interested and after considering the entire factual aspects, had directed the owner of the Vessel, viz., Pratibha Shipping Company Ltd., Mumbai to pay the admitted sum of Rs.87,45,300/- as interim measure to the legal heirs of the deceased crew members. A direction was also issued for apportionment of money. The Registrar General of this Court was directed to disburse the amount to the legal heirs of the deceased on such deposit.

<https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications

9. Further direction was also issued to the owner of the ship viz., Pratibha Shipping Company Ltd., Mumbai to deposit a further sum of Rs.5,00,00,000/- or provide a Bank Guarantee for the said

amount for a period of three years or furnish immovable property as security to the satisfaction of the Registrar General before moving the Vessel from the territorial jurisdiction of this Court. The Company was further directed to calculate the admitted arrears of the salary payable to the petitioners in W.P.Nos.31801 and 31941 to 31947 of 2012 and to pay the same within a period of four weeks from the date of receipt of a copy of the order.

10. Aggrieved by the same, the owner of the Vessel had filed the appeals in W.A.Nos.738 to 751 of 2013, challenging the order dated 21.12.2012. A Division Bench of this Court admitted the appeals on condition that the balance amount of Rs.57,00,000/- is to be deposited as per the direction of the learned Single Judge in paragraph 35(a) of the order dated 21.12.2012 and the matter was adjourned to 17.04.2013 for further arguments.

11. In the interregnum, the present suit came to be filed and since the suit was filed under Order XLII CPC, in-rem, under the Admiralty Jurisdiction of <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications this Court, several persons have filed their claims before this Court. This Court, by order dated 18.04.2013, directed sale of the Vessel M.T.Pratibha Cauvery which was berthed within the jurisdiction of this Court. Pursuant to the said direction, the Vessel was sold for a total consideration of Rs.15,64,80,000/- and the same was in deposit. During the course of time, several claim applications have been filed by various claimants who became secured creditors after the arrest of the Vessel.

12. Pending claim applications, it is seen that winding up proceedings were initiated against the owner of the Vessel, i.e. M/s.Pratibha Shipping Company Ltd., in the Bombay High Court in Company Petition No.128 of 2013 and a provisional Liquidator came to be appointed on 28.07.2014 and by order dated 21.08.2014, the claim of the Hindustan Petroleum Co., Ltd., was directed to be adjudicated by the Official Liquidator.

13. It is to be noted that there were several other intervenors, who were placed in a situation akin to that of the plaintiff. Those intervenors who are placed similar to that of the plaintiff, are not necessarily crew men, but have made claims against the said Vessel in various capacities. Before this Court, the sole defendant took a stand that the owner of the said Vessel being a company <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications i.e., Prathiba Shipping Co., Ltd., has been ordered to be wound up by the Bombay High Court, vide C.P.No.128 of 2013. The initiation of winding up proceedings and appointment of the Official Liquidator have now raised an interesting question as to the nature and scope of the Admiralty Jurisdiction to be exercised by this Court.

14. On the basis of the above, it was contended by the learned counsel appearing for the learned Official Liquidator attached to the Bombay High Court that the present suit cannot be proceeded further, without obtaining leave of the Bombay High Court under Section 446 of the Companies Act, 1956. This aspect of the matter was heard in detail by this Court and a detailed order came to be passed on 03.01.2018. In and by the said order, this Court concluded that leave under Section 446 of the Companies Act, 1956, is not necessary, as proceedings against the said Vessel is a right-in-rem and the Vessel is treated as "Juristic person". On this basis, it was held that the said Vessel will not

be affected by winding up proceedings. This is articulated in paragraph 37 of the order, which reads as follows:-

"37. In the result, I conclude that the proceedings in C.S.No.89 of 2013, being proceedings in rem against the ship, which is treated as a juristic person will not be affected by the initiation of winding up proceedings <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications against the company which is the owner of the ship and these proceedings will have to be decided by the Court in exercise of its Admiralty jurisdiction. The proceedings could neither be stayed under Section 446(2) of Companies Act nor the applicants will be directed to obtain the leave of the company Court to proceed with the applications."

15. There are as many as 31 applications filed making claim vis-a-vis in the Vessel M.T.Pratibha Cauvery and its sister Vessel. The claimants can be grouped in 9 categories. It is tabulated as below:-

Category	Application	Prayer	Claimant/ Name of the counsel	Classification of party
Number Applicant I 1674	of To declare and determine	Single	Mr.S.R.Raghunathan	Family member of the 2013
the amount payable to the claimant deceased crewmen applicant/intervenor to Rs10.0 crores	https://www.mhc.tn.gov.in/judis	C.S.No.89 of 2013 and connected Applications	Category	Application Prayer Claimant/ Name of the counsel Classification of party
Number Applicant 1675	of To declare and determine	Single	2013	the amount payable to the claimant applicant / intervenor to 8.0 crores
1713	of To declare and determine	Single	2013	the amount payable to the claimant applicant / intervenor to Rs.8.0 crores
1715	of To declare and determine	Single	2013	the amount payable to the claimant applicant / intervenor to Rs.5.0 crores
1719	of To declare and determine	Single	2013	the amount payable to the claimant applicant / intervenor to Rs.5.0 crores
1723	of To declare and determine	Single	2013	the amount payable to the claimant applicant / intervenor to Rs.5.0 crores
II 3820	of To declare that the	Single	Mr.S.Raghunathan Crewmen 2013	applicant has interest in the claimant sale proceeds of the Vessel M.T.Pratiba Cauvery to the extent of Rs.10,83,930/- + 18% interest per annum from 10.07.2012
3821	of To order pay out o	Single	2013	Rs.10,83,930/- to the claimant applicant
4210	of To declare that the	Single	2013	applicant has interest in the claimant sale proceeds of the Vessel M.T.Pratiba Cauvery to the extent of Rs.12,60,733/- + 18% interest per annum from 29.09.2012
Mr.S.Raghunathan Crewmen 4211	of To order pay out of	Single	2013	Rs.12,60,733/- to the claimant applicant
93	of 2014	To declare that the	Single	applicant has interest in the claimant sale proceeds of the Vessel M.T.Pratiba Cauvery to the extent of Rs.1,64,613/- + 18% interest per annum from 31.10.2013.

<https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications Category Application Prayer Claimant/ Name of the counsel Classification of party Number Applicant 4014 of To declare and determine Seven 2013 the amount payable to the claimants applicants / intervenors at Rs.1,46,40,834/- as on 24.12.2012 Ms.S.Vasudevan Crewmen 4015 of To order pay out of the Seven 2013 amount to the applicants / claimants intervenors at Rs.1,46,40,834/- as on 24.12.2012

4204 of To declare and determine Five the amount payable to the 2013 claimants applicants / intervenors 4205 of To declare and determine Five the amount payable to the 2013 claimants applicants / intervenors 4545 of To declare and determine Single the amount payable to the 2013 claimant applicants / intervenor at Rs.50,73,617/- from 24.12.2012 till the date of payment III 4207 of To declare that the Single applicant has interest in the 2013 claimant sale proceeds of M.T.Pratiba Cauvery to the extent of 2,18,484/- + 18% interest per annum from 11.06.2012 4208 of To order pay out of the Single amount to the applicant / 2013 claimant intervenor 4213 of To declare that the Single applicant has interest in the 2013 claimant sale proceeds of M.T.Pratiba Cauvery to the extent of 2,57,408/- + 18% Crewmen in MV.Pratiba interest per annum Warna S.Raghunathan from 02.2.2013 till date of payment <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications Category Application Prayer Claimant/ Name of the counsel Classification of party Number Applicant 4219 of To declare that the Single applicant has interest in the 2013 claimant sale proceeds of M.T.Pratiba Cauvery to the extent of 2,18,484/- + 18% interest per annum from 11.06.2012 4220 of To order pay out of Single Rs.10,32,358/- + 18% 2013 claimant interest per annum from 23.6.2012 till date of payment to the applicant / intervenor 5716 of To declare that the Single applicant has interest in the 2013 claimant sale proceeds of M.T.Pratiba Cauvery to the extent of 1,97,459/- + 18% interest per annum from 10.10.2012 till date of payment 5717 of To order pay out of Single Rs.1,97.459/- + 18% 2013 claimant interest per annum from 10.10.2012 to the applicant / intervenor IV 2997 of To declare and determine Ms/Smit Mr.Amitava Salvage service the priorities in the law of 2013 India Majumdar for the claimants Marine Mr.K.Mukund Rao Service Pvt. Ltd., V 3584 of To declare and determine M/s.Shippin M/s.Joy Thattil Emergency Towing the amount of 2013 g Ittoop & Vessel Service Provider Rs.5,59,70,045/- payable to Corporatio Mr.K.M.Anand the applicant / intervenor out of the sale proceeds of n of India <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications Category Application Prayer Claimant/ Name of the counsel Classification of party Number Applicant M.T.Pratiba Cauvery VI 2899 of To declare and determine a Mr.R.Karthikeyan & sum of Rs.1,14,92,972/- as on 30.4.2013 payable to Chennai Mr.R.Bharanidharan Berthing the Vessel the Chennai Port Trust out Port Trust Legal Advisor for of the sale proceeds of Chennai Port Trust M.T.Pratiba Cauvery VII 2998 of To permit the applicant to Cosmos Mr.Varun Srinivasan Mortgagee intervene in the suit as 2013 Co- for M/s..NVS party interested operative Associates Bank Ltd., VIII 1085 of To declare & determine M/s.Seawo amount of Rs.37,09,316/- is 2013 rldShipping due & payable to the Mr.S.Raghunathan & Logistics applicant/intervenor P. Ltd.

IX	5974	of To declare and determine M/s.Praxis
		the amount due and
	2013	Energy
		payable to the applicant /
		intervenor at US\$78,720,67 Agents S

16. Now, this leaves this Court to two categories of applications. One to determine the distribution of compensation on priority basis and the other, to determine the quantum of damages or compensation which each of the claimant is entitled to.

17. A counter affidavit has been filed by the owners and parties <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications interested in the Vessel M.T.Pratibha Cauvery disputing the maintainability of the applications in the absence of Power of Attorney specifically authorizing the said deponent in the affidavit to make a money claim on behalf of other persons. Further, it is denied that the Vessel could not have the anchors due to insufficiency of fuel as alleged and it is specifically denied that "because of the lackadaisical attitude of the owners of the Vessel, the entire episode had taken place". Further, it is stated that immediately upon dis-embarking from the Vessel and abandoning the Vessel, the crew had, by their own conduct, had put an end to the contract of employment. Similarly, the allegation of negligence on the part of the defendant and/or damage/mental agony/shock to the plaintiff and other crew, are denied. It is also denied that all the certificates of employment had been washed away with the Vessel that capsized. In any event, the decision to lower the life boat was unwarranted and hasty act was undertaken by the applicants/claimants voluntarily and therefore, the applicants cannot complain of any injury and it is a clear case of "volenti, non-fit injuria". Further, it is stated that for the act of absolute indiscretion of lowering the life boat in a heavy storm and endangering the lives of other sailors, the applicants/claimants ought not to be rewarded with compensation and therefore, the claim for compensation for mental agony and shock are not at all tenable. Finally, it is also denied that the owners of the Vessel did not properly discharge the crew and the averment that <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications the original continuous discharge certificate was washed away, is not admitted.

18. The Seaworld Shipping & Logistics Private limited, by filing a counter affidavit, submitted that on account of gross laches and dereliction of statutory duty on the part of the Chennai Port Trust, the claim of the Chennai Port Trust cannot be accepted. It is stated that under the provisions of the Major Port Trusts Act, the liability for payment of port charges is only on the owner and the Master of the Vessel and apart from Section 64 of the Major Port Trusts Act, the Chennai Port Trust is entitled to initiate action for recovery of the amounts by distraint proceedings and sale of the Vessel under Section 42 of the Indian Ports Act. Despite being vested with such statutory powers to recover the amounts due, the Port Trust had failed to take any action against the owners, Master and the Vessel for recovery of the amounts due. Further, it is stated that it is not in dispute that the Port Trust has recovered the charges payable upto November 2012 until which time the defendant was the agent of M.T.PRATIBHA CAUVERY and the other Vessels owned by Pratibha Shipping Company Limited. Although the Port Trust had been regularly calling upon the owners of the said Vessel to remove the Vessel from the berth and to pay the charges due to them, they had failed to take distraint proceedings and sale proceedings against the Vessel and the port charges have mounted only on account of laches on the part of the <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications Chennai Port Trust. Although the said Vessel belongs to an Indian Shipping Company and had been on a coastal run at the relevant time, the Port Trust has treated the said Vessel as a foreign flagged Vessel and demanded port charges at a huge rate. Under the scale of rates framed under the Major Port Trusts Act, the Chennai Port Trust would not be entitled to demand and recover at the rate at which it has been claimed by the Port Trust. It is also stated that the liability to pay the charges in respect of a Vessel is only on the ship owners and the Master and an agent like the respondent, cannot be held personally liable for payment of such charges, especially considering the fact that the agency has admittedly been terminated by letter dated

22.11.2012 and it is not open to the Port Trust to still look to the respondent for payment of such charges. It is stated that under the scheme of the Major Port Trusts Act, there is no scope for any liability on the part of the steamer agent to personally pay the dues and in the absence of any provision under the Major Port Trusts Act, akin to Section 148(2) of the Customs Act, the Port cannot look to an agent for payment of port charges and other dues claimed and therefore, it is submitted that the Port Trust may not be entitled to claim the sum of Rs.1,14,92,972/- allegedly due as on 30.04.2013 and to thereafter claim at the rate of Rs.72,332/- per day. It is submitted that the owners are due to pay a sum of Rs.37,00,000/- and there are no amounts lying with the respondent to the credit of the owners and therefore, <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications the respondent denies that the Port Trust is entitled to claim a sum of Rs.1,14,92,972/- or any other sum and the applications are therefore misconceived.

