

Workplace Death at Sea: Chinese Surviving Families' Experiences of Compensation Claims
Décès en mer en milieu de travail : l'expérience de familles chinoises survivantes de marins décédés dans leurs démarches de demandes d'indemnisation
Deceso en el lugar de trabajo en alta mar: Experiencias de reclamaciones de compensación de familias chinas sobrevivientes de marinos fallecidos

Desai Shan, Ph. D.

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Résumé de l'article

Le métier de marin demeure un des plus aventureux, mais constitue également l'une des plus dangereuses formes de travail. En comparaison des travailleurs industriels qui oeuvrent sur la terre ferme, le risque de décès chez les marins est de 11 fois plus élevé. Et leur mort en service s'avère néfaste aux conditions sociales, financières et de santé des familles survivantes. Bien qu'il y ait eu une attention particulière portée à l'amélioration de la santé des marins et de leurs conditions de travail, les effets des décès en mer sur les familles survivantes sont demeurés négligés tant par les chercheurs que par les décideurs politiques.

En nous basant sur des entrevues en profondeur menées en 2013 et 2014 auprès de huit membres de familles survivantes de marins décédés en mer, cette étude analyse leur expérience dans leurs démarches pour obtenir des indemnités de décès en Chine, laquelle compte la plus grande population de marins au monde. Au moment de l'étude, il s'était passé en moyenne 2,4 ans depuis les décès. Tous les participants à l'étude nous ont fait part de difficultés considérables rencontrées lors de leur communication avec les agences de placement et les propriétaires des bateaux au moment de faire leurs demandes d'indemnisation.

Notre étude montre que ces familles se retrouvent en position vulnérable lorsqu'il y a un conflit avec ces compagnies. Elle révèle également la faible capacité de l'État à les aider à défendre leurs droits. L'absence de réglementation des entreprises impliquées dans des relations d'emploi étrangères accentue la perte économique et la souffrance psychologique qu'endurent ces familles à la suite du décès d'un marin en exercice. De plus, les procédures légales et administratives existantes ne permettent pas de rétablir la justice ni de procurer l'aide thérapeutique nécessaire aux familles survivantes. En conséquence, ces dernières doivent endurer des pertes financières considérables, ainsi qu'une détresse psychologique additionnelle lors de leurs démarches en vue d'obtenir une indemnisation.

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Workplace Death at Sea: Chinese Surviving Families' Experiences of Compensation Claims

Desai Shan

Seafaring remains one of the most dangerous forms of work. Compared to land-based industrial workers, the risk of fatality of seagoing workers is up to 11 times higher. Workplace fatality is highly damaging for the social, financial and health conditions of the families of deceased workers. However, the effect of deaths of maritime transport workers on surviving families continues to be neglected by researchers and policymakers.

Drawing on eight in-depth interviews conducted in China in 2013 and 2014, as part of a wider study that looked at the experiences of Chinese seafarers and their families following occupational accidents in China, this paper argues that the transnational nature of the employment relationship of seafarers affects surviving families' ability to identify and execute liability claims with overseas shipowners. The negotiation of compensation claims is perceived by surviving families as an unfair and unilateral process.

KEYWORDS: workplace death, seafarers, surviving families, compensation claims.

Introduction

The International Labour Organization has estimated that around 2.3 million workers die every year as a result of work-related ill-health and injury (International Labour Organization, 2016). Of these, 350,000 deaths are caused by workplace accidents and the rest result from occupational disease (Hämäläinen *et al.*, 2006). Workplace deaths represent tremendous costs for economies and society in general. They also impact severely on workers' families, especially financially and psychologically (Matthews *et al.*, 2012). In both developing and developed countries, workplace fatality is highly damaging to surviving families' social, financial and health conditions. In 2012, 71,983 workplace fatalities were

Desai Shan, Ph. D., Associate Research Fellow, Seafarers International Research Centre, School of Social Sciences, Cardiff University, Cardiff, Wales (ShanD@cardiff.ac.uk).

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reported in China (National Bureau of Statistics of China, 2013). Between 2010 and 2011, there were 4,690 traumatic injury fatalities in the US, 220 in Australia and 171 in the UK (Health and Safety Executive, 2016; Safe Work Australia, 2012; US Bureau of Labor Statistics, 2013).

Among different industries, the maritime transport sector has a high workplace fatality rate. In the UK, the Merchant Navy's work-related fatality rate is 26 times higher than the national average (Hansen *et al.*, 2008). In the Danish merchant fleet, the fatal accident rate is 11 times greater than for shore-based industries (Hansen *et al.*, 2008; Jensen *et al.*, 2004). Although there are currently no nationwide official statistics of work-related fatalities at sea in China, a study conducted in a state-owned shipping enterprise has shown that the fatality rate of seafarers is higher than in other industrial sectors (Zhang *et al.*, 2012). As transport workers in charge of more than 90% of international trade, seafarers suffer high occupational risks. According to the Marine Casualties and Incidents records in 2015, 152 seafarers lost their lives at sea and 199 seafarers were missing in marine casualties (International Maritime Organization, 2016). As estimated by Dyregrov *et al.* (2003), every death has an impact on at least 20 other people. According to this calculation method, in addition to the estimated global seafarer casualties, 7,020 people would have been affected by workplace fatalities at sea in 2015. In this population, the families of seafarers who die at sea suffer the most harm.

With 638,990 seafarers, China is the largest maritime labour supplying state (Ministry of Transport of the People's Republic of China, 2016). Seafarers are transnational transport workers. Unlike land-based workers, seafarers are subject to labour and maritime laws of multiple jurisdictions, including the flag state of the ship and the labour supplying state where employment agreements are established. The structure of employers is complex, including shipowners, operators and multi-level crew agencies. Thus, in the case of workplace fatalities, seafarers' families usually have to negotiate with these parties, as well as shipowners' insurers. The complexity of employer structures may increase the uncertainty of compensation outcomes.

