



*C.M.A(MD)No.118 of 2017*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.07.2024**

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

**C.M.A(MD)No.118 of 2017**  
**and**  
**C.M.P(MD)No.1258 of 2017**

Sathiyamoorthi

... Appellant/2<sup>nd</sup> Respondent

Vs.

1.M.Selvam

... Respondent/Claimant

2.T.S.Balaiyan

... Respondent/1<sup>st</sup> Respondent

**Prayer:** Civil Miscellaneous Appeal is filed under Section 30 of Employee's Compensation Act, against the order of the Workmen's Compensation Commissioner-cum-Deputy Commissioner of Labour, Trichy in W.C.No.364 of 2003, dated 18.11.2016.

For Appellant : Mr.S.Deenadhayalan

For Respondents : No Appearance



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## **JUDGMENT**

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The 2<sup>nd</sup> respondent in W.C.No.364 of 2003 on the file of the Deputy Commissioner of Labour, Tiruchirappalli has preferred this appeal challenging the liability.

2. According to the claimant / workman, he is a paddy harvesting machine operator employed under the 1<sup>st</sup> respondent in the claim petition. On 02.03.2003, the 2<sup>nd</sup> respondent had taken the said machine on rental basis and while he was operating the said machine, an accident has taken place and he had sustained injuries above the wrist in the right hand. He had claimed a compensation of Rs.5,00,000/-.

3. The 1<sup>st</sup> respondent who is the employer of the claimant as per the claim petition had remained *ex parte*. The 2<sup>nd</sup> respondent who had taken the machine on rental basis had filed a counter contending that the injured claimant is not his employee and he was employed only by the 1<sup>st</sup> respondent. Originally, the claim petition was dismissed by the Deputy Commissioner of Labour on 23.05.2005. Challenging the same, the claimant had filed C.M.A(MD)No.1539 of 2010 and the same was also



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dismissed. Later, on a review filed by the claimant, the order of Deputy Commissioner of Labour was set aside and it was remitted back for fresh consideration. Thereafter, the present order has been passed on 18.11.2016 mulcting the liability upon the 2<sup>nd</sup> respondent in the claim petition, who had taken the harvesting machine on rental basis. In the order, the Deputy Commissioner of Labour has directed the 2<sup>nd</sup> respondent to satisfy the award and thereafter, recover the same from the 1<sup>st</sup> respondent. The Deputy Commissioner of Labour has fixed the compensation at Rs.2,83,766/-. Challenging the said award, the present appeal has been filed by the 2<sup>nd</sup> respondent.

4. According to the learned counsel appearing for the appellant, even as per the claim petition, only the 1<sup>st</sup> respondent is the employer of the claimant. The employer-employee relationship has been specifically disputed by the 2<sup>nd</sup> respondent. Based upon a statement said to have been given by the 2<sup>nd</sup> respondent / appellant with Revenue Divisional Officer, the present award has been passed as against the appellant. When there is no employer-employee relationship, liability cannot be mulcted upon the 2<sup>nd</sup> respondent.



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5. The above appeal has been admitted on the following substantial questions of law:

*“(i) Whether the learned Workmen Compensation Commissioner is correct in awarding the compensation by holding that the appellant is principal employer?”*

*“(ii) Whether the finding of the learned Workmen Compensation Commissioner is sustainable as per Section 3 of the Employee's Compensation Act, 1923, by holding that there was employer and workman relationship between the appellant and the claimant?”*

*“(iii) Whether Ex.P.7 is admissible in evidence as per Section 164 of Cr.P.C?”*

*“(iv) Whether the compensation has been fixed as per Section 4 of the Employee's Compensation Act, 1923?”*

6. Though the claimant has been served and his name is printed in the cause list, he has not chosen to appear either in person or through counsel. Therefore, this Court proceeds to pass orders on merits based upon the the submissions made by the learned counsel appearing for the appellant herein.

7. In Paragraph No.2 of the claim petition, the claimant has specifically contended that the 1<sup>st</sup> respondent in the claim petition,



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namely T.S.Balaiyan is the owner of the paddy harvesting machine and he is employed as an operator under him. He has further stated that the said machine was taken on rent by the 2<sup>nd</sup> respondent. The claimant has been examined as P.W.1. During his chief examination, he has admitted that he was employed as a machine operator only with the 1<sup>st</sup> respondent in the claim petition for the past 3 years. During cross-examination, the claimant has categorically admitted that there is an employer-employee relationship between himself and with the 1<sup>st</sup> respondent alone and he was never employed under the 2<sup>nd</sup> respondent. He has further deposed that the salary would be paid only by the 1<sup>st</sup> respondent and not by the 2<sup>nd</sup> respondent. Therefore, it is clear that there is no employer-employee relationship between the claimant and the 2<sup>nd</sup> respondent / appellant. In such circumstances, the Deputy Commissioner of Labour was not right in mulcting the primary liability upon the appellant herein with liberty to recover the same from the 1<sup>st</sup> respondent in the claim petition. The award passed by the Deputy Commissioner of Labour is hereby set aside. In such circumstances, the said T.S.Balaiyan alone is liable to pay compensation. The award of the Deputy Commissioner of Labour as against the appellant is set aside and the liability is mulcted upon the 1<sup>st</sup> respondent in the claim petition, namely T.S.Balaiyan. However, this



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Court is not inclined to disturb the quantum of the award.

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8. In view of the above said deliberations, the appeal is **partly allowed** exonerating the appellant from the liability. In other respects, the award of the Deputy Commissioner of Labour is hereby confirmed. The substantial questions of law are answered in favour of the appellant. The amount already deposited by the appellant herein shall be refunded to him along with accrued interest, if any. No costs. Consequently, connected Miscellaneous Petition is closed.

16.07.2024

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

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

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

**R.VIJAYAKUMAR,J.**



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Judgment made in  
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