19. A counter affidavit has been filed by the Cosmos Co-operative Bank opposing the claim of the Shipping Corporation of India stating that Cosmos Co- operative Bank Ltd. is a multi-State Co-operative Bank and the Bank is an intervenor in the present proceedings, which is entitled to contest inter-se the claim of other intervenors and also seeks for execution of its decree as granted by the Mumbai High Court in Admiralty Suit No.58 of 2013. Further, it is stated that the Bank requested before this Court to declare the sale of the Vessel only after this Court was satisfied with the order of release passed by the Bombay High Court in Admiralty Suit No.58 of 2013 and reiterated that such a release was only pursuant to the consent decree. However, none of the parties then had any objection whatsoever to the decree in favour of the Bank. It is further stated that it is highly unfair and inequitable to the Bank that now the parties before this Court are opposing the claim of the Bank. As far as the claim of the Shipping Corporation of India (SCI) is concerned, it is submitted that SCI is not entitled to any money as claimed or at all, and on a bare perusal of the documents filed, it does not emerge that the Director General of Shipping gave any direction to SCI <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications to carry out services under Section 411 of the Merchant Shipping Act and the claim made appears to be a duplication of the claim on account of berthing by SCI and the Chennai Port Trust. Further, it is submitted that SCI and Chennai Port Trust have mutually created documents for each other to take a claim out of a tragedy and the SCI was put to strict proof of its extremely exorbitant claim of Rs.5,59,70,045/-. Further, it is stated that the Bank instituted a valid mortgage suit before the Bombay High Court in Admiralty Suit No.58 of 2013 and paid a hefty court fee, but the SCI is not a genuine claimant and the same has not even paid the requisite Court fee. Further, it appears that certain members of the crew who claim to have a maritime lien, are colluding and facilitating the unfair claim of the SCI only to delay and defeat the valid mortgage decree in favour of the Bank and such action is condemnable and should not be countenanced. Further, it is stated that the owner of the Vessel has created a valid and subsisting mortgage over the Vessel in favour of the Bank and has received a loan of about Rs.58 crores in aggregate and a sum of Rs.34,81,94,000/- is due and payable and before the Bombay High Court also, the Bank had furnished the complete set of loan document relating to the Vessel M.T.Pratibha Cauvery, copies of statement of accounts etc., and the Bombay High Court, after due consideration of the entire documents, observed that Bank first had preferred mortgage in respect of the Vessel M.T.Pratibha Cauvery alone and the owners <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications were unable to repay the mortgage loan and therefore, the Bombay High Court passed a decree as per the consent

terms arrived at between the borrower and the Bank and therefore, the Bombay High Court recognized the mortgage and the first charge of the Bank, and decreed the suit only thereafter and it is stated that even as per the International Convention relating to Mortgages, the Bank has a priority over and above the other maritime claims including that of the SCI.

20. A counter affidavit has been filed by the SMIT India Marine Services Pvt., Ltd., opposing claim of the Chennai Port Trust stating that on 31.10.2012, the East Coast of India was hit by cyclone 'Neelam' and the Vessel was caught in the cyclone and drifted and therefore, the Vessel needed immediate salvage assistance and thereafter, the owner of the Vessel entered salvage agreement on 31.10.2012 and executed a Llyod's open form 2011 agreement headed "Llyod's Standard form of Salvage Agreement". Pursuant to the salvage agreement, the Chennai Port Trust (CPT) commenced salvage operations in respect of the Vessel from 01.11.2012 and as per the agreement, party is binding, subsisting and is enforceable against the Vessel. Further, it is stated that salvage services rendered by the CPT have been duly accepted, availed of and are benefited by the owners of the Vessel and parties' interest in the Vessel, without any demur or protest. Though it is only due to the efforts <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications taken by the CPT, the Vessel has been saved and kept harmless of any further distress/damage and the CPT has a valid maritime lien enforceable in law and in priority over all other claimants, but the claim of the CPT is exaggerated and misconceived, because the Vessel is a coastal Vessel and continued to carry an Indian Flag, registered in the Indian Port with a coastal licence and not a foreign going Vessel, accordingly, reckoning the Port dues ought to be on the basis that the Vessel is a coasting Vessel and therefore, the claim of the CPT as if the Vessel was a foreign going Vessel is wholly untenable. The claim of the CPT fails to satisfy the principle of quantum-meruit, since the CPT did not provide any service whatsoever and the CPT had not pleaded or rendered any plausible explanation for levy of such high berth hire charges for the Vessel. It is pertinent to state that the CPT had wantonly failed to exercise its power under the Major Port Trusts Act only to allow escalation of its claim and the berth hire charges appear to be exaggerated and the CPT is put to strict proof of the same and the claim of the CPT for berth hire charges is unjust and harsh. Further, it is stated that although the CPT is a statutory authority, the same does not accord any priority to its claim over and above the salvors. In any event, the salvors have the highest maritime lien over the Vessel and has first right to the sale proceeds over all other parties before this Court including the crew and the CPT. The CPT has not paid appropriate Court Fee while seeking a declaration and <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications determination of a sum of Rs.1,14,92,972/- as claimed and on the other hand, the salvors have paid a Court fee of Rs.3,00,000/- in Admiralty Suit No.59 of 2013 before the Bombay High Court. Further, it is stated that the law recognises and encourages the right of a salvor over and above all other maritime liens/claims, and the same is protected under the Salvage Convention of 1989 as recognised.

21. A counter affidavit has been filed by the Defendant/second respondent and submitted that the SCI has not rendered salvage services and the ETV of the SCI was hired by the salvors/Smit India Marine Services Pvt Ltd., and accordingly, the salvors have already paid to the SCI, and the payments have been made in terms of the charter-party and no more monies remain payable to the SCI and the claim of the SCI seriously lacks bona-fide. Further, it is stated that SCI has not paid the appropriate Court fee and as such, the claim of the SCI deserves to be dismissed in-limine. It is

further stated that due to cyclone 'Neelam', the Vessel eventually lost both her anchors and it dragged and ran aground at about 3.5 Nautical miles to the South of Chennai Port and the crew apprehending that the Vessel, would be lost, abandoned it and therefore, the Vessel became a casualty and needed salvage assistance. Immediately, the owners executed a Llyod's Open Form 2011 Agreement headed "Llyod's <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications Standard form of Salvage Agreement", which was entered into with Smit India Marine Services Pvt Ltd., and as per the agreement, the owners of the Vessel engaged the services of Smit for salvaging the Vessel. It is pertinent to state that the immediate salvage services rendered by the Smit India, prevented the Vessel from running on to the Beach of Chennai and the timely salvage services of Smit India were crucial to the preservation of life and property. Since the salvors were at the helm of salvage operations, the owner did not dis-approve the engagement of the ETV for a short and limited purpose, as suggested by the salvors and accordingly, salvors hired the SCI Ratna and as per the charter- party, a charter hire of Rs.14,40,000/- was payable daily and expenses for fuel, fresh water, agency charges, etc., were to be in addition to the charter hire. ETV 2012 engaged period have already been paid by the salvors to the SCI and SCI also confirmed full and final receipt of the charter party and therefore, no further amounts are due and payable by the owners to the SCI. In these circumstances, the fanciful claim of the SCI under alleged 'instructions' of the Director General of shipping purporting to be under Section 411 of the Merchant Shipping Act, cannot be countenanced and the owners deny the claim of the SCI, as instructed by the Director General of Shipping to deploy the ETV. It appears that the CPT requested ETV 2012 to be present and did not allow the ETV to shift to anchorage. It is pertinent to note that, while the Vessel continued <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications to remain berthed alongside of the CPT, but ETV 2012 abruptly left the side of the Vessel on 14.02.2013 itself and therefore, it appears that ETV 2012 was merely standing without any instructions from CPT and it received a fresh charter, and left Chennai Port. Therefore, the purported correspondences between the SCI and Chennai Port Trust cannot be the basis for a claim against the owners. Further, ETV of the SCI merely assisted the process of the salvage by providing towage services and such towage would not amount to salvage the Vessel itself, especially after the ETV was deployed two weeks after the salvage operation commenced and the ETV was one among four tugs engaged and therefore, the attempt of the SCI to pass off an ordinary towage service after receipt of the monies in respect thereof, as some sort of a maritime lien, cannot be countenanced at all. It is seen that the claim of the SCI is belated one and an afterthought, knowingly fully well that the sale proceeds are in the Registry of this Court and the claim of the SCI is vexatious. It is further stated that the Vessel had discharged its entire cargo as early as in September 2012 and therefore, any apprehension of oil pollution was unwarranted and the entire claim of the SCI lacks bona-fide and no amounts whatsoever are due and payable to the SCI.

22. The learned counsel appearing for the intervenors/deceased crew <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications members submitted that even after unloading the oil from 08.10.2012 to 31.10.2012, the Vessel was kept in outer anchorage and the Vessel was not sea- worthy and it did not have valid certificates as required under the provisions of the Merchant Shipping Act and the crew-man who were working in the defendant/ship, were not provided with proper food, water, medicine, etc., and even though they contacted the Port Trust Authorities and the owners of the Vessel, there was no response from them.

Further, the learned counsel submitted that several employees of the said Vessel sent several e-mails to the higher authorities to save them to do the needful and also requested to save their lives who were detained in the Vessel, but there was no response. The learned counsel submitted that the Vessel could not have the anchor due to insufficiency of fuel and thereafter the Vessel started drifting towards the shore of Chennai Coast and ultimately got grounded at Chennai near Marina Beach. It is further submitted that the crew members tried their level best to save their lives by using life boats and out of the 37 employees who were in the Vessel, 22 employees jumped in the sea due to insufficient fuel in the life boat and 15 employees were saved by the fishermen and six of the crew members died.

23. Further, the learned counsel submitted that shipping authorities as well as other authorities had failed in their responsibilities and the owner of the <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications defendant/Vessel was highly irregular in payment of the salary to all the crew employed in the Vessel and there was total negligence on the part of the owner of the Vessel in keeping the Vessel in sea-worthy condition with all valid certificates for the Vessel which are important for trading operations of the Vessel and it is only because of lethargical attitude on the part of the owner of the Vessel, the entire incident has happened. Further, the learned counsel submitted that as wantonly, no proper food and water were provided to the crew for nearly 80 days, the crew died of starvation very soon after falling from the life boat and therefore, it is submitted that the legal heirs of the six deceased crew members should be compensated for loss of life and suffering mental agony and to pay the arrears of salary.

24. The learned counsel appearing for the applicants/crew members reiterated the submissions made by the learned counsel appearing for the deceased crew members and submitted that on 31.10.2012, a cyclonic storm named 'Neelam' fiercely struck the Vessel and the Vessel did not have the anchors due to insufficiency of fuel; the crew on board jointly worked together and tried to lift the anchor with a view to proceed to open sea, but it was too late and consequently, the Vessel started drifting towards the shore of the Chennai coast and ultimately got struck grounded at the Chennai Coast. Further, <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications the learned counsel submitted that the owner of the Vessel failed and neglected to pay arrears of salary, and the Vessel got struck in the "Neelam" cyclone, thereby causing huge damage, mental agony and shock to the crew, who were on board in the ship and all the certificates of employment were washed away with the boat, which capsized and crew have applied to get duplicate certificates from the concerned Department and thereby, under the provisions of the Merchant Shipping Act, the plaintiff and the other intervenors are entitled for three months salary as compensation towards improper discharge. Therefore, the learned counsel submitted that the owner of the defendant/Vessel is liable to pay compensation for loss of employment of the crew and for mental agony and the shock suffered by them. The learned counsel further submitted that, as directed by this Court, the Vessel has been sold and the sale proceeds are in deposit to the credit of the suit and therefore, this Court has to declare and determine the amount due and payable to the applicants/intervenors and direct the owners of the Vessel M.T.Pratibha Cauvery to pay the same.