Globalization and neo-liberal reforms have immensely affected industrial relations in China (Pun and Smith, 2007). On the one hand, the Open Policy enables Chinese seafarers, through crewing agencies, to explore more job opportunities provided by foreign shipowners. On the other, the Reform Policy terminated traditional lifelong employment (the *iron rice bowl*), making Chinese seafarers 'free workers', subject to fixed-term, temporary and even freelancing precarious employment agreements (Wu *et al.*, 2006; Zhao and Amante, 2005). Meanwhile, the job security and social security of Chinese seafarers are weakened. According to a survey conducted by the Chinese Maritime Safety Administration

in 2014, 45.92% of seafarers in China do not have long-term employment relationships and 58.45% of seafarers are not covered by the *Chinese Work-related Injury Insurance* (Chen *et al.*, 2014). When working at sea, the health and safety conditions on board are subject to the flag state jurisdiction, which can include open registry countries, such as Panama and the Bahamas. Therefore, foreign shipowners are not obliged to comply with Chinese labour law to provide seafarers with *Work-related Injury Insurance*. Once fatal accidents occur, seafarers' families usually prefer to file their compensation claims in China, the most convenient jurisdiction. However, if the foreign shipowner does not have a branch office and assets in China, claiming compensation from the overseas employer is extremely challenging. Another problem is that the employee status of seafarers in Chinese law is being weakened by the pervasive use of contingent employment patterns (Sampson, 2013; Walters and Bailey, 2013). The employment agreements of seafarers were once interpreted as 'commercial contracts' rather than 'labour contracts' by the court in China, which would deny the families of seafarers who have died at sea entitlements to claim workers' compensation according to labour law. The exclusion of precarious workers from workers' compensation becomes a common problem since precarious employment is the norm in the maritime industry (Dacanay and Walters, 2011). Following fatal workplace accidents at sea, there may be responses from different jurisdictions, including Flag States, Port States and Labour Supplying States. This multi-national governance has created additional challenges for families, such as linguistic and procedural barriers to accessing accident investigation reports issued abroad, to requesting that employers transport the body of the deceased seafarer back to their homeland, to applying for the declaration of death when seafarers are missing at sea, and to negotiating with foreign shipowners and litigating in foreign jurisdictions.

The conflict between workers' rights to safety and employers' profit concerns has been noted by a growing body of international authors. Walters and Bailey (2013) argue that the high occupational casualty rate of the shipping industry is a consequence of the efforts of capital to minimize its operational costs while maximizing profits. In occupational health and safety regulation systems, state protection, management systems of employers, and workers' participation are three core factors in addressing the conflict between safety and profit (Tucker, 2013). The conflicts between employers and employees following a workplace fatality or injury are inevitable since companies are likely to act in their own interests (Barnetson, 2010). Workplace accident victims have to obtain income security, while employers' interests lie with ensuring efficiency and lower costs for workers' compensation overall (Quinlan *et al.*, 2010). Injured workers often report that *Workers' Compensation Systems* tend to deny any claim where a denial is possible (Barnetson, 2010). As a result, this public institution limits employers'

overall liabilities and undermines the social democratic value of providing financial security to the victims of workplace accidents and their families.

The consequences of workplace death for workers' families have not been explored systematically (Matthews *et al.*, 2014). Workplace death is a human tragedy touching hundreds of thousands of relatives and friends all over the world. Nevertheless, the community of surviving families has not received attention from either the media or academia (Matthews *et al.*, 2016). Their needs following workplace fatalities are not sufficiently recognized or studied comprehensively. In the literature on surviving families, land-based workers' families are primary research targets, such as construction workers (Matthews *et al.*, 2011). Little attention has been paid to the families of transport workers, such as seafarers. To fill this research gap, this article explores the consequences of seafarers' workplace death for their families, focusing on the necessity to preserve the dignity of both the deceased seafarers and their families, and the process of claiming financial compensation.

The available literature indicates that traumatic workplace death can have a negative social, economic and human impact on the families of the deceased. Barnettson (2010) suggests that claims for workplace fatality benefits tend to be less controversial than injury claims. However, in one empirical investigation of the health, social and financial consequences of traumatic death at work on the families of the deceased, Matthew *et al.* (2012) argue that policymakers largely ignore the associated costs. In a related study, which explored Australian institutional responses to traumatic death at work, Matthews *et al.* (2014) find that after accidents occur, the families cannot obtain adequate information regarding the accident investigation in time and that the amount of support available to them is limited. The staff of the Australian authority identified themselves as "regulators or enforcers, and not counsellors" so they did not regard assisting surviving families as part of their job (Matthew *et al.*, 2014: 259). The studies of Matthew *et al.* (2012, 2016) clearly highlight the tensions that exist between surviving families' needs and institutional responses.

The current compensation system has been criticized for being primarily focused on economic costs while ignoring the additional psychological harm suffered by workers' families. Another Australian study shows counselling funding is not provided for family members of deceased workers to help them cope with their loss in the majority of the states in Australia (Quinlan *et al.*, 2010). In China, mental harm is not recognized as a loss by the *Work-related Injury Insurance Compensation Scheme*¹. The expenses of transport and accommodation when handling accidents are not covered either. Only through tort litigation can mental harm and expenditures for transport and accommodation be compensated. Due to the insufficient coverage provided by the workers' compensation system,

many families' needs are not met by public institutions (Matthews *et al.*, 2012; Matthews *et al.*, 2014).

