

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 1035 of 2009****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE DEVAN M. DESAI**

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Approved for Reporting	Yes	No

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BHIMABEN WD/O BHAGOJI RAGHOJI UTTEKAR & ORS.**Versus****NANUBHAI RAMANLAL SHAH & ANR.**

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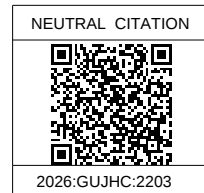
Appearance:**MR. BK. RAJ(3794) for the Appellant(s) No. 1,2,3,4,5,6****RULE SERVED for the Defendant(s) No. 1,2**

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CORAM:HONOURABLE MR. JUSTICE DEVAN M. DESAI**Date : 08/01/2026****ORAL JUDGMENT**

Learned advocate for the appellant seeks permission to delete the name of appellant No. 6 as heirs of deceased appellant No. 6 are already brought on record.

Permission, as sought for, is granted. The name of appellant No. 6 be deleted from the array of parties.



1. The present First Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 (hereinafter, referred to as the "Act") by the appellants – original applicants, challenging the judgment and order dated 30.09.2008 passed by the Workmen's Compensation Commissioner, Vadodara in Workmen's Compensation Application (old) No. 36 of 1989, (new) No. 32 of 1998.

2. Heard learned advocate, Mr. B.K. Raj for the appellants. Though served, none appeared for the respondents.

3. The brief facts of the case are as follows:

3.1 The case of the applicants before the learned Commissioner was that deceased, Bhagojirao Uttekar, was in the employment of opponent Nos. 1 and 2, who are in the business of putting up advertisement boards at Public Places. Opponent No. 1 is the contractor and opponent No. 2 is a supervisor. Deceased was being paid Rs.15/- per day over and above over-time charges by opponents. Opponents issued attendant card in the name of "Maharani Vallabhdas Shah". On 06.11.1988, deceased was painting an



advertisement board opposite Saiyaji Hospital, Kubereswar Temple in Kirti Mandir compound. The deceased, while painting the advertisement board, fell from the structure of the advertisement board and sustained injuries. He was taken to hospital and during the treatment, deceased expired. Deceased was aged about 39-40 years and, as per the case of claimants, deceased was also doing some other labour work and was earning Rs.30-35/- per day. A Notice dated 24.12.1988 was issued by the applicants, as contemplated under the Act, to the opponents. As opponents failed to deposit the amount of compensation before the learned Commissioner, the claimants filed a Claim Application claiming compensation with interest and penalty. The summons of the Claim Application were duly served upon the opponents. Opponent No. 1 appeared and filed written-statement at Exhibit – 24. Opponent No. 2, though served, did not file any written-statement. Claimant No. 1 examined herself, as well as, examined one witness, Bajirao Pendarkar at Exhibit - 62. The opponents did not lead any evidence. After considering the evidence, the learned Commissioner rejected the application on the ground that the



applicants have failed to establish a relationship of employee and employer between deceased and opponents.

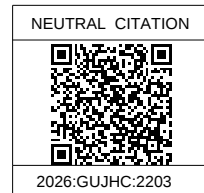
3.2 Being aggrieved and dissatisfied with the impugned judgment and order, the claimants have filed the present First Appeal.

4. Learned advocate for the appellant contended that the claimants have established a fact that the deceased was under the employment of opponent No. 1. A reliance has also been placed upon an attendant-card, wherein, the name of deceased is mentioned. In the said attendant-card, name of “Maharani Vallabhdas Shah” is mentioned. The claimant No. 1, in her deposition, has stated that deceased was in the employment of opponent No. 1. The said fact has been supported by a witness at Exhibit – 62, Bajirao Pendarkar. It is further pointed out by learned advocate for the appellant that in the written-statement, the opponents have admitted that before the date of incident, there was a talk between the deceased and opponent No. 1 for the painting of the advertisement board. The rates were also decided among themselves. The deceased had started the work of painting



the advertisement board. However, deceased fell down from the structure of the board which is an accident. This admission is enough to establish a relationship of employee and employer between the deceased and opponent No. 1. However, it is contended that the learned Commissioner has not considered this important admission in the written-statement and has given undue weightage on the lacunas found in the oral deposition of claimant No. 1, as well as, the witness. It is further contended that in absence of any contrary evidence led by opponent No. 1, the admission made in the written-statement, is sufficient to establish relationship. The injury has arisen out of and in the course of employment. Except above, no other submissions were canvassed by learned advocate for the appellants.

5. Having considered the submissions canvassed by learned advocate for the appellant and on perusal of the Record and Proceedings, an undisputed fact culls out on record that on 06.11.1988, deceased, while painting an advertisement board in the campus of Kirti Mandir, fell from the structure of the board and expired. It also appears from the written-statement, Exhibit – 24, filed by opponent No. 1 that, before the date of accident, deceased



was given the work of painting an advertisement board by opponent No. 1 and the price was also fixed at Rs.1.20 paisa per sq. feet. The deceased had also started the work of painting the advertisement board. However, the deceased lost his balance and fell down from the structure of the board. Resultantly, deceased expired. The opponents, have conveniently not entered in the witness-box and have also not led any contrary evidence. The applicants have also examined a witness at Exhibit – 62, who has also deposed the fact that on 06.11.1988, deceased was in the employment of opponent No. 1 and died due to falling down from the structure of the board. The mandatory requirement of the issuance of Notice of the claim was also satisfied by the claimants, as can be seen from the Notice dated 24.12.1988 produced on record at page No. 211 of the Record and Proceedings. It appears that no reply is given by opponents and the compensation, as mandated under Section 4A of the Act, has neither been deposited before learned Commissioner nor paid to claimants by opponents. The provision mandates that when the employer is in default of making payment of compensation due within a period of one month from the date it fell due, the commissioner shall direct the employer in addition of the amount of compensation a simple



interest at the rate of 12% over and above the amount of compensation with penalty not exceeding 50% on such amount. It is well settled proposition of law, that the Act is a piece of social security and welfare legislation. The dominant purpose of the Act is to protect the workmen and the provisions of the Act are not to be interpreted in a narrow manner so as to exclude the employee from compensation. Strict proof, as contemplated under the Indian Evidence Act, 1872 is not expected while deciding the application under the Employee's Compensation Act. Learned Commissioner is expected to interpret the evidence in a lenient manner, more particularly, when the opponents – objectors choose not to contest the Claim Application by leading any contrary evidence. The evidence in the present case is sufficient in establishing a fact that there existed a relationship of employee and employer between the deceased and opponent No. 1. The learned Commissioner has completely given a go-by in considering an admitted fact which is found in the written-statement. In my view, the learned Commissioner has committed a grave error in rejecting the application. Resultantly, the First Appeal deserves to be allowed and the same is allowed. The impugned judgment and order dated 30.09.2008 passed by the Workmen's Compensation



Commissioner, Vadodara is hereby quashed and set aside. The Workmen's Compensation Application (old) No. 36 of 1989, (new) No. 32 of 1998 is hereby allowed accordingly.

6. Record and Proceedings, be sent back to the concerned Court / Tribunal, forthwith.

MUSKAN

(D. M. DESAI,J)