25. The learned counsel appearing for the Chennai Port Trust submitted that due to cyclonic weather on 31.10.2012, it was informed to the signal station that the Vessel was dragging anchor and

not able to run the main engine and they do not have bunker, and they were unable to hold position and therefore, <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications they requested tug assistance and due to bad weather, Port tug assistance was not possible, but however, the Port took immediate action to mobilize tugs which were safely tied up due to cyclonic weather and two Pilots went to sea taking two Port tugs viz., Ocean Fame & Bharathiar, but they could not cross the duffer in light point and subsequently, the Vessel informed that they have crossed the Port limits and the same was monitored by VTMS display and Port Signal Station informed the Vessel that they were drifting close towards the shore for which the Vessel acknowledged. It is further submitted that the Vessel was warned by the Port Signal Station that Vessel will aground, unless they do something and the Vessel had dropped anchor, but the Vessel continued to drag and was advised to drop second anchor. It is further submitted that preliminary enquiry was ordered by Director General of Shipping and it revealed that Master reportedly ordered to abandon the ship and out of 37 crew members, 22 left the ship through life boat and the boat capsized immediately after launching due to bad weather and six crew members lost their lives. It is submitted that the Director General of Shipping mobilized an ETV (Emergency Towing Vessel) SCI Ratna which arrived the site on 07.11.2012 and the owners engaged the services of SMIT India to salvage and after a couple of attempts by the salvage tug 'Malaviya 21', the Vessel was eventually re-floated by the salvors on 11.11.2012 and reportedly, the Vessel was stable with hull integrity in-tact and there were no reports of oil <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications spill.

26. Further, it is stated that the owner of the Vessel, i.e. M/s. Pratibha Shipping Co., Ltd has requested to allow berthing of the Vessel inside the Port for a period of 5 days, vide letter dated 06.11.2012 and the owner replied that the Port was constrained to berth the Vessel and suggested berthing of the Vessel at the Ship Repair Facility of Kattupalli Port and the Director General of Shipping has given direction under Section 411 of the Merchant Shipping Act, 1958 to berth the Vessel inside the Chennai Port for a period of two days. Further, the Vessel was berthed at Jawahar Dock IV on 21.11.2012 after obtaining P & I Insurance cover up to a maximum of US Dollar 5 million, subject to the condition that it should vacate the berth not later than 6.00 hrs on 24.11.2012, failing which, the ship will be shifted outside the Port limits by the Port itself. The salvors delivered the Vessel to ship owner on 24.11.2012, but the owners have failed to remove the Vessel from the Port and Port limits. Finally, the Director General of Shipping was requested to prevail upon the Nautical Adviser and ensure immediate removal of the Vessel from the Port and the owners and agent were directed to remove the Vessel from the Port and settle the outstanding amount towards Port charges and the Director General of shipping issued statutory notice to the owners of the Vessel under Section 411 of <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications the Merchant Shipping Act to take the Vessel immediately from the Port on a single voyage to either Port of Repair or other destination as deemed fit. Further, it is stated that owners failed to take out the Vessel which is deserted by the crew and a sum of Rs.64,62,057/- remains unpaid and thereafter, a sum of Rs.72,332/- was payable per day towards berth hire. It is further stated that M/s. J.B. Boda Surveyors Pvt Ltd., who is one of the approved surveyors, have carried out the valuation survey of the Vessel and furnished the market value of Rs.16,10,00,000/- and on 09.02.2013, the Vessel was shifted to JD-VI berth and permission has been obtained from the Director General of Shipping for sale of the Vessel on 26.02.2013. As on 31.03.2013, the Vessel was

due to a sum of Rs.93,16,698/- to the Chennai Port Trust and a sum of Rs.9,91,273/- was due to the Indian Registrar of Shipping, Mumbai and a sum of Rs.5,59,70,045 was due to the Shipping Corporation of India, Mumbai. Therefore, it is submitted that, as on 30.04.2013, a sum of Rs.1,14,92,972/- was due and payable to the Chennai Port Trust and a direction was sought to pay from the sale proceeds as its first charge as per the provisions of the Major Port Trusts Act, 1963.

27. In the meantime, a Writ Petition came to be filed in W.P.No.3568 of 2013 by M/s.Seaworld Shipping and Logistics Private Limited, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications respondents, culminating in the notice dated 05.02.2013 bearing Reg.No.S4/3077/2012M issued by the second respondent, quash the same and to direct the respondents to initiate appropriate action for recovery of the amounts due to them, if any, towards berth hire charges or any other Vessel related charges in respect of "M.T.Pratibha Cauvery" or any other Vessel under the same ownership, only by invoking Section 64 of the Major Port Trusts Act, against the aforesaid Vessels and/or against M/s.Pratibha Shipping Company Limited, without claiming or recovering such amounts from the petitioner.

28. The writ petitioner-Company is a Company registered under the Companies Act and carrying on business as steamer agents and has been in the shipping agency business since 2001 and other companies, under the same management, and have been in such business since 1977. In their capacity as ship agents, the writ petitioner has handled some of the largest and well-known shipping principals of the world. The writ petitioner was one of the largest ship agents in terms of volumes at several major Ports including Chennai till the year 2006 and most of foreign principals represented by the writ petitioner, opened up their own offices to fall in line with such trends prevailing world-wide and later also in India. The writ petitioner's reputation, professionalism and integrity being appreciated world-wide and all over the country and in recognition <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications thereto, the Government of India had appointed their Senior Directors/Executives to be on the Board of Jawaharlal Nehru Port for several terms. The Chairman of Seaworld Group of Companies was a major shareholder and Executive Chairman of NOL (India) Pvt. Ltd., and later APL (India) Pvt. Ltd., for over a decade. As a steamer agent, the writ petitioner attends to various statutory and other formalities on behalf of their principals, both with the Customs Department and with various Port authorities in the country, including the first respondent herein.

29. The first respondent in the Writ Petition has been constituted under Section 3 of the Major Port Trusts Act for rendering certain services which are spelt out in Section 42 therein. By virtue of the Major Port Trusts Act, administration, control and Management of the Chennai Port Trust had been vested with the first respondent in the Writ Petition, which functions and is meant to discharge its functions in accordance with the provisions contained in the Major Port Trusts Act. The second respondent-Deputy Conservator is an officer of the first respondent-Port Trust, who, along with the Traffic Manager, handles various operations connected with the Vessels calling at the Chennai Port as well as Cargo which passes through the Chennai Port in the course of import/export. Since 2008 and upto 23.11.2012, the petitioner had been acting <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications as steamer agent of a ship owing Company called Pratibha

Shipping Company Limited (ship owner) based in Mumbai. However, in the cases of representation of Pratibha Shipping Owner, it is restricted to the following:

- (i) To arrange care sign and sign off.
- (ii) To arrange for crew medical attendances as and when required.
- (iii) To make transport arrangements for a crew to avoid to/from airport and hotel.
- (iv) To arrange hotel accommodation for crew.
- (v) To arrange for customs clearance of spares, and
- (vi) delivering such each requirement of the Master from PSCL.

30. The writ petitioner-Company represented the ship owner for limited functions and a steamer agent like the writ petitioner herein, it cannot in any case, be technically considered or treated to be the owner of a Vessel, inasmuch as under Section 2(o)(ii) of the Major Port Trusts Act, the term 'owner' insofar as the Vessel in question, is concerned, it can only be referred to owner, part owners, charterer, consignee or mortgagee, in possession of the Vessel. Apart from whatever responsibility or liability that had been specifically undertaken by the writ petitioner-Company, they cannot be fastened with any liability or any <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications other payment or for discharge of any other responsibility or obligation.

31. The Vessel "M.T. Pratibha Cauvery" in the normal course of her trading, called at Chennai Port in September 2012 for discharging a cargo of petroleum products for Indian Oil Corporation Ltd. During the said call, the Vessel entered into Port and Customs under the Agency of another Company called Atlantic Shipping, being appointed by the charterer, Indian Oil Corporation. The Vessel was granted Port clearance by the respondents in the Writ Petition on 08.10.2012 and had sailed out. The ship owner, for the reasons not known to the writ petitioner, had instructed the Vessel to wait at the outer anchorage of the Chennai Port through the month of October 2012. The ship owner failed and neglected to maintain not only the said Vessel, but also various other Vessels under their ownership and had not paid wages to the crew and had not supplied the necessary provisions, food, water, etc., to meet the requirements of the members of the crew. The statutory classification of other services in respect of the said Vessel had expired and had not been renewed, leading to unseaworthy condition of the Vessel and her equipments, tackles, etc., including essential equipments like Generators and life-boats. The Vessel was badly affected by the cyclonic storm "Neelam" which hit the Chennai coast towards the end of October 2012, which resulted in the Vessel grounded near <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications the Marina coast. While attempting to disembark from the Vessel, using the life-boats, on the instructions of the Master of the Vessel, six members of the crew had lost their lives, which is the subject matter of statutory and criminal investigation.

32. The financial position of the ship owner appears to have been deteriorated to the point of insolvency, and this led to the Vessels owned by the ship owner either being detained, arrested by the statutory authorities for not conforming to class requirements, or arrested by various Courts including this Court at the instance of the creditors. At the request of the ship owner as well as the Master of the Vessel and other authorities, the respondents in the Writ Petition (Port Trust) berthed the Vessel in JD IV to ensure safety and security of the Vessel, as also its crew members and also for the purpose of carrying out basic repairs to the Vessel so that she does not sink. For berthing a Vessel, there is a technical requirement inasmuch as the agent, has to file a berthing application and the writ petitioner was requested by the ship owner as well as the respondents/Port Trust to comply with such requirement of filing the berthing application, which was done by the writ petitioner purely on humanitarian grounds following the unfortunate incident. The ship owner immediately thereafter remitted part of the berth hire and other Vessel related <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications charges to the petitioner, who in turn promptly paid the amounts to the respondents/Chennai Port Trust. The respondents-Chennai Port Trust debited the writ petitioner's deposit amount with the respondents-Chennai Port Trust in a sum of Rs.13,90,697/-, which was the amount due up to 26.11.2012. The ship owner had remitted only Rs.13 lakhs to the writ petitioner and the sum of Rs.90,697/- of the writ petitioner's funds have been debited by the respondents- Chennai Port Trust. In terms of the specific requirement of the respondents- Chennai Port Trust, the ship owner simultaneously gave to Port Trust on 19.11.2012 a Letter of Indemnity, indemnifying the Port against any damage to the Vessel, third party claims and any loss or damage that the respondents- Chennai Port Trust may suffer in the event of the immobilisation of the berth.

33. It is the further case of the writ petitioner that the ship owner had also defaulted in payment of the amounts due to them amounting to about Rs.37 lakhs as in the last week of November 2012 and a couple of cheques issued by the ship owner to the writ petitioner earlier had bounced due to insufficient funds. As the ship owner had also failed and neglected to either maintain the Vessel or supply the essential necessities like food, water, etc., to the members of the crew of their various Vessels, as also the fact that the inaction and negligence of the ship owner had exposed the writ petitioner and their <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications employees to certain action by the authorities concerned, the Management of the writ petitioner decided to terminate the Agency in respect of the ship owner and had duly communicated such decision not only to the respondents, but also to the various statutory authorities like Mercantile Marine Department, the Director General of Shipping, etc. In that regard, a letter was addressed by the writ petitioner to the respondents-Chennai Port Trust and to other authorities with a copy being marked to the ship owner on 24.11.2012. The respondents- Chennai Port Trust had also clearly been put on notice that since they had ceased to be the Agents of the ship owner and that they cannot be held liable or responsible for payment of any charges due to the respondents-Chennai Port Trust and also for discharging any obligations on behalf of the ship owner. The said letter was delivered to the respondents-Chennai Port Trust on 27.11.2012. While making payment of Rs.13,39,061/- on 22.11.2012, the Traffic Manager of the first respondent-Board of Trustees, Chennai Port Trust was informed that the ship owner had not arranged for payment of Port charges and the Traffic Manager was called upon to take whatever action necessary. Even thereafter, the writ petitioner informed the respondents-Chennai Port Trust that they should take appropriate action in accordance with the

Major Port Trusts Act against the ship owner and the said Vessel. However, the respondents-Port Trust had not heeded to such request and on the contrary, the second respondent-Deputy <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications Conservator, Chennai Port Trust was merely routinely and repeatedly addressing letters to the ship owner, marking a copy of the same to the writ petitioner, calling upon the ship owner to move the Vessel to the outer anchorage. Every such letter marked to the writ petitioner was immediately replied. The respondents were vested with statutory powers under the provisions of the Major Port Trusts Act including Section 64 therein, by which the respondents-Port Trust were entitled to initiate a distraint or arrest proceedings against the Vessel in respect of any amount due to them.