Based on the current studies on the consequences of workplace fatalities on surviving families, this research aims to broaden the knowledge through exploring the experiences of family members following the death of a seafarer at sea. The study focuses on the difficulties that surviving families may face in preserving the dignity of deceased workers, in obtaining compensation from shipowners, and when seeking restorative justice through public institutions. Drawing on the theory of conflicts between workers' safety rights and employers' profit concerns, this article will discuss the roles of the Chinese state and employers in the procedure for workplace fatal accidents' claims and how these impact on surviving families.

Methods

This research adopts qualitative research methods, which are recognized as valuable instruments to obtain insights into the experiences and views of stakeholders (Silverman, 2011). In addition, in applied policy research, qualitative research methods enable researchers to evaluate policies by taking into account the views of people who are subject to these policies (Berman, 2012; King and Horrocks, 2010; Kvale and Brinkmann, 2009).

The families of seafarers who die at sea are typically an invisible population in society and are therefore difficult to access. Matthews *et al.* (2012) identify the absence of a national database of work-related deaths as a major obstacle in accessing potential participants. Moreover, seafarers are often detached from land communities, since their work takes place at sea (Alderton, 2004; Sampson, 2013). In addition, due to the Chinese government's limitation on citizens' freedom of association, non-official trade unions or other forms of worker organization of seafarers hardly exist (Chen, 2003). This makes the recruitment of participants even more difficult in China.

The first step to identify potential participants was an online search of family members of seafarers who have died at sea. Through online searches on Weibo (Chinese Twitter) and internal messages posted on a seafarers' website, a widow and a cousin of two seafarers who died as a result of a workplace accident were identified and agreed to be interviewed. Subsequent participants were recruited by contacting maritime law firms, crew agencies, and seafarers' online communities for referrals. More contact information on families of seafarers became available with the assistance of maritime lawyers, crew managers and online community administrators. Eleven potential participants were thus selected. Two of them declined the interview invitation without giving any

reason. One of them agreed at the beginning but later declined because they were suffering from depression and had a busy schedule. Eventually, a total of eight interviews were conducted with informed consent in China. Seven of these interviews were conducted face to face, while one (Nan Yang) was conducted by telephone (see Table 1).

At the time of the interviews (2013-2014), only one of the claims relating to the accidents (Nan Yang) was still in negotiation, while six had been settled. The claim of Zhao Xi was settled during the process of forcible execution of the judgement. To prepare some of the interviews, the author visited two law firms and one maritime court to read the original case files (Nan Fan, Fu Zhang and Zhao Xi). Permission from the judges and maritime lawyers involved and the consent of the three participants (Nan Fan, Fu Zhang and Zhao Xi) was obtained face to face or by telephone. The interviews lasted between 90 minutes and four hours. The respondents were provided with sufficient opportunities to tell their stories, share their feelings, and to explain any difficulties they had encountered and the extent of loss they had suffered. The interviews were audio-recorded and transcribed. Nvivo software was used to code and manage the transcripts. A thematic analysis approach was taken to identify common themes in the interviewees' experiences. All interviews were conducted in Chinese. The interviewer translated the transcripts into English to minimize the loss of meaning in the translation process.

Ethical approval was obtained from the School's Research Ethics Committee. Written and oral informed consent was obtained from the interviewees, and all participants were given a consideration period before the interview. All

TABLE 1
The list of the interviewees

Interviewees	Relationship with the deceased	Year of accident	Nationality of Vessel	Position of seafarers
Fu Zhang (Disappearance)	Brother	2010	Panama	Able Seaman
Nan Chen (Disappearance)	Cousin	2011	Liberia	Cadet
Nan Fan	Daughter	2012	Panama	Captain
Tian Zhu	Wife	2012	Marshall Islands	Chief Engineer
Nan You	Wife	2012	Panama	Chief Engineer
Zhao Xi	Daughter	2005	China	Captain
Qing Wu	Nephew	2010	China	Cook
Nan Yang	Aunt	2013	China	Able Seaman

information provided by the participants is anonymized to protect their privacy and interviewees' identities are pseudonymized. Family members' experiences are a sensitive research topic. Researching sensitive topics is intensive emotional work for a researcher (Dickson-Swift *et al.*, 2009). Being empathetic is crucial for a fruitful face-to-face interview, and researchers can be emotionally overwhelmed. Before the fieldwork, by reading the blogs of family members, I gained an understanding of the potential emotional challenges and asked for assistance from student counselling to cope with these challenges.

Four families live in urban areas, and the other four live in the countryside. The deceased seafarers were the breadwinners in these families. Fu Zhang's brother divorced in 2009 and raised a three-year-old son with his parents. The maintenance of their house in the village had been neglected for decades. Nan Chen's cousin was a single young man with elderly parents in Hubei. Nan Fan's father was a 60-year-old captain and the whole family depended on her father's income. Tian Zhu was a laid-off middle school teacher. After the death of her husband, she had to pay the remaining 20-year mortgage and raise her daughter on her own. Nan You's situation was similar to Tian Zhu's, who was a housewife with no income, with a mortgage to pay and a daughter to raise. Zhao Xi runs a small business in town, and after the death of her father, her mother depended on her. Qing Wu claimed damages for the death of his uncle-in-law for the benefit of his aunt. Nay Yang claimed damages for the death of her nephew, a single young man who died in a ship that capsized, whose parents were a disabled, elderly couple. Following the fatal accidents of these eight seafarers, the eight families faced severe financial hardship. Although the sample size is relatively small, it covers claimants from both urban and rural areas of five provinces. In addition, this research focuses on first person experiences of compensation claims. As Creswell (2013) recommended, five to twenty-five interviews are acceptable for exploratory phenomenological studies. Therefore, drawing on eight claimants' accounts, it is still possible to explore certain difficulties experienced by the families of seafarers who died in their workplace.

