

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 740 of 2023****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2023****In R/FIRST APPEAL NO. 740 of 2023**

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CHAIRMAN GUJARAT INDUSTRIAL DEVELOPMENT CORPORATION
VADHAVAN

Versus

LILABEN PRABHUBHAI BARAIYA WD/O DECD PRABHUBHAI DHIRUBHAI
BARAIYA

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Appearance:

MR BAIJU JOSHI(1207) for the Appellant(s) No. 1
for the Defendant(s) No. 1,2

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CORAM: HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 23/03/2023

ORAL ORDER

ORDER IN FIRST APPEAL :

Heard learned Advocate Mr. Baiju Joshi on behalf of the appellant.

ADMIT. Issue **Notice of Admission** returnable on **17.04.2023**.

ORDER IN CIVIL APPLICATION :

Heard learned Advocate Mr. Baiju Joshi on behalf of the appellant .

Issue **Notice** returnable on **17.04.2023**.

By way of the appeal the appellant-applicant challenges judgment and order passed by the Commissioner under the Employee's Compensation

Act in Employee Compensation (Fatal) Application No. 132 of 2003, dated 29.11.2022.

Considering the submissions made by learned Advocate Mr. Joshi for the applicant-appellant it appears that the application for grant of compensation had been preferred at least 09 years after the incident in question and whereas prima facie it appears that sufficient material may not have been produced before the learned Court below as regards the deceased being employed with the appellant herein. It would further appear that as it is the fact of the deceased having expired at the staff quarters of the appellant-applicant appears to be undisputed. It also appears that a contention had been raised by the applicant-appellant that the quarter in question had been allotted to a third party on 13.08.1987, yet, the deceased was held to be an employee of the appellant and compensation was directed to be paid to the respondent No.1 herein.

This Court has also perused the impugned judgment and order and whereas it appears that the learned Court below has also relied upon the testimony of residents of the quarters in question who have inter alia stated that the deceased was a Safai Karmchari of the appellant.

Having regard to the prima facie observations hereinabove, since it appears that there may a dispute with regard to the deceased having been employed with the GIDC at all, at this stage interference would be required. Furthermore, since it also is undisputed that the deceased had expired in the quarter in question, more particularly since it is being contended that while the deceased was doing his job that is of cleaning quarters he had suffered accidental shock, therefore there appears to be some truth in the contention of the respondent No.1 herein also.

Having regard to such circumstances, equities would be required to be balanced. Hence, it is directed that the impugned judgment and order dated 29.11.2022 shall not be implemented except insofar as the 25% of the entire decretal amount which has been deposited by the appellant herein before the Court below in question.

BDSONGARA

(NIKHIL S. KARIEL,J)