34. It is further alleged by the writ petitioner that the power to sell vested in the respondents-Chennai Port Trust statutorily was also brought to their notice. Despite being aware that all the ships belonging to the ship owner had been in unseaworthy condition, that the officers and members of the crew had not been paid their wages for several months, that the ship owner abandoned the Vessel and the crew members on board, despite being armed with statutory powers, the respondents-Chennai Port Trust failed to take any action. The Vessel was lying in Chennai for more than four months and by dragging their feet, the respondents-Port Trust had not only allowed the condition of the Vessel to get worse, but had also allowed the berthing hire charges to mount, and that too, at a penal rate. The valuable rights of various creditors were also badly affected, <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications because the berth hire charges and other Vessel related charges due to the respondents-Port Trust had priority over the claims of the other creditors. Being the statutory authority, the respondents-Chennai Port Trust were obliged in law to initiate necessary action without any delay or laches and to arrest further accrual of the charges due to them, and the respondents-Chennai Port Trust failed in that regard.

35. It is further stated that the writ petitioner received a letter dated 05.02.2013 from the second respondent-Deputy Conservator of Port Trust, informing the writ petitioner about their responsibility and liability to pay Port charges to the respondents-Chennai Port Trust and that even in the absence of necessary remittances from the ship owner, the writ petitioner still would be liable to pay the amounts. The second respondent-Deputy Conservator of Port Trust, even while threatening to black-list the writ petitioner and stop their operations not only in Chennai Port Trust, but also in other Indian Ports, called upon the writ petitioner to show cause as to why their agency should not be so black-listed. Although the said notice is in the nature of a show cause notice, a perusal of the same shows that a decision had already been apparently taken to black-list the writ petitioner and paralyse their operations. <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications

36. Considering the seriousness of the situation stated above, the writ petitioner had immediately deputed its Senior Executives, namely the President and Senior Vice President to meet the Deputy Chairman and the Deputy Conservator respectively, which they did on 06.02.2013, with a request to re-call the said notice, taking into consideration the fact that the writ petitioner was not in any manner liable for payment of charges due in respect of the Vessel and that it was open to the first respondent-Board of Trustees of Chennai Port Trust to initiate necessary action under Section 64 of the Major Port Trusts Act for recovery of the amounts due to them. However, the second

respondent-Deputy Conservator of Port Trust appeared to have expressed his inability to withdraw the said notice. Hence, the writ petitioner issued a notice through their Advocate on 08.02.2012, a copy of which was also marked to the first respondent-Board of Trustees of Port Trust, Chennai, calling upon them to withdraw the said notice dated 05.02.2013 and to drop the action contemplated therein. The respondents/Chennai Port Trust were also called upon to conform that they would not proceed further with the action proposed and no such response was forthcoming from the respondents/Chennai Port Trust.

37. It is the stand of the writ petitioner that they are not in any way liable to pay the berth hire charges or the other Vessel related charges in respect of <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications the Vessel, as the liability for payment of such charges is only on the ship owner. The writ petitioner being an Agent of a disclosed Principal, cannot be personally held liable in view of the provisions of Section 230 of the Indian Contract Act. The interpretation given by the second respondent/Deputy Conservator of Chennai Port Trust to the word 'owner' in terms of Section 2(o) of the Major Port Trusts Act, is erroneous and the writ petitioner cannot be fastened with any liability for payment of the charges due to the respondents. The respondents themselves in the Writ Petition are guilty of laches and have failed to discharge/exercise their statutory powers vested under the Major Port Trusts Act, i.e. to bring the Vessel for sale should the amount due to them remained unpaid and they have failed and neglected to do so.

38. It is not open to them in law to initiate any coercive action against the writ petitioner as threatened in the notice dated 05.02.2013 and thereby paralyse the operations of the writ petitioner. The writ petitioner represents various ship owners in all the Ports in India, besides acting as Agent for various importers and exporters. They are required to attend various formalities on behalf of their various principals/clients with various Custom Houses and Port authorities in the country. Therefore, should the respondents proceed to black- list the writ petitioner, besides paralysing their operations, such action may also <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications expose them to proceedings being initiated by the Customs Authorities for suspension/revocation of their licence. If the respondents proceed with the proposed action, the writ petitioner would be put to irreparable loss, hardship and prejudice. Hence, the petitioner has filed the present Writ Petition.

39. Heard the learned counsel appearing for the parties and perused the materials placed on record.

40. The nucleus of the suit is a Vessel i.e., M.T.PRATIBHA CAUVERY and the said Vessel was struck in inclement weather owing to 'Neelam' cyclone in 2012 and the said Vessel broke down in high seas and was ultimately anchored at the Besant Nagar, Chennai. Due to cyclone, 22 employees jumped into the sea to save their lives, out of 22, 6 members died and rest of the employees were saved by the fishermen. A crew man in the said Vessel has laid this suit claiming that he has not been paid wages. Subsequently, there were several other intervenors, who were placed in a situation similar to that of the plaintiff and have filed applications against the said Vessel in various capacities. Earlier, a Writ Petition in W.P.No.31942 of 2012 has been filed by the plaintiff and in the Writ petition, an interim order came to be passed on 28.11.2012 wherein, the undertaking of the owner of the Vessel to the effect that the company would <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and

connected Applications deposit Rs.30,00,000/- by 05.12.2012 was recorded by this Court. On 21.12.2012, this Court had directed the owner of the Vessel to pay the admitted sum of Rs.87,45,300/- as an interim measure to the legal heirs of the deceased crew members. The Registrar General of this Court was directed to disburse the amount to the legal heirs of the deceased on such deposit. This Court further directed the owner of the Vessel to deposit a further sum of Rs.5,00,00,000/- or provide a Bank Guarantee for a period of three years or furnish immovable property as security to the satisfaction of the Registrar General before moving the Vessel from the territorial jurisdiction of this Court. Aggrieved by the said order, the appeals were preferred by the owner of the Vessel. A Division Bench of this Court admitted the appeals on condition that the balance amount of Rs.57,00,000/- is to be deposited as per the direction of the learned Single Judge in the order dated 21.12.2012. Subsequently, this Court, by order dated 18.04.2013, directed sale of the Vessel. Pursuant to the said direction, the Vessel was sold for a total consideration of Rs.15,64,80,000/- and the same is now in deposit of this Court.

41. The details of sale proceeds of the Vessel deposited into the Registry on various dates and lying to the credit of C.S.No.89 of 2013 are tabulated hereunder:-

<https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications
Sl.No. Amount in Deposited with Renewed Rate of Interest & Rs. Date Period

1. 3,45,67,404/- 20.05.2021 3.55% - 1 Year
2. 3,45,67,404/- 20.05.2021 3.55% - 1 Year
3. 54,06,531/- Indian Bank, Madras High 20.05.2021 5% - 1 Year
4. 2,52,222/- Court, Chennai 21.05.2021 5% - 1 Year
5. 3,45,67,404/- 22.05.2021 3.55%- 1 Year
6. 3,45,67,404/- 22.05.2021 3.55% - 1 Year
7. 3,45,67,404/- 22.05.2021 3.55% - 1 Year
8. 3,45,67,404/- 22.05.2021 3.55% - 1 Year
9. 3,45,67,404/- 22.05.2021 3.55% - 1 Year
10. 2,32,98,431/- 22.05.2021 3.55% - 1 Year The total amount lying to the credit of the suit is Rs.27,09,29,012/-.

42. Now, the question to be decided in the suit and in the Writ Petition is as to whom the quantum of Rs.27,09,29,012/- has to be disbursed.

43. The present suit is instituted by the plaintiff for judgment and decree:

(i) to direct the defendants to pay a sum of Rs.3,59,000/- together with compensation for pain and sufferings from the date of the plaint till date of realization or such higher sum of Indian Rupees equivalent to the exchange rate prevailing on the date of the judgment whichever is higher and direct the owners of the defendant Vessel to effect payment till the last date of discharge, <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications

(ii) for arrest and sale of the defendant Vessel M.T.PRATIBHA CAUVERY, in "as is where is" condition, presently in Indian Waters at Port of Chennai or wherever available within the territorial waters of India, and (iii) for a direction to adjust the sale proceeds of the defendant Vessel M.T.PRATIBHA CAUVERY against the suit claim.

44. Learned counsel for the plaintiff submitted that the plaintiff is a qualified sea-man, who has obtained CDC (Continuous Discharge Certificate) and STCW Certificate from the Government of India. For the past four years, the plaintiff has been sailing on various trading Vessels. On 31.05.2012, the plaintiff was appointed as Second Cook by the owners of the defendant/Vessel on a monthly salary of Rs.10,000/- and he joined the duty as such, and the contract was for a period of 9 months with an option to extend it for a further period of 15 days. He further contended that the defendant-Vessel was carrying crude oil from the Post of Haldia to the Port of Chennai with 37 crew on board the Vessel, and it reached the Port of Chennai on 25.09.2012 and the Cargo was discharged on 27.09.2012. As per the terms of contract with the plaintiff, he has to pay a sum of Rs.10,000/- every month towards his salary. However, the plaintiff was paid only a sum of Rs.1,000/-, leaving a balance of Rs.49,000/- to be paid by the owners of the defendant-Vessel.

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45. The learned counsel for the plaintiff further contended that the Vessel, after reaching the Port of Chennai on 28.09.2012, ought to have sailed as early as on 29.09.2012, but the Vessel did not meet the statutory requirements and became un-sea-worthy. The defendant-Vessel was therefore waiting at the outer anchorage of the Chennai Port for obtaining clearance. On 10.10.2012, the Vessel received the necessary clearance and for maintenance to proceed with the voyage.

46. In the meantime, the marine diesel oil supplied got depleted. Therefore, the Master and other crew requested the owners of the defendant- Vessel to effect supplies on 18.10.2012. There was no response inspite of several communications from 18.10.2012 till 28.10.2012. This created an emergency situation which forced the crew to switch off the Generator to save the fuel. All 37 crew on board the Vessel, were eagerly waiting for instructions from the owners of the defendant/Vessel, but nothing was forthcoming. While so, due to cyclonic storm, namely 'Neelam' on 27.10.2012, the Vessel drifted towards the shore, which prompted the crew to jump out with life jackets to board the life boat to reach the shore to save their lives. Several crew members jumped out with life jacket to board the life boat which capsized and some of them even <https://www.mhc.tn.gov.in/judis>

C.S.No.89 of 2013 and connected Applications drowned. Fortunately, the plaintiff was rescued by coast guard on 01.11.2012. In effect, it is the submission of the learned counsel for the plaintiff that the salary of the plaintiff was not paid till the date of cyclone by the owners of the defendant-Vessel. The plaintiff filed W.P.No.31942 of 2012 and similarly, other crew also filed Writ Petitions. This Court, by common order in the above said Writ Petitions, dated 21.12.2012, directed the owner of the defendant-Vessel to pay the arrears of salary within a period of four weeks from the date of receipt of a copy of the order, besides payment of compensation and in spite of such direction, the owner of the defendant/Vessel had not paid the amount. Ultimately, the plaintiff and other crew members were discharged on 24.12.2012. The total salary payable to the plaintiff works out to Rs.69,000/-. By adding the compensation, the loss of employment and compensation for pain and sufferings, the total sum of Rs.3,59,000/- is payable to the plaintiff and therefore, the plaintiff has filed the present suit.

47. Learned counsel for the plaintiff invited the attention of this Court to Section 9(1)(a) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 to drive home the point that the plaintiff as surviving crew, is ranked first in priority as maritime lien-holders and is entitled for wages. He also pointed out Section 143 of the Merchant Shipping Act, to contend that the plaintiff and <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications other crew intervenors are entitled to receive compensation equivalent to three months' wages. For the reasons stated above, the learned counsel prayed for decreeing the suit.

