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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2026

CORAM

THE HON'BLE DR. JUSTICE P. MURUGAN

CMA(MD) No. 629 of 2023

CNR:{HCMD010496752023}

1. P.Gopinath,
   S/o K.K.Palanisamy,
   No.4/157, Ayyanar Nagar,
   Aathumadu,
   Vedasnthur Taluk,
   Dindigul District.

2. K.K.Palanisamy
   S/o Karuppana Gounder,
   No.4/157, Ayyanar Nagar,
   Aathumadu,
   Vedasnthur Taluk,
   Dindigul District. .. Appellants

Vs.

V.Murugaraj
S/o Velusamy,
No.3764/1, Palaiyakottai,
Sullerumbu Post,
Vedasanthur Taluk,
Dindigul Distict. .. Respondents

PRAYER: Civil Miscellaneous Appeal filed under section 30 of Employee's Compensation Act, to *set aside* the impugned order passed in E.C.No.80 of 2018 dated 27.02.2023 on the file of the Commissioner, Employee's Compensation Tribunal, Dindigul.

For Appellants :Mr. C.Nihil Nandha
for Mr. D.Kirubakaran

For Respondent :Mr.S.Sankar

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J U D G M E N T

The respondent in E.C.No.80 of 2018 on the file of the Commissioner, Employee's Compensation Tribunal, Dindigul, challenges the order dated 27.02.2023 passed in that case, where the claim petition filed by the respondent herein was allowed in part, fastening the liability on the appellants to pay compensation of Rs.6,51,984/- together with interest at 12% per annum, in addition to medical expenses amounting to Rs.8,72,666/-, to a total sum of Rs.15,24,650/-.

2. The litigative status of the parties are referred to as it stood before the Tribunal that the appellants are the respondents and the respondent is the petitioner / claimant.

3 (a). The respondent, who is the injured, filed the claim petition before the Commissioner of Employee's Compensation, Dindigul (hereinafter referred as 'Tribunal') stating that the first respondent in the claim petition is the owner of the land in survey No.77, in S.C.No.30 of Navaluthu village, in which the second respondent, who is the father of the first respondent, maintaining the said property, in which as the request made by the respondents, the claimant had been working in the said land with well for sludge and

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silt removal (fpzW J}h;thUjy;) work for the past one month. The injured was paid Rs.15,000/- as monthly wages with daily patta of Rs.150/-, during the working days.

3 (b). On 23.08.2018, while he was working with the respondents' land with well at about 06.00 pm, when the injured was attending the motor pipe setting work, the side wall of the well scrubbing and fallen down on the injured and out of which, the injured sustained injuries on his head, neck, chest, left thigh and all over body and there was heavy bone fracture. Immediately, he was taken to Kumaran Hospital, Oddanchathiram, in which first aid was given and thereafter, he was recommended to the Vellammal Hospital, Madurai and there he was admitted on 24.08.2018 till 27.08.2018 as inpatient. Thereafter, once again he has taken treatment at City Hospital, Dindigul, for some time and thereafter, he is taking treatment in the said hospital as out patient.

3 (c). For the said accident, a case in Crime No.77 of 2018 under sections 228 and 338 of I.P.C was filed at Idayakottai police station. Out of the said accident, the injured sustained bone fracture on his neck, chest, left thigh and thereby he could not able to attend his work and any employment. The said accident was happened

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when the injured was working under the respondents with the supervision, even then the respondents did not send any notice under section 10 of the Employee's Compensation Act, 1923 (hereinafter referred to as '1923 Act') to the Commissioner under the 1923 Act. Though the claimant made a request to the employers to pay compensation with medical expenses, but, there is no reply. Thereby, the claimant filed a compensation petition before the Commissioner under the 1923 Act, for claim of Rs.15,00,000/- as compensation.

4 (a). Brief counter of the respondents before the Tribunal is as that the land and well mentioned in the claim petition belongs to the first respondent. The other allegations are denied. The second respondent is the father of the first respondent and the second respondent has no right over the subject property. The alleged accident is denied. At no point of time the respondents engaged the service of the petitioner as workman. The first respondent was working in a private company at Coimbatore. The second respondent is residing 10 Kms away from the subject land and well, at Vedasandur, Ayyanar Nagar. The respondents 1 and 2 did not present at the accident place.

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4 (b). It is true that the respondents engaged the service of Nachimuthu and his younger brother Dharmar @ Dharmaraj, for sludge and slit removal of the well belonging to the first respondent. They brought the claimant for the said work. There is no direct employer and employee relationship between the claimant and the respondents. The respondents did not know the claimant. The respondents are not necessary parties. Nachimuthu and Dharmar @ Dharmaraj, are necessary parties in which they have not been added as parties to the case. Therefore, the claim petition is liable to be dismissed. The claimant has no educational qualification or technical qualification to attend the motor pipe work. The claim petition is filed only to get compensation from the respondents.

