IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 2559 of 2019

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MAVJIBHAI KANJIBHAI JUNGI

Versus

LATE SHAMJIBHAI GOVINDBHAI BAROYA SINCE DIED THROUGH LH & ORS.

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Appearance:
MR UTSAV SHAH for MR ASHISH M DAGLI(2203) for the Appellant
RULE SERVED for the Defendant(s) No. 1.1,1.2,1.3,1.4,1.5

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 12/06/2026

ORDER

1. Present First Appeal is directed against the judgment and award dated 14.3.2019 passed by the learned Workman Commissioner, Junagadh in Workman Compensation (F) Case No.9 of 2018.

2. Brief facts of the case are that the appellant is the original respondent, residing at Porbandar and owner of fishing boat namely "Devprayag" having registration no. GJ-25-MM-2012 and running the business of fishing since long.The deceased Shamjibhai Govindbhai - husband of Respondent No.1 herein and father No. 2 to the of 5 in this appeal was serving as a sailor (Khalashi) in the boat owning by the appellant with the salary of Rs. 8,000/- per month. Another person namely Rakesh Parbat Chudashama was working as a sailor on the said Boat. Likewise the relation between the deceased and the appellant herein was coming within the ambit of master and servant in the eyes of law. The Shamjibhai Govindbhai Baraiya while he was on duty at the

Boat and while he was sleeping with the other sailor, in the night hours on dated 21.11.2017, he was found missing in the next day morning and on dated 24.11.2017 in the morning time, the dead body of Shamjibhai was found from Sea and it was presumed that the Shamjibhai was died because of fell down in the late night hours, accordingly the police investigation was launched, postmortem was carried out and therefore the legal heirs of the deceased Shamjibhai filed Workman Compensation Case No. 9 of 2018 before the Labour Court cum Compensation Commissioner Workman, Junagadh.

2.1 The learned Workman Commissioner vide impugned order partly allowed the application and granted compensation of Rs.7,58,240/- to the legal heirs of the deceased, with 9% interest from the date of application till realization.

2.2 Against aforesaid order, the appellant respondent is before this Court.

3. Heard learned advocate Mr. Utsav Shah appearing for learned advocate Mr. Ashish Dagli for the appellant. Though served, none appears for the respondents.

4. Learned advocate Mr. Shah would submit that the appellant is the owner of the boat and the learned Workman Commissioner has committed serious error in believing existence of the employee – employer relationship between the deceased and the appellant on the ground that the appellant is owner of the boat and that the deceased died

while he was on duty at the boat. He would further submit that in absence of any specific supporting documentary evidence establishing the employee – employer relationship, the learned Workman Commissioner ought not to have assessed compensation under the Employees' Compensation Act and saddled the liability to pay compensation upon the appellant. He would further submit that in absence of any documentary evidence, the learned Workman Commissioner has committed serious error in believing the income of the deceased at Rs.8000/- per month.

4.1 Upon above submission, learned advocate Mr. Shah prays to allow the First Appeal.

5. Having gone through the facts and circumstances of the case and the evidence on record, this Court is not impressed with the submission of learned advocate Mr. Shah on the ground that one sailor Mr. Rakesh Parbat was the driver of the boat and he has not been examined by the appellant to support his argument that the deceased was not the employee of the appellant. Against the aforesaid, it is the case of the appellant that the deceased was sailor in the boat. The FIR, inquest panchnama and other documentary evidence on record sufficiently established that when the deceased died while he was falling from the boat, the boat was anchored at the seashore. It is Mr. Rakesh Parbat, who as the best piece of evidence to disclose the actual facts, however, the appellant failed to lead this evidence. Rather, the FIR and other documentary evidence supports the case of the deceased. The burden is shifted upon the appellant to

disprove the fact that the deceased was not his employee and was casual on the boat at the time of his death, and not in capacity of sailor. Admittedly, the deceased was on the boat. The appellant claims that the deceased was sleeping in the boat. The legitimate presumption arise in view of the fact that the deceased was on boat at the time of untoward incident. It is in these circumstances, heavy burden lies upon the employer to disclose aforesaid legitimate presumption, which the appellant has failed to disclose.

6. Insofar as the submission that the learned Workman Commissioner has assessed the income of the deceased on higher side, I see no reason to interfere with such finding on the ground that the incident took place in 2017 and that time, the rate of minimum wage is around Rs.8000/-.

7. Under the circumstances, there is no merit in the matter and therefore, the First Appeal fails and stands dismissed. Notice discharged.

8. Registry is directed to return back the R & P, if any, to the concerned Court forthwith.

9. The learned Commissioner is directed to disburse the amount of compensation deposited by the appellant to the claimants after due verification and identification along with interest and after verifying their right to claim the compensation.

(J. C. DOSHI,J)

SHEKHAR P. BARVE

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: SHEKHAR PRAFULBHAI BARVE(HC00200), Principal Pvt. Secretary, at High Court of Gujarat on 12/06/2026 15:54:42