48. In Application Nos.1713, 1715, 1675, 1674, 1719 and 1723 of 2013 in C.S.No.89 of 2013, learned counsel for the applicants contended that these applications are filed by the legal heirs of the dead sea-men, for determination of priorities and for payment of compensation from the sale proceeds of the defendant/Vessel. The deceased sea-men were able-body-seamen, Third Officers, Second Engineer and Third Engineer, in the Vessel MT Pratibha Cauvery, which was hit by Cyclone 'Neelam' on 31.10.2012 and ran aground the shore at Chennai. Already, by virtue of the direction of this Court, sale proceeds of the ship have been deposited lying to the credit of the present suit with the Indian Bank, Madras High Court Branch. The applicants are the legal heirs of the deceased sea-men who had a maritime lien over the defendant/Vessel in respect of the claims relating to loss of life during the course of employment as per Section 9(1)(b) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. As legal heirs of the deceased sea-men, the applicants have priority in the claim for compensation. It is stated that most of the documents pertaining to proof of income of the deceased, had been lost due to the Cyclo <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications "Neelam" which had struck the ship "MT Prathiba Cauvery" on 31.10.2012. Whatever the documents which have been salvaged, have been filed before this Court.

49. The Maritime Labour Convention, 2006 is considered to be the "Fourth Pillar" of International Maritime Law and the Bill of Rights for the seafarers provides them not only their fundamental rights as workers, but also provide minimum international standards for living and working conditions.

50. Rule 8 of the Merchant Shipping (Maritime Labour) Rules, 2016 and Rule 4(m) of the Rules in M.S. Notice No. 16 of 2016 have to be read along with Rule 9(5) of the said Rules, which specifically deals with 'wages'. As per the above provision, the monthly wages of the deceased are to be calculated as per the collective bargaining agreement. However, the same is always subject to the minimum basic wage as stipulated under the Maritime Labour Convention, 2006. It is submitted that when in doubt, the Municipal Law (National Law) must be interpreted in accordance with the State's international obligations, as held by the Supreme Court in the decision reported in 1980 (2) SCC 360 (Jolly George Varghese Vs. Bank of Cochin).

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51. Learned counsel for the applicants further contended that the compensation is payable to the applicants as per the provisions of the Motor Vehicles Act, 1988. Section 168 of the Motor Vehicles Act deals with the concept of 'just' compensation to be determined by adopting fairness, reasonableness and equitability. This includes determining the loss of Estate, loss of Consortium and loss of funeral expenses together with applying the relevant multiplicand. In the event of the deceased being a Bachelor, personal deduction has to be made as per Pranay Sethi case (National Insurance Co. Ltd. Vs. Pranay Sethi - reported in 2017 (16) SCC 680) to an extent of 50%.

52. Learned counsel for the applicants also submitted that the compensation amount has to be paid to the applicants with interest @ 12% per annum being the date on which the Cyclone 'Neelan' had struck the defendant/Vessel.

53. It is also submitted by the applicants' counsel that the compensation payable must be in accordance with the maritime lien of the applicants as per Section 9(1)(b) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.

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54. The application in A.No.2899 of 2013 in C.S.No.89 of 2013 has been filed by the Board of Trustees of Chennai Port, represented by its Chairman, for recovery of Rs.1,28,94,910/- towards the dues payable to them as per the provisions of the Major Port Trusts Act. According to the applicant in A.No.2899 of 2013, the defendant/Vessel was sold on top priority and this applicant had borne the advertisement charges/publication for sale of the Vessel, which worked out to Rs.5,39,568/-, which is liable to be repaid to them by the defendant-Vessel. Apart from Rs.5,39,568/-, this applicant is also entitled to get the other statutory charges incurred by them at Rs.1,23,55,342/- (totally, the applicant is entitled to get Rs.1,28,94,910/-). In order to substantiate their claim that the amount claimed by them is legally payable to them, learned counsel relied on a decision of the Supreme Court reported in 1998 (4) SCC 302 (Board of Trustees, Mumbai Vs. Indian Oil Corporation).

55. Application No.2997 of 2016 in C.S.No.89 of 2013 has been filed by the intervenor for determination of priorities and for payment from the sale proceeds of the defendant/Vessel deposited with this Court in satisfaction of the decree it has obtained before the High Court of

Bombay, dated 10.05.2013. According to the applicant-Smit India Marine Services Pvt. Ltd., they are the salvor and they have got maritime lien for providing salvage services to the <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications defendant/Vessel. It is stated that they are entitled to raise a salvage claim recognised under Section 9(1)(c) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act. As salvor, the applicant shall have priority only second to the seafarers' claim for wages and death compensation. If salvage services were not provided to the defendant/Vessel, the defendant/Vessel would have not been sold or may have fetched a considerably meagre price. The applicant/salvor has obtained a consent decree for a sum of USD 2,480,000 from the Bombay High Court against the defendant-Vessel and its owners in Admiralty Suit (L).No.394 of 2013 for the salvage services provided to the defendant/Vessel from 14.11.2012. The applicant/salvor filed an Execution Petition in E.P.No.34 of 2018 in C.S.No.89 of 2013 for a sum of INR 13,61,89,200 before this Court for satisfaction of the decree from the sale proceeds of the defendant/Vessel which were deposited before this Court.

56. According to the claimants, they have provided salvage services and it has also been admitted by the erstwhile ship owner and this Court, by order dated 16.05.2013, had recorded the existence of action filed before the Bombay High Court by the salvors. This Court has also recorded the existence of action filed before the Bombay High Court by the salvors and that the salvors have obtained a consent decree, which is to be examined against the sale proceeds of <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications the Vessel lying with this Court. The said decree has become final and no appeal has been filed there-against.

57. According to the applicant, the surviving crew of the Vessel are only entitled to be paid their outstanding wages under Section 139 of the Merchant Shipping Act, and compensation for premature discharge amounting to three months' wages under Section 143 of the Merchant Shipping Act along with interest accrued on such sum. The surviving crew are not entitled to any further sum under any head of compensation whatsoever. The applicant in A.No.2997 of 2016 has no objection to such sum being released from the security being held by this Court to the surviving crew with the amended interest @ 12% per annum.

58. It is further stated by the learned counsel for the applicant that the kin of the deceased seafarers are entitled to receive death compensation for the deceased seafarers as per their respective collective bargaining agreements. The statutory compensation payable which is to include any contractual compensation is to be calculated under the provisions of the Employees' Compensation Act, 1923, as seafarers are included in the definition clause of Section 2(1)(dd)(ii)(a) therein. The quantum of compensation payable as per the <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications judgment of the Supreme Court reported in Sarla Verma Vs. DTC (reported in 2009 (6) SCC 121), would be lesser than the death compensation payable as per the collective bargaining agreements of the deceased seafarers.

59. Thus, it is submitted by the learned counsel for the applicant that the kin of the deceased seafarers are entitled to receive compensation as per their collective bargaining contracts along with interest @ 12% per annum from the date of the incident till the date of realisation.

60. It is further submitted by the learned counsel for the applicant that the the Emergency Towing Vessel (ETV) 'SCI Ratna' was allegedly deployed at the Chennai Port under the instructions of Directorate General of Shipping from 14.09.2012 to 30.10.2012, 30.10.2012 to 14.11.2012 and 29.12.2012 onwards, which is evident from the letter dated 07.02.2023 from the Director General of Shipping to the Ministry of Shipping. The ETV was hired by the applicant/salvor from 14.11.2012 to 24.11.2012 under Charter-party dated 14.11.2012 to render assistance to the applicant/salvor. It is mentioned in the said letter that ETV then moved to the East Coast of India under the instructions of the Director General of Shipping for rendering assistance to the defendant/Vessel and was on stand- by from 30.10.2012 to 14.11.2012 and from 14.11.2012 to 24.11.2012, the <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications applicant/salvor hired the ETV for a charter-hire of INR 14,40,000/- and the expenses for fuel, fresh-water, agency charges, etc., were supposed to be in addition to the charter-hire. Accordingly, a debit note was raised by SCI by letter dated 04.12.2012 for INR 2,28,67,945/- for the services rendered and the same has been paid by the applicant/salvor to SCI. Moreover, the ETV was successful in extinguishing the fire on the Vessel MV Amsterdam and providing assistance in the salvage operations of MV Amsterdam and thereafter, was on stand-by from 14.09.2012 to 30.10.2012.

61. M/s.Seaworld Shipping & Logistics Private Limited, had filed W.P.No.3568 of 2013 before this Court reiterating the facts mentioned above. In the said Writ Petition, the petitioner-Company challenges the show cause notice dated 05.02.2013 issued by the Chennai Port Trust stating that non-availability of fund to the Agent from the owner will in no way absolve them of the responsibility of meeting out the statutory requirement of payment of Port charges and as already informed to the petitioner-Company, vide letter dated 23.11.2012 that in the event of refusal to pay the Vessel related charges for the Vessel M.T.Pratibha Cauvery, the writ petitioner-Company's agency will be black- listed and stopped from doing any business in Chennai Port as well as in the other Indian Ports.

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62. The applications have been filed pending the suit, making claim in respect of the Vessel M.T.PRATIBHA CAUVERY and sister Vessel. The claim can be grouped as per priority under Section 9 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.

63. Originally, the plaintiff has filed the suit in C.S.No.89 of 2013 before this Court for recovery of a sum of Rs.3,59,000/- together with compensation for pain and sufferings. While the said suit is pending before this Court, by virtue of Admiralty Jurisdiction, as the owners of the said Vessel/Ship abandoned the Vessel, this Court had heard the matter and accordingly, the Vessel M.T.Pratibha Cauvery was sold and the sale proceeds were deposited before the Registry of this Court on 21.12.2021 in a sum of Rs.27,09,29,012/- in Court deposit to the credit of the said suit and thereafter, the sale proceeds were deposited before the Indian Bank, Madras High Court Branch, Chennai-600 104, in an interest bearing account.

64. In the above context, it is useful to extract Section 9 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 which reads as follows:

<https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications
"Section 9 : Inter se priority on maritime lien:

(1) Every maritime lien shall have the following order of inter se priority, namely:-

(a) claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;

(b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;

(c) claims for reward for salvage services including special compensation relating thereto;

(d) claims for port, canal, and other waterway dues and pilotage dues and any other statutory dues relating to the vessel;

(e) claims based on tort arising out of loss or damage caused by the operation of the vessel other than loss or damage to cargo and containers carried on the vessel.

(2) The maritime lien specified in sub-section (1) shall continue to exist on the vessel notwithstanding any change of ownership or of registration or of flag and shall be extinguished after expiry of a period of one year unless, prior to the expiry of such period, the vessel has been arrested or seized and such arrest or seizure has led to a forced sale by the High Court:

Provided that for a claim under clause (a) of sub-section (1), the period shall be two years from the date on which the wage, sum, cost of repatriation or social insurance contribution, falls due or becomes payable.

(3) The maritime lien referred to in this section shall commence--

(a) in relation to the maritime lien under clause

(a) of sub-section (1), upon the claimant's discharge from the vessel;

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(b) in relation to the maritime liens under clauses (b) to (e) of sub-section (1), when the claim arises, and shall run continuously without any suspension or interruption:

Provided that the period during which the vessel was under arrest or seizure shall be excluded.

(4) No maritime lien shall attach to a vessel to secure a claim which arises out of or results from--

(a) damage in connection with the carriage of oil or other hazardous or noxious substances by sea for which compensation is payable to the claimants pursuant to any law for the time being in force;

(b) the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive products or waste."

65. As per the above said Section 9, the applications can be grouped on priority basis. Firstly, as per Section 9(1)(a), the surviving crews are entitled to their arrears of wages and other sums due to the Master of the Vessel and others. Accordingly, plaintiff, 13 crews and intervenors fall under Section 9(1)(a) of the Admiralty Act of 2017, namely:

(i) Shanmugam Rajasekar - Second Cook, i.e. the plaintiff in C.S.No.89 of 2013;

(ii) P.G.Gopikrishnan - Second Officer;

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(iii) K.Narendra Kumar - Third Engineer;

(iv) Jiwan Prakash - Chief Engineer;

(v) Somi Reddy - Electrical Engineer;

(vi) L.Bhuvanesh - Chief Cook;

(vii) Jayant P.Narkar - Fourth Engineer;

(viii) Joy Herman Corda - Ordinary Seaman;

(ix) Nitin Kumar Gupta - Fourth Engineer;

(x) Bimalendu Jana - Trainee Seaman;

(xi) Sant Raj Chaurasiya - Fitter;

(xii) Pankaja Baria - Trainee Ordinary Seaman; and

(xiii) Shailendra Yadav - Oiler, and

(xiv) Sarath Arechantakath - Deck Cadet.

66. The above said 2nd to 8 persons filed Application No.4014 of 2013 in C.S.No.89 of 2013, for declaration and determination of their wages as well as Application No.4015 of 2013 in C.S.No.89 of 2013 filed for payment out of their wages from the sale proceeds; the above said 9th to 13th persons filed A.No.4204 of 2013 in C.S.No.89 of 2013 for declaration and determination of their wages as well as Application No.4205 of 2013 in C.S.No.89 of 2013 filed for <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications payment out of their wages from the sale proceeds and the last person in the above list, namely Sarath Arechantakath filed A.No.4545 of 2013 for declaration and determination of his wages and Appln.S.R.No.29010 of 2013 was filed for payment out of his wages from the sale proceeds. Thus, in toto, all the above 14 persons claim compensation.

