

7.21 JONES ACT – COMPARATIVE NEGLIGENCE (Approved pre-1985)

If in accordance with the principles of law heretofore given you, you find that the defendant was negligent and that the plaintiff was contributory negligent, you will apply the following provision of 46 U.S.C.A., Sec. 688 commonly referred to as the

Jones Act:

Any seaman who shall suffer personal injury in the course of his/her employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply, and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

This statute extends to seamen the benefits of the *Federal Employers Liability Act* which as related to this case provides that the fact that the seaman may have been guilty of contributory negligence shall not bar a recovery but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such seaman.

This provision which deals with the effect of the employee's contributory negligence upon the amount of his/her recovery, states two principles of law:

- The fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but
- if the employee is guilty of contributory negligence the effect of such contributory negligence is that the damages the employee is entitled to shall be diminished by you in proportion to the amount of such contributory negligence.

These provisions of law are applicable to the facts in this case in the following manner:

First, ascertain the amount of damages that the plaintiff would be entitled to without reference to his/her contributory negligence.

Second, ascertain the proportion or percentages of such amount of damages which is attributable to plaintiff's contributory negligence.

Third, diminish the amount ascertained in the first step by the proportion or percentage of contributory negligence ascertained in the second step.

The amount remaining is the amount the plaintiff is entitled to.

Alternate Charge

If, in accordance with the principles of law heretofore given you, you find that the defendant was negligent and that the plaintiff was contributory negligent, you will apply the following provision of 46 U.S.C.A., Sec. 688 commonly referred to as the *Jones Act*:

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This statute extends to seamen the benefits of the *Federal Employers Liability Act* which as related to this case provides that the fact that the seaman may have been guilty of contributory negligence shall not bar a recovery but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such seaman.

This provision deals with the effect of the employee's contributory negligence upon the amount of his/her recovery, states two principles of law:

- The fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but
- if the employee is guilty of contributory negligence the effect of such contributory negligence is that the damages the employee is entitled to shall be diminished by you in proportion to the amount of such contributory negligence.

To explain how to apply the doctrine of comparative negligence to the facts of this case, I shall use an illustration.

You may determine that the amount of the plaintiff's damages for his/her personal injuries was X dollars and that the percentage or proportion of that amount of X dollars which is attributable to the plaintiff because of his/her contributory negligence is 50%. You would compute what 50% of X dollars is, that is, 50 cents times each of X dollars, and diminish the amount of X dollars by 50% or 50 cents out of each dollar, which would leave the amount 50% of X dollars to which the plaintiff would be entitled in your verdict.

You may determine that the amount of the plaintiff's damages for his/her personal injuries was X dollars and that the percentage or proportion of that amount of X dollars which is attributable to the plaintiff because of his/her contributory negligence is 90%. You would compute what 90% of X dollars is, that is, 90 cents times each of X dollars, and diminish the amount of X dollars by 90% or 90 cents out of each dollar, which would leave the amount 10% of X dollars to which the plaintiff would be entitled in your verdict.

Cases:

Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 98 L.Ed. 143, 74 S.Ct. 202 (1953); *Nygren v. American Boat Cartage, Inc.*, 290 F.2d 547 (2d Cir. 1961); *Duplanty v. Matson Navigation Company*, 53 Wash. 243, 333 P.2d 1092 (Sup. Ct. 1959); *Allan v. Oceanside Lumber Company*, 214 Or. 27, 328 P.2d 327 (Sup. Ct. 1958); *Wood Towing Corporation v. West*, 181 Va. 151, 23 S.E.2d 789 (Ct. App. 1943); *Boles v. Munson S.S. Lines, Inc.*, 256 N.Y.S. 709, 235 App. Div. 175 (1932).

NOTE TO JUDGE

Causes of action under the *Jones Act* may be tried in state courts. See Title 46, U.S.C.A., Sec. 688; *O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U.S. 36, 87 L.Ed. 596 (1943); *Romero v. International Term. Operat. Co.*, 358 U.S. 354, 3 L.Ed.2d 368, 79 S.Ct. 468 (1959).