



# The Identification of Partnership in the Era of Civil Code: A Perspective on the Compensation for Personal Injury and Death of Fishing Crew

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**Abstract.** After the promulgation of the Civil Code of the People's Republic of China, the chapter of "partnership contract" improved the legislation of China's partnership system, provided the basis for court trials, and promoted the development of the rule of law. However, due to the flexible way of fishing partnership, there are often different identifications and different judgments in the court trial process, which eventually leads to a large gap in personal injury and death compensation, which is not conducive to the realization of social equity and justice. This paper focuses on the difficulty in the recognition of partnership among fishing crew, analyzes the causes based on the judgment cases, and protects the legitimate rights and interests of fishing crew by standardizing the recognition standards of fishing partnership, and promotes the healthy development of partnership.

**Keywords:** Civil Code, Partnership, Fishing Crew, Personal Injury and Death.

## 1 Introduction

Article 967 of the Civil Code of the People's Republic of China stipulates that: partnership contract is an agreement signed by two or more partners to share interests and risks for common business purposes. In partnership organizations, partners generally bear joint and unlimited liability, or bear limited liability according to the law. In modern society, partnership has become an important subject of social and economic life, and an important way for people to invest and participate in transactions. As a relatively flexible form of organization, partnership can give full play to the advantages of all parties and maximize common interests. <sup>[1]</sup>

The partnership of fishing vessels belongs to the simple case of individual partnership in partnership. In the past, fishing vessels were usually based on families, and this kind of partnership was bound by blood relationship, with a high degree of trust between partners. With the development of fishery modernization, the way of operating partnership has also changed, namely, a small range of neighborhood relations based on familiarity and trust in ability for cooperative operation. Because the employment of fishing vessel crew members in the process of participating in fishing

operations is relatively flexible, the fuzzy judgment standard leads to a large number of disputes in the identification of partnership by judicial organs, which not only causes a waste of judicial resources, but also is not conducive to safeguarding the legitimate rights and interests of the parties.

## **2 The Gap in Personal Injury Compensation Caused by Different Legal Relations**

### **2.1 The Gap Between Personal Damage Compensation and Different Legal Relations**

Through the analysis of cases, in a large number of personal injury compensation disputes, most of the fishing boat crew asked the court to establish an employment relationship, while the shipowner believed that it constituted a partnership. The main reason is that the compensation liability generated by the employment relationship and the fair compensation in the partnership relationship have a large gap in the amount of compensation. Moreover, the income of both parties in the case is at the bottom of the society. Once there is personal injury and death, the expenditure of medical expenses is difficult for ordinary families to bear. Under the influence of interests under huge financial pressure, the spirit of the contract will cease to exist. If the judicial organ determines that the parties constitute an employment relationship, the shipowner will pay a huge amount of compensation. The fishermen who have personal injury and death or their relatives who sue as heirs can obtain more compensation, which will bring a lot of help to the families in difficulty. For the shipowner, since the income source is only obtained by fishing, most of the funds are invested in buying ships, and the risk resistance ability is weak. In order to save costs, there is no awareness of buying social insurance and commercial insurance for the crew. Once there is an accident of personal injury and death, the compensation will be a large amount, and the shipowner has no corresponding ability to pay. On the contrary, if the parties are determined to form a partnership, the amount of compensation for the crew will be shared according to the agreement between the parties or the proportion of contribution, and the compensation pressure for the shipowner will be much smaller. In the practice process, the focus of a large number of case disputes also revolves around the determination of the legal relationship between the parties, mainly due to the differences in the relevant legal provisions on the compensation liability of employment relationship and partnership relationship.<sup>[2]</sup>

### **2.2 Analysis of the Causes of the Dispute**

The employment relationship bears the liability for compensation in accordance with the fault. The premise for the fishing boat crew to request the shipowner to bear the employer's liability for personal injury suffered in the production at sea is the existence of the employment relationship. The employer bears the no-fault liability for the behavior of the employee causing others to suffer damage in the employment activities,

while the employee bears the joint and several liability with the employer only in the case of intentional or gross negligence. Because the employer bears the no-fault liability for the damage caused by the employee's employment activities, the employer should bear all the liability for compensation when the employee is only in general negligence, and only when the employee is intentional or gross negligence, can the employer's liability for compensation be reduced. In the process of fishing operations, the employer has the obligation to remind the safety and take corresponding protective measures to prevent the occurrence of accidents. To judge whether the employee has gross negligence, it is necessary to investigate whether the employee has professional occupational skills; whether the occurrence of the injury accident is caused by the employee's behavior in violation of the professional requirements; whether the employee has a serious violation of the operating procedures; Whether the employee does not listen to the dissuasion and reminder. <sup>[3]</sup>