Findings

The management of fatalities, including seafarers missing at sea, is relatively complicated due to the involvement of various domestic and overseas organizations and institutions. There are three main parties involved in handling seafarer casualties: 1- crewing agencies, who recruited the seafarers involved on behalf of shipowners; 2- shipowners and their representatives, including their liability insurers' claim handlers and lawyers, who manage the claims and cover compensation liabilities; 3- administrative and judicial authorities, who act as arbitrators or adjudicators to restore justice.

Surviving families usually have to go through four stages: 1- being notified of the seafarer's death/disappearance and discussing funeral arrangements with shipowners through crewing agencies; 2- negotiating compensation with shipowners' representatives; 3- initiating activities in defence of their rights if they are dissatisfied with the compensation offer; 4- settling compensation disputes and obtaining payment from shipowners. In this paper, drawing on seafarers' families' accounts, the author will identify the difficulties they have faced dealing with shipowners and public authorities.

1- Post-accident communication with the organizations

Family members have described a series of difficulties in their communication with crew agencies and shipowners, which are linked to the trustworthiness of organizations, the preservation of the dignity of deceased seafarers, the respect for families' humanitarian requests, and their rights to know the truth about the fatalities.

The trustworthiness of crew agencies rests on whether the messenger company is authentic and whether the agency is reliable. The crew agencies usually give an obituary notice by telephone. Some participants complained that telephone notice from a stranger was not appropriate to convey such sensitive information, which was compounded by the difficulties families had in knowing whether the communication was authentic. Fu Zhang said:

On the phone, they told me my brother was missing at sea. I could not believe it at all since I had no idea who the messenger was. I told myself it must be a scam. Then I travelled to the company and found the message was real.

Nearly half of Chinese seafarers do not have long-term employment and have to change their crew agencies frequently to obtain job opportunities (Chen *et al.*, 2014b). For some surviving families, the crew managers are 'strangers', thus, the families cannot trust this form of notice and have to verify its authenticity.

The reliability of crew agencies is called into question if they refuse to accept liability arising from the accident, as Fu Zhang recalled:

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

In addition to the tremendous shock of learning about the loss of their loved one, the crew agency's denial of liability imposed further frustration and despair on the seafarers' families, as well as increasing the difficulties for families to claim compensation.

Preserving the dignity of the deceased is another challenge. To minimize compensation liability, some shipowners try to deny the work-related nature of fatalities, as participant Tian Zhu stated:

One legal adviser and two managers were always emphasizing my husband would sign off next morning, but he just died several hours before. [...] What they tried to say was my husband actually 'almost' died off duty. Later, they told me my husband might have committed suicide, so they would not pay compensation, but only a little humanitarian contribution.

This phenomenon reflects the 'blame-the-worker' culture of Occupational Health and Safety Management (OHSM), which has been extended to the post-fatalities communication, shifting the balance of power away from families towards management (Lund, 2004; Tucker and Nichols, 2000; Wokutch and VanSandt, 2000).

Within this culture, the sacrifice of seafarers and the pain suffered by their families are also rarely recognized. From the perspective of family members, company practice is inhumane, and the monetary issue is its only concern. Nan Fan said:

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

Attending the accident site to say farewell to their loved one is a frequent humanitarian request from Chinese family members. This farewell plays a therapeutic role to lessen their grief and loss (Dyregrov *et al.*, 2003; Yang and Chiu, 2015). However, due to the concern about costs and workload, shipowners and crew agencies are reluctant to allow it. For example, the policy of one shipping company forbids family members to make a farewell request, and stipulates that the body should be cremated even without families' consent if the accident occurred overseas. These policies create additional emotional harm for grieving family members. Tian Zhu gave the following account:

I requested the (labour supply) company to let me go abroad to take my husband's body back. The company showed me a policy from the 1980s, which said that families should not go overseas as a matter of principle. The company told me that if I wanted to go abroad, they needed approval from their supervisors. I trusted them. The company agreed at first, but later told me I was not permitted to go abroad to take my husband's body back. [...] It was a hard time for our family. I felt both anger and grief.

The right to know the truth about the circumstance of a seafarer's death at sea is a fundamental human right for family members. However, this research finds that this right is not respected in many cases, particularly in the event of a seafarer missing at sea. The facts relating to disappearance indicate that it is unknown whether the seafarer is dead or alive. A police investigation is necessary to ascertain the life status of the person who has disappeared. However, some shipowners are not cooperative. Nan Chen, described his experience:

The company (labour supply company) told us my cousin was missing. [...] We requested to go on board to interview his colleagues. The company refused and said there was no way to investigate it at all because all the crew had been replaced already. They were OK to negotiate compensation, but not to conduct an investigation. We tried to seek help from governments, such as the Department of Foreign Affairs, the Maritime Safety Administration, but none of them would help us. Finally, we gave up and 'calmed down', as expected by the company.

The concern about costs is an important reason why shipowners are not cooperative in assisting families searching for missing seafarers. There is an inherent tension between shipowners' interests and the needs of the bereaved family members, yet families are often powerless, as Fu Zhang explained:

My brother's body had not been found. The labour supply company said it was not their business to search for bodies, and then referred us to staff from the shipowner's insurance company (a P and I Club's correspondent). We requested that all the bodies should be found, but he told us it was expensive to do so, and it was very difficult to find the body in the high sea. If we insisted that the bodies should be found, all the costs would be deducted from our final death compensation. As you already know, the death compensation is capped at CNY 800,000, so we had to give up our requests.