67. On a careful perusal of the entire pleadings and the defence, as already stated, the owners have abandoned the Vessel. This Court, based on the suit filed by the plaintiff (Shanmugam Rajasekar) ordered sale of the Vessel and subsequently, the same was sold. Therefore, as per Section 9(1)(a) of the Admiralty Act of 2017, the above said 14 persons are entitled to their wages/salary and compensation, on priority basis. Also, as per Section 143 of the Merchant Shipping Act, 1958, they are entitled to receive compensation which is equivalent to three months' wages. The above said 14 persons also claimed interest for the compensation amounts.

68. A perusal of the entire plaint, written statement and other pleadings like intervenor's applications, etc., shows that there is no dispute regarding employment of the above said 14 persons in the Vessel M.T.Pratibha Cauvery. <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications

69. Therefore, considering the pleadings and the claims submitted by the leaned counsel for the parties and the written arguments, the plaintiff in the suit in C.S.No.89 of 2013 joined the said Vessel on 31.05.2012 as Second Cook and his salary was Rs.10,000/- per month. He was under employment during the relevant period in the said Vessel, i.e. total number of days on board was 6 months and 25 days. The amount due is Rs.67,333.25 (i.e. salary 68,335.25, less, advance paid Rs.1,000). As per Section 143 of the Merchant Shipping Act, 1958, the plaintiff and 13 surviving crew intervenors are entitled to receive compensation equivalent to 3 months' wages, and for better appreciation, Section 143 of the Merchant Shipping Act, 1958, reads as follows:

"Section 143: Compensation to seamen for premature discharge:- (1) If a seaman having signed an agreement is discharged, otherwise than in accordance with the terms thereof, without fault on his part justifying the discharge and without his consent, he shall be entitled to receive from the master, owner or agent, in addition to any wages he may have earned, as due compensation for the damage caused to him by the discharge, such sum as the shipping master may fix having regard to the circumstances relating to the discharge:

Provided that the compensation so payable shall not exceed--

(a) in the case of a seaman who has been discharged before the commencement of a voyage, one month's wages; and

(b) in the case of a seaman who has been discharged after the commencement of a voyage, three months' wages.

<https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications (2) Any compensation payable under this section may be recovered as wages."

70. Thus, as per Section 143(1)(b) of the Act of 1958, the plaintiff is entitled for 3 months' salary as compensation, which comes to about Rs.30,000/-. Therefore, the plaintiff is entitled to get the actual amount due at Rs.97,333.25. (i.e. Rs.67,333.25 + 30,000).

71. Further, since the Vessel is not in running condition as on date, which was also abandoned by the owners and as the Vessel also got damaged due to "Neelam" Cyclone, the same was sold long back and therefore, the claimants are not entitled to interest as claimed by them either at 18% or 12%.

72. Thus, as the Vessel is a legal entity and as the claim is only against the Vessel and its dependants, and therefore, the Vessel had also been sold as per the order of this Court pending the present suit, and that subsequently, there is no income except the sale proceeds having been deposited with the Bank in the interest bearing account, the claimants are entitled to interest only @ 6% per annum.

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73. The plaintiff does not dispute the fact that he was a Second Cook and he had not filed anything contra to that effect. As far as the documents are concerned, the main contention of the learned counsel appearing for the plaintiff is that due to the cyclone and other connected disasters, the Vessel had become unseaworthy and the same was not in running condition and that the Vessel came to Chennai Port and due to unseaworthy condition and also that due to non-availability of fuel and could not be anchored at the appropriate place and that in the meanwhile, due to cyclone effect, the Vessel had also moved from the drifted line, and hence, subsequently, the Vessel was abandoned by the owners of the Vessel and that fortunately, the above said 13 persons escaped and that six persons died in the meantime, and ultimately, the Vessel was sold as per the order of this Court, during the pendency of the present suit, as it does not yield any favourable income, and that the claim of the claimants is not against the owner and the claim is only against the Vessel being legal entity, and hence, for all these reasons, the claimants are not entitled to any interest as claimed by them. However, taking into consideration the peculiar facts and circumstances of the case, the claimants are entitled to only 6% per annum on the compensation being discussed infra.

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74. Some of the claimants are intervenors who have filed applications pending suit, for declaration of their rights and also sought compensation. One of the claimants herein worked as Second Officer. For easy reference, the details of 14 claimants (including the plaintiff) who have sought for the amount due as compensation, are extracted below:

(i) Plaintiff :

Name of crew + Date of joining (DoJ) and date of discharge (DoD)	Rank	Salary per month	Total Number of days on Board	Amount due (salary - less - advance paid)
Shanmugam Rajasekar (plaintiff)	Second Cook	10,000	6 months + 25 days	68,333.25 minus 1,000 = 67,333.25
				A 30,000

(ii) P.G.Gopi Krishnan - Applicant in A.Nos.4014 and 4015 of 2013 :

Name of crew + Date of joining (DoJ) and date of discharge (DoD)	Rank	Salary per month	Total Number of days on Board	Amount due (salary - less - advance paid)
P.G. Gopi				A

<https://www.mhc.tn.gov.in/judis>

C.S.No.89 of 2013 and connected Applications Name of Amount due crew + (salary -

Date of Total

joining (DoJ) and date of discharge (DoD)	Rank	per month	Number of days on Board	less - advance paid)	mont compe sati
Krishnan	Second	1,70,000	6 months +	10,48,333.35	5,10,
DoJ: 20.06.2012 DoD: 24.12.2012				A	B

(iii) K.Narendra Kumar - Applicant in A.Nos.4014 and 4015 of 2013:

Name of crew + Date of joining (DoJ) and date of discharge (DoD)	Rank	Salary per month	Total Number of days on Board	Amount due (salary - less - advance paid)	3 m com s
K.Narendra Kumar DoJ: 31.05.2012 DoD: 24.12.2012	Third Engine er	1,85,000	6 months + 25 days	12,64,166.67	5,55,
				A	

(iv) Jiwan Prakash – Applicant in A.Nos.4014 and 4015 of 2013
<https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications
 Name of Amount due crew + Date (salary -

of joining (DoJ) and	Rank	Salary	less -
-------------------------	------	--------	--------

date of discharge (DoD)	per month	Number of days on Board	advance paid)	
Jiwan Prakash DoJ: 30.06.2012 DoD: 24.12.2012	Chief Engineer	4,50,000	5 months + 25 days	A 26,25,000.00

(V) Somireddy Kotilingeswara - Applicant in A.Nos.4014 and 4015 of 2013 Name of Amount due crew + Date (salary -

of joining (DoJ) and date of discharge (DoD)	Rank	Salary per month	Total Number of days on Board	less - advance paid)	
Somireddy Kotilingeswara Reddy DoJ: 11.06.2012 D: 24.12.2012	Assistant Electrical Officer	15,000	6 months + 14 days	A 97,000	

(vi) L. Bhuvanesh - Applicant in A.Nos.4014 and 4015 of 2013
<https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications
 Name of Amount due crew + Date (salary -

of joining (DoJ) and	Rank	Salary	Total Number of	less -
-------------------------	------	--------	--------------------	--------

date of discharge (DoD)	per month	days on Board	advance paid)	A
L.Bhuvanesh				
DoJ: 06.08.2012	Chief Cook	33,383	4 months + 19 days	1,54,675.00
DoD: 24.12.2012				

(vii) Jayant P.Narkar - Applicant in A.Nos.4014 and 4015 of 2013 Name of Amount due crew + Date (salary -

of joining (DoJ) and date of discharge (DoD)	Rank	Salary per month	Total Number of days on Board	less - advance paid)	A
Jayant P.Narkar DoJ: 04.05.2012 DoD: 24.12.2012	Fourth Engineer	40,000	7 months + 21 days	3,08,000	

<https://www.mhc.tn.gov.in/judis>

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(viii) Joy Herman Corda: Applicant in A.Nos.4014 and 4015 of 2013 Name of Amount due crew + Date (salary -

of joining (DoJ) and Rank date of discharge (DoD)	Salary per month	Total Number of days on Board	less - advance paid)	
Joy Herman Corda	Ordinary Seaman	32,000	8 months + 26 days	A
DoJ: 30.03.2012 DoD: 24.12.2012				2,83,733.00

(ix) Nitin Kumar Gupta: Applicant in A.Nos.4204 and 4205 of 2013:

Name of crew + Date of joining (DoJ) and Rank date of discharge (DoD)	Salary per month	Total Number of days on Board	Amount due (salary - less - advance paid)	
Nitin Kumar Gupta	Fourth		8 months +	A
				7,06,667.00

C.S.No.89 of 2013 and connected Applications Name of Amount due crew + Date (salary -

of joining	Total			
(DoJ) and Rank	Salary	Number of	less -	3 m
date of	per month	days on	advance	com
discharge				s
(DoD)		Board	paid)	
DoJ:	Engineer	80,000	25 days	A
31.03.2012				(-)
				1,65,391.00
DoD:				=
24.12.2012				5,41,276.00

(x) Bimalendu Jana (Applicant in A.Nos.4204 and 4205 of 2013 Name of Amount due crew + Date (salary -

of joining	Total			
(DoJ) and Rank	Salary	Number of	less -	3 m
date of	per month	days on	advance	com
discharge				s
(DoD)		Board	paid)	
Bimalendu				A
Jana			4 months +	
			29 days	49,667.00
DoJ:	Trainee			30,
26.07.2012	Seaman	10,000		
DoD:				
24.12.2012				

(xi) Sant Raj Chaorasiya: Appliant in A.Nos.4204 and 4205 of 2013
<https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications
 Name of Amount due crew + Date (salary -

of joining Total

(DoJ) and Rank	Salary	Number of	less -	
date of	per month	days on	advance	
discharge			paid)	
(DoD)		Board		A
Sant Raj			6 months +	
Chaorasiya			14 days	
DoJ:	Fitter	30,000		1,94,000
11.06.2012				
DoD:				
24.12.2012				

(xii) Pankaja Baria: Applicant in A.Nos.4204 and 4205 of 2013:

Name of		Amount due		
crew + Date		(salary -		
of joining	Total			
(DoJ) and Rank	Salary	less -		
date of	per month	Number of	advance	
discharge		days on	paid)	
(DoD)		Board		A
Pankaj Baria			7 months +	
DoJ:			21 days	
04.05.2012	Trainee	10,000		77,000.00
DoD:	Ordinary			
24.12.2012	Seaman			

<https://www.mhc.tn.gov.in/judis>

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(xiii) Shailendra Yadav Applicant in A.Nos.4204 and 4205 of 2013 Name of Amount due crew + Date (salary -

of joining (DoJ) and Rank date of discharge (DoD)	Salary per month	Total Number of days on Board	less - advance paid)	A
Shailendra Yadav Oiler DoJ: 18.02.2012 DoD: 24.12.2012	34,776	10 months + 7 days	3,55,874.40	1,

(xiv) Sarath Arechantakath: Applicant in A.Nos.4545 of 2013 Name of Amount due crew + Date (salary -

of joining (DoJ) and Rank date of discharge (DoD)	Salary per month	Total Number of days on Board	less - advance paid)	A
Sarath Arecha- ntakath DoJ: 31.03.2012 DoD:	Deck Cadet 5,000	8 months + 25 days	44,167.00 (-) 6,550.00 = 37,617.00	

<https://www.mhc.tn.gov.in/judis>

C.S.No.89 of 2013 and connected Applications Name of Amount due crew + Date
(salary -

of joining	Total	
(DoJ) and Rank	Salary	less -
date of	per month	Number of
discharge		days on
(DoD)		advance
	Board	paid)
24.12.2012		A

75. As already stated, since the Vessel was already sold, and sale proceeds were deposited, they are entitled to get compensation including interest only from the already deposited amount. Accordingly, the Registry of this Court is directed to pay the entire compensation amount out of the already deposited amount with interest @ 6% per annum, to the respective Bank accounts of the above said 14 surviving crew intervenors (including the plaintiff) on priority basis and they are in first priority and the necessary compensation shall be paid to them accordingly from and out of the total compensation deposited and lying to the credit of the suit in this Court.

76. Some of the applicants were employed in the Vessel M.T.Prathiba Cauvery and also in the sister concern's Vessel M.V.Pratibha Warna and both the ships were, at the relevant point of time, owned by Pratibha Shipping Corporation Limited. Those applicants have also sought for compensation for <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications having worked in the Vessel Pratibha Cauvery also, which had sunk in the Chennai Port Trust. They are entitled to interest only at 6% per annum on the compensation.