Partnerships shall bear compensation liability proportionately in accordance with the agreement. In partnerships, if one of the partners is injured in participating in partnership affairs without the fault of other partners, the other partners, as the beneficiaries of partnership, shall give appropriate economic compensation, in line with the characteristics of partnership profit and loss and risk sharing. The damage compensation lawsuit brought by the partners for the interests of the partnership for personal injury and death belongs to the internal disputes between the partners, which shall be handled in accordance with the agreement of the partnership. In the absence of agreement or agreement, the other partners shall give appropriate compensation according to the principle of fairness. <sup>[4]</sup>

### **3 Causes of the Dilemma of Partnership Identification of Fishing Vessel Crew**

#### **3.1 It is Difficult to Distinguish Between Employment and Partnership**

The investment method of fishing vessel crew is usually labor. Labor is an important guarantee of productivity, and has always been a special property in people's eyes. Labor's contribution is the form of contribution to the partnership organization by the investor through labor behavior, labor experience, etc. Because the situation of coastal fishing waters is more complex, and the fishing equipment of fishing boats is relatively simple and the modernization level is low, there is a folk saying of "three parts of the boat and seven parts of the risk". An experienced fisherman will accurately judge the position of the fish and point out the direction of navigation according to the direction of the ocean current, temperature, wind speed and other conditions, to escort the fishing operation of the fishing boat. And most of the fishing boat crew rely on fishing for a living, and their income is unstable. It is difficult to contribute by providing funds, so the contribution by labor has become the preferred way of contribution. Although it is common for fishing boat crew to participate in the partnership by technical labor in daily operation, there is no corresponding standard in law to determine what kind of labor can meet the requirements of partner contribution. <sup>[5]</sup>

### 3.2 It is Difficult for the Parties to Prove the Partnership

Most of the partnership agreements between fishing boat crews are oral. The fishing boat crews are villagers in coastal towns, with a generally low level of education and a weak legal awareness. Most of the fishing boat crews have no consciousness of signing a contract. Because the fishing boat crews are mostly neighbors, the maintenance of partnership depends more on mutual trust between each other, often only in the form of oral agreement. In the absence of industrial and commercial registration certificates and written partnership agreements, it is difficult to recognize the partnership only through the statements of the parties. Even if we can find witnesses who have no relationship with the case, there may be collusion witnesses for various reasons, resulting in low credibility of the evidence obtained and can't be recognized by the court. In Chen Sancheng, Chen Wenhai and other maritime, territorial waters personal damage liability disputes, Chen Wenhai for if the sea fishing, losses occurred, losses should be borne by themselves, or by the five people on the ship to share this issue, the two sides are different, each holding a word. Because the burden of proof to prove the establishment of partnership in the defendant Chen Wenhai party, and the defendant Chen Wenhai can't prove that the five people on the ship had agreed to share the losses, the court believes that it should bear the adverse legal consequences of the burden of proof. It can be seen that once a dispute occurs, when proving whether there is a partnership, the parties do not retain the corresponding evidence, which makes it difficult to find out the case. In the absence of contract proof, even if the previous oral agreement between the parties is clear, driven by interests, the parties are more inclined to choose the direction of their own interests, not to admit or conceal the facts of their own disadvantage. Often in the original share of investment, partnership dividend amount, debt between the proportion of larger disputes, is not conducive to the recognition of partnership. This will greatly reduce the efficiency of the court case, is also an infringement on the legitimate rights and interests of the parties.

Evidence is not retained or does not meet the requirements According to the law, the parties shall provide evidence to prove the facts on which they base their own litigation claims or refute the facts on which the other party's litigation claims are based, otherwise the parties with the burden of proof shall bear adverse consequences. Due to the special working environment of fishing vessel crew, the parties basically have no awareness of actively retaining evidence, and the preservation of evidence is poor. In the process of fishing operation, there is usually no special account book for recording, in most cases, it is a record at will, and the income and expenditure of funds are also separately managed by different parties.<sup>[6]</sup> Although most parties can clearly know that this kind of accounting method does not conform to the accounting norms, it is difficult to comply with in the daily work process, and other members rarely object to this kind of accounting method. Once there is an accident and the corresponding evidence needs to be provided, the true financial situation is often difficult to clarify. Even if the original account book can be obtained, the evidence often does not meet the regulations for various reasons.