4 (c). The claimant worked under Nachimuthu and Dharmar @ Dharmaraj, to carry out sludge and slit removal work, which was entrusted to the said Nachimuthu and Dharmar @ Dharmaraj. The claimant attended the said work as they requested and having done the work at 04.30 p.m. and left the place. Thereafter, no work was engaged from the claimant. The real truth is that the claimant came

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to the well around 06.00 p.m. only to steal motor pump set and he voluntarily went down to the well and at that time the scrubbing of the well wall taken place, thereby the claimant sustained injury.

4 (d). Having the claimant decided to steal the motor pump set and sustained injury during that course, on humanitarian ground the respondents did not file any police complaint for the welfare of the injured. If at all the compensation is to be paid, the said Nachimuthu and Dharmar @ Dharmaraj, are liable to pay. Therefore, the claim petition is to be dismissed.

5. During the enquiry, the injured claimant examined as P.W.1, and through him Exh.P1 to Exh.P11 have been marked. Then the medical expert opinion with regard to disability of the injured was marked as Court document in Exh.C1 through Court witness C.W.1 - Mr. Sivakumar from City Hospital, Dindigul. On behalf of the first respondent, the first respondent was examined as R.W.1 and through him Exh. R1 to Exh.R3 were marked. On behalf of the second respondent, the second respondent was examined as RW2 and through him Exh. R1 / R.W.2 was marked. After taking into consideration of the facts, evidence, the tribunal came to the conclusion that the injured worked under the direction of the second

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respondent in the land and well of the first respondent. Thereby there is an employer and employee relationship between the respondents and the claimant, and the accident was taken place during the course of employment, and thereby the compensation with medical expenses as ordered is indicated in paragraph No.1 of this judgment. Against the said judgment, both the appellants filed this appeal.

6. Heard both sides. Perused the records. Considered the submissions raised by both sides.

7. The appeal was admitted on 11.07.2023 on the following four substantial questions of law:

I. Whether the Tribunal is right in fixing the liability upon the appellants to pay the compensation in the absence of any substantial evidence?

II. Whether the Tribunal shall award compensation in the case where there is no employer-employee relationship exist?

III. Whether the Tribunal is right in awarding the compensation, despite the claim is in violation of section 12 of the Employee's Compensation Act 1923?

IV. Is the Tribunal is correct in awarding the compensation, even in the absence of the necessary parties to the claim and whether

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the petition filed by the respondent is maintainable without adding the necessary parties?

8. The learned counsel for the appellants / respondents submitted that there is no contract of employment between the claimant and the respondents. There is no employer and employee relationship between the parties to the case. Though the respondents engaged the service of Nachimuthu and Dharmar @ Dharmaraj, for cleaning the well and sludge and silt removal, and thus those persons, who to have brought the claimant, for daily wages. On the fateful day of 23.08.2018, when the sludge and silt removal work was over between 09.00 a.m. and 04.30 / 05.00 p.m., the wages for that day was disbursed around 04.30 to 05.00 p.m.

9. It was further submitted that the injured left the place and thereafter around 06.00 p.m. came to the well and went down to the well for the purpose of stealing the motor and pump set. At that time the side wall of the well was being scrubbed and thereby the alleged accident was happened. Having the injured was not working under the respondents, the respondents are not liable to pay compensation, and if at all anything is to be paid, only by Nachimuthu and Dharmar @ Dharmaraj, in which they engaged the service of the claimant, is

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liable to pay compensation. All these aspects have not been taken for consideration. Therefore, this appeal is filed.

10. The said learned counsel further submitted that, though the injured had allegedly attempted to commit theft of the motor pump set and sustained injuries in the course of such an attempt, no police complaint was lodged, taking into consideration the welfare, life and future of the injured. On the above grounds, the learned counsel submitted that the appeal is liable to be allowed.

11. The learned counsel appearing for the injured / claimant submitted that it is not in dispute that the injured was engaged in sludge and silt removal work in the well situated in the land belonging to the first respondent, which was maintained, administered and cultivated by the second respondent, who is none other than the father of the first respondent. It is a common practice in agricultural activities that, whenever a well is required to be cleaned by removing sludge and silt, the owner of the property would engage workers for the said purpose.

12. He further submitted that though the respondents had engaged the services of the claimant and others for such work, it is also a matter of common practice that the workers engaged in sludge

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and silt removal would, as part of their incidental work, to switch on the motor pump set then and there to pump out the water from the well and attend to the necessary operational requirements of the motor pump set, including the adjustment, setting, resetting and removal of the foot valve, whenever required. Such activities are ordinarily incidental to and form part of the work undertaken by the workers engaged in cleaning agricultural wells. Therefore, the performance of such ancillary duties cannot be treated as an act unconnected with or beyond the scope of their routine work in the agricultural field.