Shanmugam	Rajasekar	V. owners and p
interested in Vessel -	M.T.Pratibha Cauvery	
Sl. Application	Name	Amount
No. No.		claimed
1	4209- Captain Rajkaran	Rs.12,60,733
	4211/2013 Thakur (Master)	+
		6% interest

Pratibha Cauvery (signature) 19.02.2013 (signature) 29.02.2013

		Durga Halder	Pada Rs.4,50,000 + P (Chief 6% interest C	
2	3819-	Engineer)		(
				1 S 0
			Rs.1,64,613/- Pratibh + 6% interest Cauvery	
		Nishanth		(signed
		Chandrakant		01.04.2
3	93/2014	Jagadale (ordinary sea man)		signed 31.10.2
		Shanmugam Rajasekar V. owners and parties interested in Vessel - M.T.Pratibha Warna		

<https://www.mhc.tn.gov.in/judis>

C.S.No.89 of 2013 and connected Applications Sl. Application Name Amount Vessel
No. No. claimed served on Pratibha Sarfaraj Latif Rs.2,18,484 + Warna (EL 6%
interest (signed on Rajpurkar 1 4208/2013 01.02.2012 -

Officer) signed off on 11.06.2012) Rs.2,57,408 + Pratibha Anil 6% interest Warna Vaithiya (signed
on Kumar Arjunan 2 4213/2013 09.11.2012 -

(4th Engineer) signed off on 02.02.2013) Pratibha Warna Rs.10,32,358 (signed on 3 4220/2013
Captain Parwez + 6% interest 26.11.2011 -

		Shamsh (Master)	
		Anil Kumar	Rs.1,97,459
		(Electrical	6% interest
4	5717/2013	Officer)	

77. Learned counsel for the applicants in A.Nos.3821, 4211 of 2013, 93 of 2014, 4208, 4213, 4220 and 5717 of 2013 submitted that the applicants in A.Nos.3821 and 4211 of 2013 served on board the Vessel M.V.Prathibha Cauvery, which sank off the Chennai Port. The applicants in A.Nos.4208, 4213, 4220 and 5717 of 2013 had served on the Vessel M.V.Prathibha Warna, a sister ship of M.V.Prathibha Cauvery and both the ships, at the relevant point of time, were owned by Pratibha Shipping Corporation Limited. Both the sets of applicants have claimed only the salary/wages payable to them along with interest from the date of their being signed off and such applications have also been filed to declare and determine their interests in the said Vessel, besides seeking leave of this Court to intervene in the suit and for payment of amounts due to them including interest. Pursuant to the order of this Court, the Vessel M.V.Prathibha Cauvery was ordered to be sold and the sale proceeds along with the accrued interest, are lying in the deposit of this Court to the credit of the present suit.

78. It is further stated by the applicants in A.Nos.3821 and 4211 of 2013 and 93 of 2014, who had served on board the Vessel that they are entitled to proceed against the Vessel and under Section 9(1)(a) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, their claim for wages have a priority over all the other claims against the said Vessel and they have also a maritime lien over the Vessel and the sale proceeds in terms of Section 9(1) of the Act of 2017 and are entitled to maintain the suit in the Admiralty Jurisdiction of this Court under Section 3 read with Section 4(o) of the Act of 2017.

<https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications

79. As far as the applicants in A.Nos.4208, 4213, 4220 and 5717 of 2013 are concerned, their claims relate to their services on board M.V.Prathiba Warna, which is a sister-ship, which is under the same ownership. Even prior to the enactment of the 2017 Act, a claimant is entitled to proceed against the sister- ship. This Court, exercising Admiralty Jurisdiction, is entitled to order arrest of any other Vessel under the same ownership for the purpose of enforcing the claims under Section 5(2) of the 2017 Act, subject to the condition and as contemplated under Section 5(a) of the said Act, the person who owned the Vessel at the time when the maritime claim arose, is liable for the claim and is the owner of the Vessel when the arrest is effected. Resultantly, members of the crew would be entitled to seek an order of arrest from this Court, not only of the Vessel on which they had served as crew members, but also against any other Vessel under the same ownership. It is also stated that in the event of the sale of a Vessel under arrest, the claimants including crew members, are entitled to proceed against the sale proceeds of the Vessel and seek a direction from this Court for payment out of the amounts due to them.

80. Coming to the next order of priority in distributing the compensation, it is the legal heirs of the dead sea-men. They are entitled to get compensation <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications only under the provisions of the Employees Compensation Act, 1923 and not under the provisions of the Motor Vehicles Act, as argued by the learned counsel for

the applicant in A.Nos.1713, 1715, 1675, 1674, 1719 and 1723 of 2013 in C.S.No.89 of 2013. In this regard, it is relevant to quote relevant portion of Section 4 of the Employees' Compensation Act, which deals with the statutory compensation payable:

"Section 4: Amount of compensation: (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:

(a) where death results from the injury: an amount equal to fifty per cent, of the monthly wages of the deceased employee multiplied by the relevant factor, or an amount of one lakh and twenty thousand rupees, whichever is more."

81. As per Section 9(1)(b) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, the above tabulated deceased employees' legal heirs are entitled to compensation on priority basis. Their employment in the Vessel is not in dispute at the relevant point of time when the Vessel capsized due to "Neelam" Cyclone. The above crew of the Vessel Pratibha Cauvery, in order to save their life, used life jacket and due to its failure, they have lost their life. They could not produce all the relevant/crucial documents and they have lost those documents, but however, the employment in the Vessel is not in dispute. <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications Therefore, the above tabulated legal heirs are entitled to compensation under the provisions of the Employees' Compensation Act. Though the legal heirs of the above said deceased persons have claimed interest @ 12%, they are entitled to interest only at 6%, as those dead sea-men could not move. In spite of safeguard of the Vessel and the huge expenditure incurred, they could not survive and they have lost their valuable lives and they could not be taken back to the Port arena. The incidental expenses like paper publication, salvaging charges and that even the owner of the Vessel had abandoned and as per the Order of this Court, the Vessel was sold and the sale proceeds are lying in this Court's deposit, as detailed supra. Accordingly, in the second order of priority, the legal heirs of the deceased employees of the Vessel, are entitled to the compensation with interest @ 6% per annum, which shall be paid from and out of the deposit lying to the credit of the suit before this Court.

82. The details of the compensation payable to the legal heirs of the dead seamen, along with the details of the claimant and Application Number (in C.S.No.89 of 2013) as claimed by the claimants are as follows:

Sl. No.	Name of the dead sea-man	Position held	Equivalent ILO-ITF Rank	Details of the applicant/claimant
1	Krishnachandaran	Trainee	Able bodied	Chandra-

<https://www.mhc.tn.gov.in/judis>

C.S.No.89 of 2013 and connected Applications P.P. Seaman Seaman sekharan.P.P. of 2013 2 Rushab Jadhav Deck Cadet Third Officer Chandrakanth A.No.1715 1,27,16,348.75 Jadhav of 2013 3 Jomon Joseph Oiler Able bodied K.J.Joseph A.No.1675 76,82,853.5 Seaman of 2013 4 Anand Second Second Mohandoss A.No.1674 1,24,00,195.5 Mohandoss Engineer Engineer of 2013 5 Raj Ramesh Deck Cadet Third Officer Namrata Khamitkar A.No.1719 1,29,77,816.25 Khamitkar of 2013 6 K.K.Niranjan Marine Third Engineer Packyalakshmi A.No.1723 1,19,50,706.25 Engineer of 2013

83. Even as per the order of priority under Section 9(1)(c) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, the salvors are entitled to compensation with interest at 6% per annum, as per the decision of the Honourable Supreme Court reported in 1998 (4) SCC 302 (Board of Trustees of Port of Mumbai Vs. Indian Oil Corporation). The next order of priority is the Port (Chennai Port Trust), which is entitled to get compensation under Section 9(1)(d) of the Admiralty Act of 2017. According to the Chennai Port Trust, they have filed A.No.2899 of 2013 in C.S.No.89 of 2013 stating that the Vessel M.T.Pratibha Cauvery, on board, arrived Chennai anchorage at about 11.45 hours on 25.09.2012 with Cargo LDO. The Vessel berthed on 28.09.2012 to discharge cargo and sailed on 29.09.2012 to Mumbai. The Vessel came back on 08.10.2012 and anchored at about 17.54 hours for provision and bunkers. On 30.10.2012 at about 13.05 hours, the Meteorological Department informed the Chennai Port Trust that due to Cyclone "Neelam" movement predictions hoist <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications danger signal No.VII (i.e., great danger). The Port was to face severe weather from a storm of great intensity that is expected to cross over the Coast to the South of the Port. The practice of broadcasting the warning was carried out by signal station staff and informed the Vessel inside the harbour and also their agents for sailing their Vessel out of the harbour. The Port signal station also informed the entire Vessel at anchorage to proceed out to a safer distance. On 31.10.2012 at about 10.40 hours, M.T.Pratibha Cauvery informed signal station that the Vessel is dragging anchor and not able to run main engine and they do not have bunker and they are unable to hold position and therefore requested tug assistance. The Vessel was informed that due to bad weather, Port Tug assistance is not possible. However, the Port took immediate action to mobilise tugs which were safely tied up due to cyclonic weather and two Pilots went to Sea taking two Port tugs ocean fame and Bharathiar, but they could not cross the duffer in light point due to 36.9 knots wind speed and swell height of more than 2 meters. Subsequently, wind speed increased to 40 knots. By that time, the Vessel informed that they have picked up anchor at 11.54 hours and maintaining the same position and trying to move out with their engines. At about 13.10 hours, the Vessel informed that they have crossed Port limits. The Vessel was monitored by VTMS (Vessel Traffic Management System) display and Port signal station informed the Vessel that they are drifting close towards the <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications shore, for which the Vessel acknowledged. At 13.48 hours, the Vessel was warned by Port signal station that the Vessel will aground unless they do something. The Vessel had dropped anchor at 14.13 hours. But the Vessel continued to drag and was advised to drop second anchor also. At 14.21 hours, the Vessel sent SOS signal MAY DAY and informed the Vessel grounded.

84. It is further stated by the learned Standing Counsel appearing for Chennai Port Trust that preliminary enquiry was ordered by the Director General of Shipping and it revealed that the Master reportedly ordered to abandon the ship and 22 of the total 37 crew, left the ship in the life boat. The boat capsized immediately after launching due to bad weather and six crew members lost their lives. The Director General of Shipping mobilised ETV (Emergency Towing Vessel) 'SCI Ratna', which arrived the site on 07.11.2012 in the afternoon. The owners of the Vessel engaged the services of SMIT India to salvage and after couple of attempts by the salvage tug 'Malaviya 21' starting from 08.11.2012, the Vessel was eventually re-floated by the salvors on 11.11.2012 at about 18.20 hours and reportedly, the Vessel was stable with hull integrity in-tact and there were no reports of oil spill.

85. Learned Standing Counsel appearing for the Port Trust further stated <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications that the relatives of the deceased sailors had filed W.P.Nos.29948 of 2012, 30197 of 2012, 30900 of 2012, 30991 of 2012, 30992 of 2012 and 30993 of 2012, for compensation and this Court, by order dated 21.12.2012 directed the Pratibha Shipping Company Limited, Mumbai to pay the admitted amount of Rs.87,45,300/- as interim measure to the legal heirs of the crew members, after deducting Rs.30 lakhs already deposited and the Registrar General of this Court was directed to disburse the same and directed the Company to deposit further sum of Rs.5 crores or Bank Guarantee for the said amount or to give immovable property security worth Rs.5 crores to the satisfaction of the Registrar General of this Court before moving the Vessel out of the territorial jurisdiction of this Court and also directed the Company to pay the salary payable till the end of October 2012 to the petitioners in W.P.No.31801 to 31947 of 2012 and pay the same within four weeks and also directed the Police finalise the investigation within three months from 21.12.2012.

86. The learned Standing Counsel appearing for the Chennai Port Trust also further stated that the owners of the Vessel, i.e., M/s. Pratibha Shipping Company Limited, have requested to allow berthing of the Vessel inside the Port for a period of five days, vide letter dated 06.11.2012. The owners replied that Port was constrained to berth the Vessel and suggested berthing of the Vessel of <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications the ship repair facility of Kattupalli Port. The Director General of Shipping had given direction under Section 411 of Merchant Shipping Act, 1958 to berth the Vessel inside the Chennai Port for a period of two days, vide letter No.11- NT(65)/2012, dated 16.11.2012. The Vessel was berthed at Jawahar Dock IV at 10 hours on 21.11.2012 after obtaining P & I Insurance Cover up to a maximum of US Dollar 5 Million, subject to the condition that she should vacate the berth not later than 06.00 hours on 24.11.2012, failing which, the ship will be shifted to outside the Port limits by the Port itself. The salvors delivered the Vessel to ship owner on 24.11.2012 at about 17.30 hours, but the owners have failed to remove the Vessel from the Port and Port Limits.

