

Skipper awarded \$525,000

By KEVIN SULLIVAN
Times staff

A Gloucester fishing skipper who sued his own corporation after breaking an arm at sea was awarded about \$525,000 Friday by a U.S. district court jury.

Lawyer Joseph Orlando, who represented skipper Mercurio DiMercurio of the Racketeer, said the "revolutionary" decision was the largest-ever U.S. District Court jury award to a fishing captain.

And, he said, it was the first time, to his knowledge, that a fishing skipper sued a corporation in which he was a principal stockholder.

A jury took two days to rule in favor of Mercurio DiMercurio, skipper of the eastern-rigged dragger Racketeer. DiMercurio, 32, suffered a broken arm in October 1981, when a 20-pound steel block fell 20 feet and struck him.

Like most fishing-boat owners, DiMercurio does business under a corporate title, the DiMercurio Fishing Corp.

DiMercurio, president and treasurer, owns 51 percent of the stock. His brother, Frank, a Racketeer crewmember, owns the other 49 percent.

The vessel and crewmembers are insured by New Hampshire Insurance Co. from Manchester, N.H.

When DiMercurio was hurt, he sued the corporation. Although it appeared he was suing himself, he was actually seeking payment from the insurance company, Orlando said.

All crewmembers on vessels are insured against personal injury, regardless of whether they own

stock in the corporation, Orlando said.

But he said, fishing skippers who own stock have long considered themselves in a bind. He said such skippers have been injured, but not brought suit, because they felt they would have been suing themselves.

Orlando said he had represented many skippers injured while fishing, but never one who was also a stockholder.

Orlando said this decision could change the way stock-holding skippers handle injuries.

Boston attorney Alan Hoffman, who represented the insurance company at the trial, agreed that DiMercurio was covered by insurance as a crewmember, regardless of his position as principle stockholder.

But in this case, he said, the insurance company argued that DiMercurio was responsible for his injury.

DiMercurio "was primarily responsible for his own injuries by virtue of things he did... as captain and president of the corporation," Hoffman said.

Hoffman said improper maintenance of the boat's equipment was responsible for the accident. As captain and principal owner, DiMercurio was responsible for the boat's maintenance and, therefore, had no grounds to collect, Hoffman said.

The insurance company offered a \$20,000 settlement, but DiMercurio fought for more, and won.

Hoffman said he would seek a new trial, for several reasons.

The principal reason was Judge David Nelson's instructions to the jury. Hoffman said Nelson told the

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jury it could base its award on wages that DiMercurio expects to lose in the future.

Hoffman said there would be no such loss in this case.

Despite a steel plate and five screws in his arm, Orlando said, DiMercurio had his best year fishing in 1983.

Hoffman said he will also argue that there were several procedural errors in the case.

The \$525,000 figure is an estimation. The jury awarded DiMercurio \$554,000, plus 10 percent interest since the date of his injury, totaling about \$700,000.

But the jury ruled that DiMer-

curio was 25 percent responsible for his injuries. Neither Hoffman nor Orlando knew how that figure was arrived at.

So the actual award, if the decision stands, will be about \$700,000 minus 25 percent, or about \$525,000.

DiMercurio was fishing this morning, unavailable for comment.