

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 92-2702  
Summary Calendar

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CRUZ M. DE JESUS,

Plaintiff-Appellant,

VERSUS

KEYSTONE SHIPPING COMPANY,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
(CA-H-91-1862)

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(November 19, 1993)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:<sup>1</sup>

De Jesus filed this action under the Jones Act and the general maritime law seeking recovery against his employer, Keystone Shipping Company (Keystone), for injuries sustained when he allegedly slipped and fell in oil while working on Keystone's vessel, the S/S TONSINA. Following a bench trial, the district court rejected plaintiff's claims and entered a take-nothing judgment in favor of Keystone. The court found that plaintiff failed to establish that Keystone was negligent or that the S/S

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<sup>1</sup> Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

TONSINA was unseaworthy. We have carefully reviewed the record and conclude that the district court's findings are not clearly erroneous. Fed.R.Civ.P. 52(a).

Plaintiff's theory of the case was that oil leaked from one of the ship's winches onto the deck near the No. 5 port cargo tank and that he slipped in this oil. The district court concluded that plaintiff failed to establish the factual predicate for his claim. In his own testimony, plaintiff stated that he did not see what caused him to slip and fall. (R. p. 32-33). Moreover, when plaintiff reported his accident, he did not report that he slipped in oil, and the accident report which he signed did not mention that he slipped in oil. Finally, the chief mate inspected the accident scene immediately after plaintiff fell and found no oil. (R. p. 69-70). Therefore, the district court did not clearly err in finding that plaintiff failed to prove that Keystone was negligent or that the S/S TONSINA was unseaworthy.

Plaintiff also argues that the district court erred in refusing to find Keystone at fault for failing to provide adequate medical care. The record, however, supports the conclusion that no physician was available in Chiriqui Grande, Panama, the first port of call after plaintiff's accident. Chief Mate Flynn testified that the vessel contacted its agent in Chiriqui Grande who advised that no medical care was available in that port city.

Lastly, De Jesus complains of the district court's denial of his motion for new trial. De Jesus attached affidavits to his motion for new trial. Even if De Jesus had explained why he could

not have produced this new evidence at the time of trial (which he did not), the district court was entitled to conclude that it would not have produced a different result. Therefore, the district court did not abuse its discretion in denying the motion for new trial.

For the reasons stated above, the judgment of the district court is affirmed.

AFFIRMED.