13. Though the work relating to the removal of sludge and silt had been completed at around 05.00 p.m. on 23.08.2018, the respondents directed the claimant to go down to the well to check the availability of the motor pump, pipe and foot valve for pouring water the next day. At that time, the side wall of the well suddenly crumbled, thereby causing injuries to the claimant. Since the claimant was working under the employment of the respondents, the contention of the respondents that they had not engaged the claimant cannot be accepted. Therefore, the Tribunal has rightly awarded compensation. Hence, the appeal is liable to be dismissed.

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14. As the substantial questions of law reveals that there is no challenge about the quantum of compensation awarded and the disability sustained by the claimant, which is 85%, and the monthly wages, age factors, etc. It is the contention of the respondents before the Tribunal that there is no employer and employee relationship and the award is against under section 12 of the 1923 Act and there is an absence of necessary parties.

15. The evidence adduced by the parties before the Tribunal is considered. The claimant has deposed as P.W.1 in accordance with the facts stated in the claim petition. He has incurred medical expenses of Rs.8,72,666/-. Initially, he received first-aid treatment at Kumaran Hospital, Oddanchatram, on 23.08.2018. Thereafter, he underwent treatment as an inpatient at Velammal Hospital, Madurai, from 24.08.2018 to 27.08.2018 and at City Hospital, Dindigul, from 28.08.2018 to 10.12.2018, followed by outpatient treatment. In respect of the accident, an FIR in Crime No.77 of 2018 was registered by the claimant's wife under sections 228 and 338 of the IPC against the second respondent.

16. The said FIR was marked as Exh.P1. The discharge summary relating to the claimant was marked as Exh.P2. The

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discharge summary issued by City Hospital was marked as Exh.P3, and the admission and treatment certificate issued by City Hospital was marked as Exh.P4. The medical expense bills issued by City Hospital were marked as Exh.P5 and Exh.P6. The medical expense bill issued by Velammal Hospital was marked as Exh.P10, and the bill issued by City Hospital was marked as Exh.P11. Exh.P7 is the patta relating to the subject land, standing in the name of the first respondent. The remaining documents are the family card and ration card of the claimant.

17. On perusal of the cross-examination of the claimant, examined as P.W.1, it is revealed that he is a coolie and is not well educated. He was engaged in the work of sludge and silt removal under the respondents. Though two other persons, namely, Nachimuthu and Dharmar @ Dharmaraj, had also worked along with the claimant, they were not impleaded as parties. However, the respondents had engaged the services of the claimant. C.W.1, the Court witness, spoken about the medical records.

18. The second respondent was examined as R.W.1 and narrated his counter facts in his R.W.1 chief examination before the Tribunal. On perusal of his cross-examination conducted by the

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claimant, R.W.1 stated that the accident was informed to him by Dharmar @ Dharmaraj. The said Dharmar @ Dharmaraj had been engaged to clean the well by removing sludge and silt, for which there was no written contract. He further admitted that they might have engaged the services of the claimant. The subject land, comprised in Survey No. 77, situated at Navaluthu Village, is owned by his son, the first respondent. Since his son was working at Coimbatore, the second respondent was administering the said property. After the accident, R.W.1 visited the injured claimant twice at the hospital.

19. The complaint given by the claimant's wife in Crime No. 77 of 2018 is not disputed. The second respondent has been shown as an accused, and the charge sheet has been taken on file in STC No. 121 of 2020. The second respondent has not taken any steps to challenge the criminal proceedings by filing a quash petition or otherwise.

20. It is the case of the respondents that four workmen would have been engaged for the removal of sludge and silt, and the claimant could also have been one among them. However, this is merely a hypothetical answer. Though the stand of the respondents

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is that the injured Murugaraj came to the subject well for the purpose of stealing the motor pump set, RW1 has admitted that no F.I.R. was registered in this regard.

21. It is also admitted by R.W.1 that when the well cleaning work, that is silt and slit removal, taken place, the foot valve of the motor is to be cleaned and then only the water could be taken from the well to the field, for which only the injured came in the evening hours for cleaning the motor pump set and foot valve. Though denied by RW1, RW1 admitted that he has paid the wages to Dharmar @ Dharmaraj and Nachimuthu, who will disburse the same to the workman. Though the said Dharmar @ Dharmaraj and Nachimuthu worked with the claimant and they have engaged the service of the claimant as contended by the respondents, the respondents could not take any steps to implead those persons as parties to the case.

22. The first respondent examined as R.W.2, in which he stated that on the accident date he was not at the accident place and was working at Coimbatore. Thereby he produced gas bill, identity card to show that he was at Coimbatore. He admitted that the subject land in Survey No.77 belongs to him, and the second respondent,

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who is his father, taking care of the said land, maintaining and administering the land. The answer to most of the questions is not known. There is no contract for sludge undislit removal is admitted by R.W.2. The other questions have been denied by him.

