

[Porto v. Carnival Cruise Lines, Inc.](#)

Court of Appeal of Florida, Third District

November 14, 1989, Filed

Case No. 88-1931

Reporter

555 So. 2d 394; 1989 Fla. App. LEXIS 6383; 14 Fla. L. Weekly 2662

RAMON CABARCAS PORTO, Appellant, v. CARNIVAL CRUISE LINES, INC., Appellee

Subsequent History: **[**1]** Released for Publication on Denial of Rehearing February 7, 1990.

Prior History: An Appeal from the Circuit Court for Dade County, Robert Newman, Judge.

Core Terms

maintenance and cure, fail to provide, compensatory damages, damages, jury instructions, punitive damages, final judgment, shipowner, maritime, ship

Case Summary

Procedural Posture

In a maritime action, appellant seaman sought review of a decision from the Circuit Court for Dade County (Florida) which found in favor of appellee cruise line.

Overview

Appellant seaman sought damages for an injury he sustained during the course of his employment with appellee cruise line. At trial, the court instructed the jury on the elements the appellant needed to prove to establish a compensatory damage claim. The trial court rendered judgment for the appellee, and appellant sought review. He contended that the trial court erred because the jury instructions created the impression that appellant needed to prove an additional element and had to show an injury suffered as a result of the failure to provide maintenance. The court reversed and remanded because the instruction was prejudicial error. It found that when a seaman was injured while in the service of his ship, the shipowner was required to pay him maintenance and cure, whether or not the shipowner was at fault.

Outcome

The court reversed the trial court judgment for appellee cruise line because the trial court erred when it instructed the jury on the elements appellant needed to prove to establish a compensatory damage claim.

LexisNexis® Headnotes

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Admiralty & Maritime Law > Maritime Workers' Claims > General Overview

Admiralty & Maritime Law > Maritime Workers' Claims > Maintenance & Cure > General Overview

Admiralty & Maritime Law > Maritime Workers' Claims > Maintenance & Cure > Covered Employees

Admiralty & Maritime Law > ... > Maintenance & Cure > Damages > Punitive Damages

Civil Procedure > ... > Jury Trials > Jury Instructions > General Overview

HN1 When a seaman becomes injured while in the service of his ship, the shipowner must pay him maintenance and cure, whether or not the shipowner was at fault.

Counsel: Brett Rivkind, for appellant.

Kelley Drye & Warren, and Brooks C. Miller, for appellee.

Judges: Nesbitt, Cope, and Gersten, JJ.

Opinion

[*394] This is an appeal from a final judgment in a maritime case in which appellant, Ramon Cabarcas Porto, a seaman, sought damages from appellee,

Carnival Cruise Lines, Inc. (Carnival), for an injury sustained during the course of his employment. The jury found in favor of Carnival on all counts. We reverse and remand.

Appellant claimed to have suffered an injury while reboarding the ship. Carnival had provided maintenance and cure. However, appellant contended that the amount provided was insufficient. Appellant sought, pursuant to the Jones Act and general maritime law, additional maintenance and cure, punitive damages arising from Carnival's failure to provide maintenance and cure, and compensatory damages arising from Carnival's alleged negligence.

At trial, the court instructed the jury on the elements the appellant had to prove to establish a compensatory damage claim arising from Carnival's failure to provide maintenance and cure. The trial court instructed the jury as follows:

[2]** Therefore, in order to award damages to plaintiff for the failure of the defendant to provide maintenance and cure, you must first find:

- (1) That the plaintiff was entitled to maintenance and cure;
- (2) That it was not provided;
- (3) That such failure resulted in injury to the plaintiff.

In this case, appellant sought recovery of compensatory damages arising from Carnival's negligence. Appellant was not seeking compensatory damages arising from Carnival's failure to provide maintenance and cure. On appeal, appellant's primary **[*395]** contention is that the above instruction misled the jury into believing that appellant needed to prove an additional element, "injury suffered as a result of the failure to provide maintenance," in order to award maintenance and cure.

We therefore conclude that giving the above instruction was error and prejudiced the jury's findings on appellant's maintenance and cure claim and punitive damages claim arising from appellant's failure to provide maintenance and cure. **HN1** When a seaman becomes injured while in the service of his ship, the shipowner must pay him maintenance and cure, whether or not the shipowner was at fault. *Gaspard v. Taylor Diving & Salvage Co., [*3] Inc.*, 649 F.2d 372 (5th Cir. 1981), cert. denied, 455 U.S. 907, 71 L. Ed. 2d 445, 102 S. Ct. 1252 (1982).

Finding no merit in appellant's other contentions, we reverse the final judgment and remand the cause for a new trial on appellant's claims for maintenance and cure, and punitive damages arising from appellant's failure to provide maintenance and cure.

Reversed and remanded.