## **4 The Identification of Partnership of Fishing Vessel Crew Under the Civil Code**

### **4.1 The Labor Services Used for Capital Contribution in the Partnership Should Have Particularity**

In the case of fishing vessel operation, labor or technology as a form of investment is difficult to be shared by all partners like property. When a partner fails to fulfill the obligation of providing labor in accordance with the partnership agreement, other partners can only request the partner who provides labor to bear corresponding compensation liability, but cannot request the court to enforce the partner's labor. Therefore, the judicial organ needs to be very careful in determining whether to make investment with labor or technology. The labor used by the parties to make investment should be combined with the ongoing production practice, and only in this way can the labor provided by the partners be transformed into benefits shared by all in the partnership process. At the same time, the labor provided by the parties is not a simple labor that can complete the production work by providing physical strength alone, in daily life, the provision of simple physical forms of labor is usually regarded as an employment contract relationship. The labor services provided by partners who make contributions through labor services need to have certain particularity, that is, they should have certain technicality, and should be the "complex" labor that can only be provided by the laborer with rich knowledge that is difficult for others to copy, higher level of technology or valuable experience accumulated in long-term production and life, such as diving, cage operation technology and other work independently carried out with their own experience and skills. At the same time, it can be comprehensively determined according to the actual situation. For example, in the process of fishing operations, the daily operation and management of ships, the decision of sea operation time, mode and place, and the work content that can affect the income of fishing vessels should be decided by partners. Labor contributions should not be treated differently. The labor provided by partners is not different from the income generated by funds provided by others. Partners who provide labor services also have the rights and obligations of other partners.

### **4.2 Sharing Benefits is Not Equal to Sharing Risks**

As the most important principle to identify the existence of partnership, sharing benefits and sharing risks are the basis of the existence of partnership. However, in cases involving disputes over fishing vessels and crew members, the parties often claim in the indictment that "the two parties agreed to distribute profits according to the catch, and no remuneration would be given if there is no catch". The courts often have different judgments in similar cases, which will undoubtedly affect the fairness of the judgment. In the court's public judgment documents, most of them claim that "the partnership relationship is a local custom, and it is determined to be a partnership based on respect for the local custom". According to investigations, in coastal towns and villages, there is a fishing boat operation that fishermen receive more remunera-

tion when the income from sea operations is high, and less when the income is low. However, if the fishing boat operation suffers losses, fishermen do not bear the risk of losses, nor do they share the operation costs such as ship operation. As crew members, they only provide labor services and participate in the distribution of fishing income, but do not bear joint and several liabilities for debts arising from fishery production and operation activities, which is not in line with the characteristics of sharing benefits and sharing risks in individual partnerships. The essence of employment is "control", that is, the employer decides the selection of employees, provides the equipment and tools needed for the work, and controls the work. [7]

### **4.3 The Oral Partnership Should be Determined Comprehensively According to the Case**

There is no restrictive provision on the form of partnership contract in the Civil Code. Usually in fishery business activities, most of the parties are in an oral way to enter into partnership, or in written form to carry out a simple and general agreement on the content of the partnership. [8] If the judicial organ denies the existing partnership between the parties simply because there is no written partnership agreement between the parties or the parties are not clear about the content of the partnership, it is not conducive to the stability of social order and the efficient development of social economy, and it is not conducive to the protection of the legitimate rights and interests of the parties. If there is an oral agreement between the partners and they jointly recognize the existence of the partnership, the court can determine the existence of the partnership according to the actual situation. But usually in the absence of written evidence, the parties are driven by their interests, and they usually only state the facts that are powerful for their own party. This requires the judicial organ to carefully review whether there is a partnership contract, and to judge on the basis of the case and the corresponding evidence. [9]

According to the specific circumstances of the case, the examination of evidence should be strengthened and the burden of proof should be reasonably allocated. Through the contribution situation, transaction situation, partnership matters and other content, the parties shall provide corresponding evidence. If the partnership agreement is only reached orally without paper evidence, the parties may be required to provide corresponding electronic evidence, including the transfer records of the contribution, the WeChat records of the transaction, and the telephone recordings in the process of negotiation and communication, to prove that there are negotiations and confirmation of the scope of partnership, the method of contribution, profit distribution and loss sharing, and the execution of partnership affairs. If the account books and other documents are under the control of the other party, the party with the burden of proof can apply to the people's court in writing to order the other party to submit before the expiration of the period of proof. In this way, the occurrence of difficulties in providing evidence can be avoided to a certain extent. [10]

## 5 Conclusion

Partnership, as a civil system, plays a huge role in economic life. The Civil Code identifies it as a famous contract, reflecting the great value of the partnership system. The identification of partnership is the first step in handling partnership disputes. When determining whether a partnership exists between fishing crew members, factors such as whether there is a partnership contract, whether there is a contribution, the way of labor contribution, whether there is a partnership, and whether there is a shared income and risk should be considered comprehensively, and attention should be paid to distinguishing partnership from other legal relationships in order to more accurately identify partnership.

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