87. It is further stated by the learned Standing Counsel appearing for the Chennai Port Trust that the agent of the Vessel M/s. Seaworld Shipping and Logistics Pvt. Ltd., have refused to act as agent for the Master/Vessel, vide their letter dated 22.11.2012 and the Police complaint has therefore been lodged against the owners, Agent and salvors on 26.11.2012. The Director General of Shipping was requested to prevail upon the Nautical Adviser and ensure immediate removal of the Vessel from the Port, vide letter dated 27.11.2012 and the owners and agent were directed to remove the Vessel from

the Port and settle the outstanding amount towards Port charges, vide letter dated <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications 29.11.2012. The Director General of Shipping issued statutory notice, dated 29.11.2012 to the owners of the Vessel under Section 411 of the Merchant Shipping Act, 1958, to take the Vessel immediately from the Port on a single voyage to either Port of repair or other destination as deemed fit. The owners failed to take out the Vessel, which was deserted by the entire crew. A sum of Rs.64,62,057/- remains unpaid as on 20.02.2013 and thereafter, a sum of Rs.72,332/- is payable per day towards berth hire. Notice dated 04.01.2013 under Section 4(1) of the Indian Ports Act, 1908, was issued to the owners in compliance with B.R.No.127, dated 21.12.2012. Despite the said notice, no steps have been taken by the owners to settle the outstanding amount and remove the Vessel from the Port. Hence, the Vessel was distrained on 21.01.2013 under Section 64 of the Major Port Trusts Act, 1963 to sell the Vessel and realise the Port charges.

88. The learned Standing Counsel appearing for the Chennai Port Trust further contended that some of the sailors have also approached this Court demanding their wages and the same is pending before this Court and hence, the applicant-Chennai Port Trust is also approaching this Court to intervene in the suit and seek for sale of the Vessel. The Vessel was sold on top priority and the Chennai Port Trust has borne the advertisement charges for sale of the <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications Vessel. The advertisement charges work out to Rs.5,39,568/-.

89. The learned counsel for the Chennai Port Trust submitted that they are entitled for the expenses incurred in causing the publication for sale of the Vessel and the same works out to Rs.5,39,568/- (advertisement charges). The statutory charges incurred by the Chennai Port Trust works out to Rs.1,36,94,403/-. The Port was already paid Rs.13,39,061/- and after deducting the same, the balance statutory charges to be paid to Chennai Port Trust works out to Rs.1,23,55,342/-. After adding the advertisement charges of Rs.5,39,568/- and the balance statutory dues, the amount to be paid to Chennai Port Trust is Rs.1,28,94,910/-. (5,39,568 + 1,23,55,342).

90. The learned Standing Counsel appearing for the Chennai Port Trust relies on a judgment of the Supreme Court, reported in 1998 (4) SCC 302 (Board of Trustees of Port of Mumbai Vs. Indian Oil Corporation), in which the Apex Court has held that the Port has the paramount and first lien over the sale and as such, the Port is liable to be paid for its dues.

91. The learned Standing Counsel appearing for the Chennai Port Trust also stated that the accident took place on 31.10.2012, whereas the Admiralty <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications Act came into effect only in the year 2017, and the law on the date of the accident has to be considered and the law prevailing on the date of accident was that the dues of the Chennai Port Trust have to be paid first and then only, others are liable to be paid.

92. It is the contention of the learned Standing Counsel appearing for the Chennai Port Trust that the dues to be paid to the Port amounted to Rs.1,28,94,910/- and the dues of the Chennai Port Trust are to be realised as first charge, as per the provisions of the Major Port Trusts Act, 1963.

93. From the above submissions of the learned Standing Counsel appearing for the Chennai Port Trust, it is clear as to how the Vessel came to the Port and also the in-action attitude on the part of the owners/agents of the Vessel from the salvors. Further, as per the decision of the Supreme Court reported in 1998 (4) SCC 302 (Board of Trustees of Port of Mumbai Vs. Indian Oil Corporation), the Chennai Port Trust is entitled for compensation in respect of the statutory charges, apart from advertisement charges, as noted above. Therefore, from and out of the amount deposited to the credit of the present suit, the Chennai Port Trust is entitled to Rs.1,28,94,910/- as observed supra. <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications

94. As far as the salvor's claim application is concerned in Application No.2997 of 2016 in C.S.No.89 of 2013, it is submitted by their learned counsel that as salvors, they shall have priority only second to the sea-farer's claim for wages and death compensation. If salvage services were not provided to the defendant-Vessel, the defendant-Vessel would not have been sold or may have fetched a considerably meagre price.

95. The salvors obtained a consent decree for a sum of USD 2,480,000.00 from the Bombay High Court against the defendant-Vessel and its owners in Admiralty Suit (L) No.394 of 2013 (decree) for the salvage services provided to the defendant-Vessel from 14.11.2012. The applicant/salvor has filed an Execution Petition in E.P.No.34 of 2018 in C.S.No.89 of 2013 for a sum of INR 13,61,89,200.00 (INR equivalent of the decree sum of USD 2,480,000) before this Court for satisfaction of the decree from the sale proceeds of the defendant- Vessel deposited with this Court. The principal sum of USD 2,480,000 had been converted to INR 13,61,89,200 at an exchange rate of INR 54.9150 being the exchange rate on the date of the decree, i.e. 10.05.2013. The applicant/salvor is entitled to the said sum with interest and they are entitled to priority over even the Port of Chennai and other claimants after the salary of the employers of the Vessel.

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96. Further, some of the Banks have also filed applications for their security, since they are secured creditors. Some of the secured creditors have also filed application seeking compensation.

97. It is not in dispute that the defendant-Vessel came to the Port of Chennai and due to cyclone "Neelam", the Vessel could not move further. But however, the fact remains that due to un-seaworthiness of the Vessel and also due to non-availability of fuel, it could not be placed in the correct place as per the instructions of Chennai Port Trust. It is not the sole reason of the cyclone "Neelam effect". On that day, there were several Vessels in the Port and those who followed the instructions of the Port Trust, sold it, but however due to un- seaworthiness of the Vessel and non-availability of fuel, the Vessel had lost its control and subsequently, all the crew have abandoned and left. As per the preliminary report of the Director General of Shipping and also the experts, it clearly shows that only due to the negligence on the part of the owners and agents, the ship had berthed into the sea. As per the version of the Chennai Port Trust, subsequently, all the persons have not co-operated and they left the Vessel.

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98. Despite several requests made by the Port Trust, the owners have not removed the Vessel from the Port and the outstanding dues have not been settled. The Port Trust has clearly stated that M/s. Seaworld Shipping and Logistics Private Limited refused to act as an Agent for the Master of the Vessel, vide their letter dated 22.11.2012 and the Police complaint has also been lodged against the owners of the Vessel, Agent and salvors on 26.11.2012. The owners and agents were directed to remove the Vessel from the Port and settle the outstanding amount towards the Port charges, vide letter dated 29.11.2012. Even the salvors have also not properly completed their work and therefore, they cannot take the priority as per Section 9 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. However, from the evidence of the Port Trust, the salvors have done some service and hence, they are also entitled for the service charges, but only after the surviving legal heirs and employment of 13 persons, its legal heirs, employees of the deceased and also the Port Trust, the statutory dues of the Port Trust, if remaining amount is there, then only the salvors are entitled to get compensation as per the decree of the Bombay High Court in Admiralty Suit (L) No.394 of 2013. That will not prevail over all the above categories of workers that the workers dues and the legal heirs of the deceased workers and also the statutory charges of the Port. <https://www.mhc.tn.gov.in/judis C.S.No.89 of 2013 and connected Applications>

99. Since the Port Trust has given instructions and warned and however, they are entitled to retain the Vessel to safeguard the Vessel. The Vessel has now been sold as per the order of this Court, the maritime lien shall be disposed of on priority basis as per Section 9 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, and also by following the decision of the Supreme Court reported in 1998 (4) SCC 302 (Board of Trustees, Mumbai Vs. Indian Oil Corporation).

100. Therefore, after clearing all the above order of payment of compensation to the persons mentioned in Section 9 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, and in view of the decision of the Honourable Supreme Court reported in 1998 (4) SCC 302 (supra), if anything remains, the salvors are entitled to be paid compensation. Hence, after the salvors, the secured creditors are entitled to get compensation, if any amount still lies in deposit.

101. In the result, all the applications are disposed of with the above observations. Since the Vessel has already been sold, and it is not fetching further income, except nominal interest from the deposit of the sale proceeds, the persons claiming compensation are entitled to get interest only at 6% per <https://www.mhc.tn.gov.in/judis C.S.No.89 of 2013 and connected Applications> annum.

102. As far as the Writ Petition in W.P.No.3568 of 2013 filed by M/s. Seaworld Shipping and Logistics Private Limited, is concerned, they have refused to act as Agent for the Master/Vessel, vide letter dated 22.11.2012. The writ petition has been filed even before the sale of the Vessel. In view of the disposal of the above applications in C.S.No.89 of 2013, and since the Vessel had been sold and the claim of the claimants be paid in the order of priority as per Section 9(1) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, the relief claimed in the said Writ Petition in W.P.No.3568 of 2013 has become infructuous.

103. On failure to comply with the provisions of the Company Law, winding up process had come into play in respect of the writ petitioner-Company and hence, there are secured creditors of the writ

petitioner-Company in the winding up proceedings, and the control of the writ petitioner-Company goes with the Official Liquidator and he cannot be added under the provisions of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, since the Vessel is a legal entity under the provisions of the Companies Act and hence, the writ petitioner-Company is not necessary to be added to be paid compensation in the <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications order of priority under Section 9 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act.

104. It is not in dispute that the Vessel had sailed during the "Neelam" cyclone and only because of its un-seaworthiness, its expert opinion found that it is unseaworthy to sail and no certificate was produced to show its seaworthiness at the relevant point of time. There was also no sufficient fuel at that time and due to that, they could not be operated in the anchorage and the Vessel was not sailed and halted in the right place as per the direction of the Port Trust. Therefore, the Vessel was deviated and moved towards the sea-shore. Hence, with the help of salvors, they have got there and action in the anchor of the Port Trust, despite the direction, they did not remove the Vessel and further, since the Vessel had lost its seaworthiness, they could not proceed further in the seas and the Vessel was abandoned either by the owners or the Agent or the salvage agent had taken effective steps to move the Vessel from the Port Trust. Subsequently, the workers of the Vessel and even the Port Trust, moved this Court to get the statutory dues. Thereafter, the Vessel was directed to be sold upon the order of this Court pending the present suit.

105. Therefore, from the above said discussion, out of the sale proceeds deposited in the Bank, the first priority goes to the surviving plaintiff + 13 + 3 <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications employees of the Vessel and 4 employees of the sister concern's Vessel M.V.Prathiba Warna. Since the Vessel M.T.Prathiba Cauvery had already been sold, they are entitled to compensation with interest at 6% per annum as tabulated supra.

106. Next in the order of priority is the surviving legal heirs of the deceased. After that, as per the decision of the Supreme Court reported in 1998 (4) SCC 302 (Board of Trustees, Mumbai Vs. Indian Oil Corporation), statutory dues are to be disbursed to the Port Trust authorities. Thereafter, if any amount still remains, then the salvors are entitled to get the same, who had obtained a decree from the Bombay High Court for the salvage services. If after this order of priority in the disbursement of the compensation amount, still remains, then the secured creditors are to be paid. Since the Vessel got struck and the same having been sold subsequently, they are not entitled to get interest as claimed by them. However, for the above said reason, they are entitled to get interest only at 6% per annum.

107. The suit is partly decreed in the above terms and all the applications are consequently disposed of as above. The Writ Petition is dismissed as having become infructuous. There shall be no order as to costs.

28.04.2023 Index: Yes/no <https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications Speaking Order: Yes/no Neutral Citation: Yes/no cs To

1. The Board of Trustees, Port of Chennai, having its Administrative Office at Rajaji Salai, Chennai-600 001, Represented by its Chairman.

2. The Deputy Conservator, Chennai Port Trust, Rajaji Salai, Chennai-600 001.

<https://www.mhc.tn.gov.in/judis> C.S.No.89 of 2013 and connected Applications P.VELMURUGAN, J cs Pre-delivery Judgment in and connected applications Judgment Delivered on 28.04.2023
<https://www.mhc.tn.gov.in/judis>