As the weaker party in this conflict, family members are not able to push through their requests. Faced with the threat of deduction of costs from the damages to be awarded, they are led to give up their rights and entitlements. Their right to know the facts about the seafarer's accident is not respected in many cases.

2- Negotiating compensation

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

In the first instance, the legal knowledge of seafarers' families determines the scope of their claims in the negotiations, which means the more families understand about legal entitlements, the higher the compensation that can be claimed during a negotiation. This research finds that claimants who are able to conduct legal research are more likely to achieve a higher compensation amount, as Tian Zhu said:

I checked the law day and night online. There was a regulation from the Ministry of Transport that said that the dispatched seafarer has three entitlements: the work-related injury insurance, shipowner's P & I club insurance and commercial life insurance. I used this to claim work-related injury insurance and commercial life insurance from the labour supply company. [...] I claimed this amount and the company eventually accepted. Combining these three parts, I justified CNY 1,770,000 as my claim amount.

However, if the families are not able to identify the proper legal instruments, the compensation they obtain will be very limited. The companies are able to take the initiative and decide the compensation amount. Fu Zhang described how they were treated by crew agencies when they did not have sufficient legal knowledge:

The crew agency insisted the death compensation should be calculated according to rural income level, the lowest standard. Our family could only receive CNY 200,000 to CNY 300,000. Someone reminded us that we should use foreign-related legal standards to obtain a higher amount of compensation. I didn't know about this specialized foreign-related maritime law before, but the crew agency should not cheat us. Why did they only insist on using the low domestic rural standards?

With limited legal knowledge, families are in a vulnerable position during negotiations. The above account indicates that the companies may choose the legal standard least favourable to family members as their compensation standard.

In the second instance, shipowners, charterers, managers and operators of sea-going ships can limit their liability for maritime claims arising from vessel operation accidents (Gauci, 1995). From 1992 to 2013, in foreign-related personal injuries/death at sea², Chinese law entitled shipowners to limit their liability to CNY 800,000. This legal regime has created significant obstacles for seafarers' families to pursue satisfactory damages, as Nan Fan said:

We asked for USD 400,000 according to my father's income level. But they argued that CNY 800,000 was the limitation of liability for the shipowner. They insisted that the compensation should not be more than CNY 800,000. Through many efforts made by my father's friends, we achieved an amount of CNY 1,500,000. It was a significant step from CNY 800,000 to 1,500,000. Without their help and encouragement, we could not have achieved it. The CNY 800,000 limitation was set in 1992, and is out of date, but the shipowner still took advantage of it.

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

However, many bereaved families do not have such strong social and political ties as Nan Fan's family. To accept the compensation offered by companies is the only solution for them. The interviewee Nan Chen described his experience of failing to challenge the limitation of liability:

We raised an amount of CNY 1,300,000 according to the law. However, they had better lawyers. Our lawyer was not as dedicated and loyal as theirs was. In the negotiation, we could not achieve more and we just wanted to solve this quickly and did not want to overly immerse ourselves in dispute and grief. We eventually accepted the company's compensation of about CNY 800,000.

In the third instance, the bereaved might be subject to strategic attacks from the companies during negotiations. These strategic attacks can be regarded as 'negotiation skills', which are used to increase psychological pressures on the opposite parties. These attacks aim to divide family members, to stigmatize claimants, and to seek police power to force the claimant to abandon their claim. The effects of these strategic attacks are largely dependent on the social and political power possessed by the company.

Inciting internal conflicts to divide families is a common strategy adopted by companies. Tian Zhu explained the harm caused by this strategy:

My husband's brother did not help us in the initial negotiation but joined later. Once learning his identity, the labour supply company started to talk to him secretly. When we negotiated about the payment method, the manager suddenly asked whether the money should be transferred to two separate accounts. I kept silent for a while. But the company then asked my brother-in-law whether he should have CNY100, 000. This was irritating. You see, my brother-in-law asked for money for himself, and the company incited him to take money from my daughter and me. I told my brother-in-law that he infringed upon my daughter's interests. I was so disappointed with him. He thought I would no longer be a member of the family after the death of my husband.

The company was trying to create internal conflicts within my family. If we fought each other, they would face fewer pressures. This behaviour is shameless.

Stigmatization is another typical attack on claimants in other jurisdictions (Lippel, 2003 and 2007). In addition to the general stigma of greediness, in China, families of deceased seafarers may have to confront political stigmatization. The following example is an illustration:

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

The stigma of being a 'socially unstable element' relates to *Weiwen (social stability maintenance) activity*. In China, if a person defends his/her civil rights for a long time and tries to attract public attention to obtain justice, the government may label him/her as a socially destabilizing element threatening political stability. Therefore, in this case, the company made use of the political stigmatization to impose extra pressures on the claimant. Through this strategy, the seafarer's family may be forced to abandon further claims, or just accept the compensation offered by the company to free themselves from the stigma. The stigma of greediness does not involve the political power of the government, and the negative effects on seafarers are usually limited to economic loss and psychological pressures, while political stigma is more dangerous for claimants, because it can result in the loss of freedom, confinement in a quasi-prison, i.e. a *Labour Re-education Camp*. The political stigma of civil claimants is a phenomenon peculiar to the Chinese social environment, which threatens seafarer claimants' freedom in civil compensation claims.

Through examining the interactions between seafarers' families and companies at the negotiation stage, it is noticeable that surviving families are vulnerable in terms of professional knowledge, legal entitlements, and negotiating skills. Therefore, to recover the economic loss arising from the fatalities through private negotiation is challenging. Furthermore, some of the negotiation strategies of the companies have intimidating effects on families' mental health and may damage their social image.

