

COMPARISON OF REMEDIES FOR MARITIME PERSONAL INJURIES

Persons Entitled	Parties Liable	Basis of Liability	Damages Allowed	Defenses
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GENERAL MARITIME LAW NEGLIGENCE

Passengers, invitees (including longshore workers)	Any negligent party, including vessels in rem for negligence of employees	Negligence	<p>Special: past & future medicals (can include qualified medical monitoring expenses) past & future loss of earnings (or earning capacity) services hired</p> <p>General: pain & suffering (sometime "fear of disease") disfigurement loss of enjoyment of life emotional distress (requires either (1) physical impact, (2) zone of danger, or (3) related bystander)</p> <p>Additional: interest, punitive damages (maybe), loss of consortium (maybe)</p>	Comparative negligence
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GENERAL MARITIME LAW, NEGLIGENCE & PRODUCTS LIABILITY

Any person	Any person but employer of injured seaman	Negligence or manufacture or sale of unreasonable dangerous product	Same as above, except most cases hold no punitive damages or loss of consortium for injury to a seaman, irrespective of classification of responsible party	Comparative negligence
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GENERAL MARITIME LAW, UNSEAWORTHINESS

Seamen. Possibly "seamen pro hac vice" performing traditional duties of seamen but not subject to LHWCA	Vessel in rem, vessel operator	Unseaworthy condition (unreasonably unsafe) (liability is strict, irrespective of notice or opportunity to correct defect)	Same as above, except most cases interpret Miles v. Apex Marine to prohibit recovery of punitive damages and loss of consortium for seamen regardless whether claim is against the seamen's employer, the vessel or a third party.	Comparative negligence Primary duty of officer (sole cause of injury)
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JONES ACT (46 USC § 30104) (NEGLIGENCE OF EMPLOYER OF SEAMEN)

Seamen only, when in course of their employment. Employer/employee relationship essential	Employer only (no in rem liability of vessel)	Negligence (including negligent failure to provide reasonably safe place to work), violation of safety statute (slightest contributing cause)	Special & general damages per above, but no: loss of consortium prejudgment interest when claim is tried at law punitive damages	Comparative (duty for own care slight), no comparative if violation of safety statute.
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MAINTENANCE, CURE & UNEARNED WAGES

Seamen only	Vessel in rem, vessel operator	Disability arising while in service of vessel (while answerable to the call of duty) (no "fault" required for liability)	<p>"Cure" (reasonable medical expenses to "maximum cure") Maintenance to "maximum cure" (precedents are split on whether rates can be set by collective bargaining agreements) Unearned wages to end of voyage or employment contract or pay period if short voyages & no articles or contract Attorney fees for willful and recalcitrant refusal to pay when clearly due (recent cases hold no punitive damages)</p>	No comparative negligence Intentional misrepresentation of disabling condition Disobedience of order Willful misconduct: (a) venereal disease (b) gross inebriation (c) fighting when aggressor
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General Notes:

1. "Negligence" includes acts and omissions of employees of defendants when acting within the scope of their employment.
2. Definition of "seaman": a person whose employment on a vessel or identifiable fleet of vessels under common ownership(a) is substantial in terms of duration and nature (b) the vessel is in navigation, (c) the persons's duties contribute to function of vessel in navigation or commerce, or the "work of the vessel". Rule of thumb for "amphibious workers": they must spend substantial portion of their employment (30%? rule of thumb) aboard the vessel or fleet under common ownership or control.
3. Limitations of actions: three years, except in case of passengers may be limited by terms of contract of carriage (not less than 1 year), and actions for maintenance and cure may be limited by doctrine of laches.
4. Awards for "pecuniary" future damages are to be reduced to "present value"
5. An affirmative duty is imposed on a vessel operator to investigate, determine doubts in favor of seaman, and timely pay maintenance, cure & unearned wages. Possible awards of attorney fees if there is a willful and recalcitrant refusal to timely make payments.
6. Seamen's releases: the defendant has the duty of proving that the release was executed by a seaman freely with full understanding of his rights and with a full appreciation of the consequences of the release.
7. All columns but "damages allowed" apply to death actions. "Persons entitled" become the personal representative of an "entitled" decedent's estate.