



*C.M.A(MD)No.696 of 2010*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.06.2023**

CORAM

**THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR**

**C.M.A(MD)No.696 of 2010**

Sivaraj @ Sivarajan

... Appellant/Petitioner

Vs.

1.Manimohan

2.The Branch Manager,  
Oriental Insurance Company Limited,  
Namakkal.

... Respondents/ Respondents

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 30 of Workmen's Compensation Act, against the dismissal order passed by the learned Commissioner of Workmen's Compensation cum Deputy Commissioner of Labour, Tiruchirappalli in W.C.No.253 of 2004, dated 21.01.2009 and to set aside the same.

For Appellant : Mr.M.Karthikeya Venkitachalapathy

For R1 : No Appearance

For R2 : Mr.A.Ilango



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## **JUDGMENT**

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The present appeal has been filed by a workman challenging the order passed by the Commissioner of Workmen's Compensation/ Deputy Commissioner of Labour, Tiruchirappalli in W.C.No.253 of 2004.

2. According to the claimant, he is a labourer in the rig borewell which is run by the 1<sup>st</sup> respondent in the claim petition. On 16.07.2003 when he was working in the rig borewell, he met with an accident and his fingers in both the hands were amputated. He had taken treatment in Girishantha Ortho Care at Chitradurga and after taking treatment for 35 days, he had to return back to his home in view of the fact that there was no assistance from any one of the revenue or police authorities in Karnataka. He had further contended that he was receiving a salary of Rs.5,000/- and batta a sum of Rs.50/- per day. He has filed the claim petition seeking a compensation of Rs.5,00,000/-. Since the borewell was insured with the 2<sup>nd</sup> respondent, he made a claim as against the insurance company also.

3. The owner of the borewell had remained ex parte and the insurance company had filed a counter contending that no F.I.R has been



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registered relating to the accident and the claimant has not established that there was an employer-employee relationship between the claimant and the 1<sup>st</sup> respondent in the claim petition. They have also contended that the driver of the 1<sup>st</sup> respondent was not possessing a valid driving license at the relevant point of time.

4. The claimant had relied upon Exhibit A.5 discharge summary issued by Girishantha Ortho Care hospital, Exhibit A.7 cash bill and Exhibit A.6 lab test report in order to establish his case that he met with an accident on 16.07.2003 and he had undergone a surgery. However, the Commissioner under the Workmen's Compensation Act has relied upon the first page of discharge summary which reflects that the claimant was admitted to the hospital on 20.07.2003 and discharged on 24.07.2003. In view of the said endorsement, the Commissioner had arrived at a finding that if really the claimant had sustained such grievous injuries, he would have got admitted in the hospital on 16.07.2003 itself and would not have waited to get admitted till 20.07.2003. Therefore, the claimant has not established that the accident has taken place on 16.07.2003 and he has not established the employer-employee relationship with the 1<sup>st</sup> respondent. Based upon the said findings, the claim petition has been



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dismissed in entirety. Challenging the same, the present appeal has been filed by the claimant.

5. The learned counsel appearing for the appellant/claimant had contended that the Commissioner has not looked into the 2<sup>nd</sup> page of the discharge summary wherein it is recorded that two surgeries have been performed at P.V.S hospital on 16.07.2003 and 19.07.2003. He further contended that Exhibit A.7 bills will reflect that the claimant has undergone surgery on 16.07.2003 and 19.07.2003. He has also referred to Exhibit A.6 lab test report to indicate that due to the accident, he has undergone the said test. Therefore, the Commissioner has not properly appreciated Exhibits A.5 to A.7 and has dismissed the claim petition in entirety.

6. Per contra, the learned counsel for the respondent/insurance company has contended that unless the claimant establishes that the accident has taken place in the course of his employment and his relationship as an employee of the 1<sup>st</sup> respondent, the claim petition cannot be considered on merits.



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7. I have carefully considered the submissions made on either side.

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8. A perusal of the 2<sup>nd</sup> page of Exhibit A.5 which is the discharge summary clearly indicates that the claimant has undergone two surgeries on 16.07.2003 and 19.07.2003 at P.V.S.Hospital. The discharge summary further indicates address of the injured as Kalai borewell who is arrayed as the 1<sup>st</sup> respondent in the claim petition. A perusal of Exhibit A.7 also indicates that the claimant has undergone some surgeries in the hospital on 16.07.2003 and 19.07.2003. Therefore, the claimant has established that an accident has taken place on 16.07.2003 and he is an employee of the 1<sup>st</sup> respondent in the claim petition. Therefore, the Commissioner was not right in dismissing the claim petition.

9. In view of the above said deliberations, the order, dated 21.01.2009 made in W.C.No.253 of 2004 is hereby set aside and the matter is remitted back to the Deputy Commissioner of Labour, Tiruchirappalli for fresh consideration of the claim petition in the light of the observations made by this Court. The owner of the borewell as well as the insurance company are entitled to let in further evidence, if they are so advised. The Deputy Commissioner of Labour, Tiruchirappalli



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shall dispose of the appeal on or before 31.12.2023.

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10. With the above said observations, this Civil Miscellaneous  
Appeal stands allowed. No costs.

**22.06.2023**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No

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To

1.The Workmen's Compensation cum  
Deputy Commissioner of Labour,  
Tiruchirappalli.

2.The Section Officer,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**R.VIJAYAKUMAR,J.**

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Judgment made in  
C.M.A(MD)No.696 of 2010

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