3- Seeking justice and initiating activities in defence of their rights

The compensation process makes the rights of family members secondary to the interests of shipowners. Some families choose to bring their grievances to

authorities, such as their local police station or the petition offices of the local government. Fu Zhang recounted their experience of petitioning:

At the beginning, the labour supply company just ignored our requests, so we called the police. It was useless. The police said the marine casualty was beyond their jurisdiction. Then we went to the petition office of our provincial government. They sent a message to the company, and the company agreed to negotiate with us, but it was not very helpful because they were still perfunctory. All these methods were useless.

Due to the international dimensions, some families tried to seek assistance from central government. Nan Chen described his disappointment:

The police station said they could not help because my cousin disappeared outside China. We went to the Ministry of Transport. They did not allow us to enter the gate. We went to the Ministry of Foreign Affairs; a civil servant told me quite straightforwardly: 'your cousin's death was not such a big deal that needs to be addressed by the Ministry of Foreign Affairs'. We grew up in an environment where the government never values ordinary people's life. It is always like that. The government has no humanitarian spirit. I could be angry, but I could not challenge the Party and society, right?

Nan Yang described her frustration when she sought help from local government:

The shipowners negotiated with us last week and told us to have the negotiation again on Saturday morning, but they cheated us and checked all the hotel rooms out. We asked for help from the government investigation committee, but they would not give us any information. Everybody knows that civil servants were on the side of shipowners. Later on, the committee told us shipowners would not come to negotiate again.

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

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

Nan Yang also tried to post comments on a news page to attract public attention to her nephew's death on board:

There was news on the shipping website regarding the disputes between shipowners and their insurance companies. I attached my nephew's story as a comment on that news, hoping more people would pay attention to it.

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

Demonstrations, sit-down protests and occupational protests have been adopted as forms of resistance to unfair compensation offers and mistreatment in negotiation. Following the first round of negotiation, Tian Zhu wore a mourning dress and exhibited her banner at the labour supply company to highlight the company's unfair treatment of her family. She purchased paper money and burned it in front of the company in memory of her husband. The company called the police to stop her demonstration. Nan Chen adopted a sit-down protest at the company's premises. She and her parents wore mourning dress and sat down quietly at the labour supply company. She said:

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

According to these accounts, there is no effective and functional social safety valve to reduce the grief, pain and pressures of seafarers' families. When they found themselves in despair due to the companies' attitude or conduct towards them, they adopted forms of resistance. An occupation protest was adopted in the case of Fu Zhang after 13 seafarers had been killed. About 40 relatives of the affected seafarers gathered at the labour supply company. Fu Zhang described how the bereaved became outraged occupiers:

At the beginning, we tried to negotiate with the company calmly. However, they denied all their responsibilities, refused to provide information about the identity of the shipowner, and always fooled us. The police and provincial government's efforts could not help. Some of us were so mad that we smashed the company's table and chair. From my point of view, compared to the loss of 13 lives, this protest was reasonable. The ignorance of the company and governments turned the disputes into protests.

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

4- Settling compensation claims and receiving compensation payment

The settlement of compensation usually means that the disputes between companies and families are approaching the end. At the settlement stage, the

amount of compensation, the form of payment, the wording of settlement agreements and labour supply companies' deductions are four sensitive issues for families.

This research finds that amounts of compensation for workplace death vary widely between different shipowners. In the eight cases, the final payment amounts are differentiated by year, by nationality of the vessel and the position of seafarers (see Table 2). The settled amount of damages for seafarers killed on foreign vessels is higher than for domestic vessels. This is mainly because of lower insurance arrangements for Chinese coastal vessels.

The year 2012-2013 was a turning point. In the two foreign-related cases before 2012, the victims were compensated CNY 800,000, but after 2012, the compensation was increased significantly. This change is attributed to the abolition of the shipowners' liability limit (CNY 800,000) in January 2013. However, for the fatal accidents that occurred in 2012, the shipowners still used it as a legal instrument to limit their liabilities. In Nan Fan's case, the pirates' attack occurred in February 2012. Therefore, the shipowner still insisted on CNY 800,000 as the upper limit, which made the claim arduous for the family. The absence of reasonable standards of damages, which can cover actual loss for the families, is the essential problem in current Chinese law and policies.

Making compensation payments through instalments is another way to reduce financial pressures for companies, as Qing Wu said:

The total compensation for my aunt was CNY 600,000 and the first instalment of CNY 150,000 was paid instantly. Now two years have passed, yet the compensation has not been paid completely.

TABLE 2
The settled compensation amounts of the eight cases

Name of claimant	Year of accident	Nationality of Vessel	Agreed Damages (CNY)
Fu Zhang (Disappearance)	2010	Panama	800,000
Nan Chen (Disappearance)	2011	Liberia	800,000
Nan Fan	2012	Panama	1,550,000
Tian Zhu	2012	Marshall Islands	1,770,000
Nan You	2012	Panama	1,990,000
Zhao Xi	2005	China	280,000
Qing Wu	2010	China	600,000
Nan Yang	2013	China	700,000

Payment by instalments makes the settlement unpredictable. Therefore, some victims even sacrifice some compensation in exchange for an instant lump-sum payment, as Nan You said:

It is hard to trust the company, and undue delay may bring troubles. Therefore, even if they would promise a higher compensation by instalments, I asked them to pay me cash instantly.

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

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

After the deduction of the labour supply company, the CNY 800,000 became CNY 650,000. We did not know the breakdown of this deduction. Is it enough to raise my brother's kid? It is impossible to pay the education of my nephew and support my parents in the future. The interest rate for bank savings today does not keep up with the inflation rate.

Between accepting the compensation amount and receiving the actual payment, seafarers' families have to face unfair terms and conditions, including deductions imposed by labour supply companies. Moreover, if the compensation is paid in instalments, the payment is not secure.

Concluding discussion

This study explores the experiences of surviving families in accessing compensation following workplace death/disappearance in the context of Chinese seafaring. The findings suggest that surviving families face various challenges from labour supply companies, shipowners and their liability insurers. Many reasonable requests, such as repatriating the body from overseas and investigating the disappearance of the seafarer, are rejected by shipowners. These findings support the argument of Barnettson (2010) that employers are likely to act in their interests in addressing workplace fatalities. The miserable and frustrating experiences seafarers' families had with these companies is a further

instance of the issue of “safety or profit” raised by Walters and Bailey (2013) in the shipping industry. As a consequence of the efforts of the shipping industry to minimize operational costs, labour supply companies adopt various strategies to deny or reduce compensation amounts. Inciting domestic conflicts, stigmatizing and victimizing family members were tactics adopted by the companies to discourage families from pursuing compensation.

As Tucker (2013) points out, in addition to employers’ behaviours, the level of state protection is another variable affecting workers’ rights. In this study, families had sought help from various public institutions, including police stations, the Department of Foreign Affairs and the Maritime Safety Administration, but the responses from these authorities were far from satisfactory. Considering the frequency with which families seek justice, a fundamental question is why the legislation and organizational policies continue to provide them with little support and recognition (Matthew *et al.*, 2014). This research finds the Chinese families of seafarers are ignored by policymakers. Even though they made efforts to seek assistance from official authorities, the state provides little institutional support.

The article has identified the jurisdictional ambiguity regarding maritime workplace accidents as an additional factor in the disempowerment of family members. Without sufficient administrative or judicial punishment, labour supply companies have leeway to ignore the needs of families. The lack of regulation exacerbates the harm to family members. In addition, families’ lack of access to information regarding the identity of shipowners enables companies to disguise themselves and then hide the truth about accidents, especially in situations where the accident investigation reports are issued abroad or in a foreign language. The lack of sufficient regulation over both domestic labour supply companies and foreign shipowners makes it extremely difficult for seafarers’ families to achieve their right to information about the circumstances of the seafarers’ accident, and the right to be treated with respect and to preserve the dignity of deceased seafarers.

The fragmented employment relationships exacerbate the harmful consequences of claim activities (Quinlan and Mayhew, 1999). For family members of seafarers who have died at sea, the inability to talk to shipowners face to face makes them feel ignored and disrespected. The third party labour supplier or crew agency acts as a shield to hide the party that is really responsible. The liabilities arising from workplace fatalities at sea are fragmented between shipowners and crew agencies, which increase the possibility that both organizations shirk their liability for the loss suffered by surviving families.

In addition to employers’ oppression of families’ needs, the reluctance of Chinese authorities to support families’ rights is highlighted in this study. Wexler (1997) points out that legal rules, legal procedures and legal actors should constitute social forces to produce therapeutic consequences for victims. However,

Chinese law favours shipowners by providing them with limited liability, which has benefited shipowners for over two decades. Although the abolition of such limitations means that families can now claim more compensation, the passive attitude of Chinese authorities towards families' grievances is still striking. In terms of the protection of families' rights, the need to ensure social justice through legislation is not recognized or sufficiently valued by Chinese public institutions.

Political stigmatization through the labelling of people as 'socially destabilizing elements' is a result of industrial conflict in the Chinese political environment. A civil labour dispute can be dragged into the sphere of 'state politics of stability'. In contrast, administrative authorities are more active in investigating whether defence of civil rights would 'threaten social stability' rather than assisting families in exercising their rights. The protection of the rights of family members following workplace fatalities is a global occupational health and safety issue. The workplace health and safety issues are no longer limited to the context of national regulations and industrial relations, but have been extended to legal, social and political issues globally. This study builds on and enriches current knowledge about seafarers in the global shipping industry (Walters and Bailey 2013; Sampson, 2013). It bridges a research gap in surviving families' rights following workplace accidents at sea. It also reveals that weak state prevention forces families to have to defend their rights through protests. The current Chinese legal and administrative procedures cannot restore justice for seafarers' families. This is also due, as this article has shown, to the significant imbalance of power between family members and companies in the compensation claim process and the lack of state protection, which makes claimants suffer unfair and offensive treatments from employers. Although the sample size is small, the findings may not be generalizable to a large population. However, this qualitative study investigates an invisible group of victims of workplace accidents, surviving families, which is hard to access. Drawing on their experiences of compensation claims, this article not only reveals the challenges faced by seafarers' families, but also some structural problems in employment relations and regulations in the shipping industry in China.

Notes

- 1 See Article 39 of the *Regulation on Work-related Injury Insurance* (2010): "If an employee dies from work, his close relative may draw from the work-related injury insurance fund the funeral subsidy, the pension for supporting the relatives and the lump-sum subsidy for death from work." The regulation does not entitle surviving families any remedies for mental harm caused by workplace fatal accidents.
- 2 "Foreign-related personal injuries/death at sea" is a legal term in Chinese maritime law, referring to: 1- injuries/death of Chinese seafarers occurring outside Chinese territories; 2- injuries/death of seafarers occurring in Chinese territorial sea but on a foreign vessel; or 3- injuries/death of Chinese citizens (including seafarers, stevedores and pilots) caused by the operation of foreign ships in China.

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SUMMARY

Workplace Death at Sea: Chinese Surviving Families' Experiences of Compensation Claims

Seafaring remains one of the most adventurous yet dangerous forms of work. Compared to shore-based industrial workers, seafarers suffer a risk of fatality that is up to 11 times higher. Workplace fatality is proved to be harmful to the social, financial and health conditions of surviving families. Although there has been an increase in attention given to the improvement of seafarers' health and working conditions at sea, the effects of death at sea on surviving families has remained neglected by both researchers and policymakers.

Drawing on in-depth interviews conducted with eight surviving family members in 2013 and 2014, this study investigates seafarers' surviving families' experiences of raising death compensation claims in China, which has the world's largest population of seafarers. The work-related fatalities occurred between 2005 and

2013. At the time of the study, 2.4 years had elapsed on average since the deaths took place. All research participants reported considerable difficulties in communicating with crewing agencies and contacting ship owners when making compensation claims.

This study shows that surviving families are in a vulnerable position when in conflict with companies. It also reveals that weak state prevention forces surviving families to defend their rights through protests. The absence of regulation over organizations involved in foreign-related employment relationships exacerbates the economic loss and mental harm suffered by surviving families following the occurrence of workplace fatalities. Furthermore, current legal and administrative procedures are unable to restore justice and provide therapeutic help for surviving families. Consequently, surviving families have suffered considerable financial loss and additional psychological harm in claim processes.

KEYWORDS: workplace death, seafarers, surviving families, compensation claims.

RÉSUMÉ

Décès en mer en milieu de travail : l'expérience de familles chinoises survivantes de marins décédés dans leurs démarches de demandes d'indemnisation.

Le métier de marin demeure un des plus aventureux, mais constitue également l'une des plus dangereuses formes de travail. En comparaison des travailleurs industriels qui œuvrent sur la terre ferme, le risque de décès chez les marins est de 11 fois plus élevé. Et leur mort en service s'avère néfaste aux conditions sociales, financières et de santé des familles survivantes. Bien qu'il y ait eu une attention particulière portée à l'amélioration de la santé des marins et de leurs conditions de travail, les effets des décès en mer sur les familles survivantes sont demeurés négligés tant par les chercheurs que par les décideurs politiques.

En nous basant sur des entrevues en profondeur menées en 2013 et 2014 auprès de huit membres de familles survivantes de marins décédés en mer, cette étude analyse leur expérience dans leurs démarches pour obtenir des indemnités de décès en Chine, laquelle compte la plus grande population de marins au monde. Au moment de l'étude, il s'était passé en moyenne 2,4 ans depuis les décès. Tous les participants à l'étude nous ont fait part de difficultés considérables rencontrées lors de leur communication avec les agences de placement et les propriétaires des bateaux au moment de faire leurs demandes d'indemnisation.

Notre étude montre que ces familles se retrouvent en position vulnérable lorsqu'il y a un conflit avec ces compagnies. Elle révèle également la faible capacité de l'État à les aider à défendre leurs droits. L'absence de réglementation des entreprises impliquées dans des relations d'emploi étrangères accentue la perte économique et la souffrance psychologique qu'endurent ces familles à la suite du décès d'un marin en exercice. De plus, les procédures légales et administratives existantes ne

permettent pas de rétablir la justice ni de procurer l'aide thérapeutique nécessaire aux familles survivantes. En conséquence, ces dernières doivent endurer des pertes financières considérables, ainsi qu'une détresse psychologique additionnelle lors de leurs démarches en vue d'obtenir une indemnisation.

MOTS-CLÉS : décès en milieu de travail, marins, familles survivantes, demandes d'indemnisation.

RESUMEN

Deceso en el lugar de trabajo en alta mar: Experiencias de reclamaciones de compensación de familias chinas sobrevivientes de marinos fallecidos

El oficio de marino es uno de más arriesgados y peligrosas formas de trabajo. En comparación con los trabajadores industriales en tierra firme, los marinos sufren un riesgo de muerte hasta 11 veces superior. Se ha demostrado que el deceso en el trabajo es perjudicial para las condiciones sociales, financieras y de salud de las familias sobrevivientes. A pesar de la atención creciente otorgada a la mejora de la salud y de las condiciones de trabajo en altamar de los marinos, los efectos del deceso en alta mar sobre las familias han sido ignorados tanto por los investigadores que por los decisores políticos.

A partir de entrevistas en profundidad realizadas con ocho familiares sobrevivientes en 2013 y 2014, este estudio investiga las experiencias de las familias de marinos sobrevivientes en el inicio de reclamaciones de compensación por deceso en China, país que tiene la población mundial más numerosa de marinos. Los decesos vinculados al trabajo ocurrieron entre 2005 y 2013. Al momento del estudio, habían transcurrido 2.4 años en promedio desde el deceso. Todos los participantes a la investigación reportaron dificultades considerables para comunicar con las agencias de tripulación y para establecer contacto con los propietarios de los buques al momento de hacer las reclamaciones de compensación.

Este estudio muestra que las familias sobrevivientes se encuentran en posición vulnerable cuando entran en conflicto con las compañías. Se revela también que la debilidad de la prevención estatal fuerza las familias sobrevivientes a defender sus derechos por medio de protestas. La ausencia de regulación sobre las organizaciones involucradas en las relaciones laborales vinculadas al extranjero exacerba la pérdida económica y el daño mental sufrido por las familias sobrevivientes después de una fatalidad ocurrida en el lugar de trabajo.

Además, los procedimientos legales y administrativos en vigor son incapaces de restaurar la justicia y de proveer ayuda terapéutica a las familias sobrevivientes. Por consecuencia, las familias sobrevivientes han sufrido considerables pérdidas financieras y daños psicológicos adicionales durante el proceso de reclamación.

PALABRAS CLAVES: deceso en el lugar de trabajo, marinos, familias sobrevivientes, reclamaciones de compensación.