23. Though the respondents engaged the workmen's service for sludge and silt removal work, and the work was entrusted to Nachimuthu and Dharmar @ Dharmaraj, in which as per the evidence of R.W.1, minimum four persons worked in the said work for one month, wherein the Nachimuthu and Dharmar @ Dharmaraj, the claimant Murugaraj and one Mr. Gopal worked for the said purpose. It is the stand of the respondents that on the fateful day of 23.08.2018, the wages on that day was disbursed to Nachimuthu, and the said Nachimuthu disbursed each workman wages and left the place. Thereafter, the said Murugaraj injured came to the subject land and well and step into the well for the purpose of stealing the pump set, for which no police complaint given.

24. It is the contention of the respondents in the counter that the first respondent was working in Coimbatore and the second respondent was staying 10 Kms away from the subject land and well at Vedasandur. He was not there at the subject land on 23.08.2018

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when the injured Murugaraj attended motor pump set cleaning and refitting. Though the stand taken by the respondents that the injured had come to the well at around 06.00 p.m after the sludge and silt work was over about 04:30 to 05.00 p.m for the purpose of stealing the motor pump set. Non-filing of the police complaint by the respondents makes a great doubt about their contentions.

25. It is quite common for sludge and silt removal work workmen engaged and in such activities to adjust the motor pipeline and clean the foot valve of the motor pipe in order to facilitate the pumping of water from the well to the agricultural field. Though the work on the day was over around 05.00 p.m., thereafter the respondents could have engaged the service of injured for the said cleaning and refitting the motor pipe and foot valve, and at that time the well wall scrubbing where the injured sustained various injuries.

26. Having there is no written contract between the respondents and the said Nachimuthu and Dharmar @ Dharmaraj to fasten their liability on them, and the respondents did not take any steps to bring those two persons as respondents and further failed to file police complaint about the intention to steal the motor pump set it is proved that the respondents not only engaged the service of the

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injured for well cleaning, for sludge and silt removal, and also engaged the said Murugaraj's service or work for cleaning the motor pipe foot valve. Therefore, there was an employer and employee relationship between the injured Murugaraj and the respondents. However, the Tribunal has held that the first respondent being the land owner, which is not disputed and also admitted by both the respondents, there is an employer and employee relationship between the first respondent and the claimant. This Court after re-appreciation of evidence had reached the same conclusion that the land owner utilised the services of the injured, therefore, there was an employer and employee relationship between the claimant and the first respondent.

27. The respondents contended that the award is violation of section 12 of the 1923, Act. Section 12 of the said Act says that when a principal employer engaged service of the contractor for the execution of the whole or any part of work, sustained injury or death taken place, the principal is liable to pay employee execution of the work. Sub-section (1) of section 12 of the 1923 Act is extracted below for better clarity:

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> "12. Contracting.- (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any employee employed in the execution of the work any compensation which he would have been liable to pay if that employee had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the employee under the employer by whom he is immediately employed."

28. The contention of the respondents that they had engaged the services of Nachimuthu and Dharmar @ Dharmaraj to carry out the work, therefore, the injured have to claim any compensation from them and not under the respondents as principal employer. As discussed above, there is no written contract or agreement between

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the respondents and principal employer. For the alleged contract with Nachimuthu and Dharmar @ Dharmaraj, no steps taken by the respondents to implead the said Nachimuthu and Dharmar @ Dharmaraj as parties to the proceedings, at least to establish that the respondents have given contract work to them.

29. Further the respondents failed to examine any one of Nachimuthu and Dharmar @ Dharmaraj as witness before the Tribunal to establish those facts. Having failed to prove the contention of the respondents that they have not engaged service of Murugaraj/ injured, given contract to Nachimuthu and Dharmar @ Dharmaraj and non filing of any agreement / contract non examining any one of Nachimuthu and Dharmar @ Dharmaraj, the contention of the respondents is ruled out and thereby, the Tribunal has rightly concluded that the first respondent being the owner of the land, in which the injured worked for sludge and slit removal, there was an employer and employee relationship and, therefore, section 12(1) of the 1923 Act is not squarely applicable to the contention canvassed by the respondents.

30. In view of the above factual scenario, evidence coupled with the failure of the respondents to prove their defence, the

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Tribunal had rightly come to the conclusion, answering all the issues in favour of the claimant and thereby nothing found to interfere into the Tribunal order. Therefore, this Court is of the firm view that all the substantial questions of law are answered against the respondents. Thereby, the appeal is liable to be dismissed by confirming the Tribunal order. The parties shall bear their own costs.

27. In the result:

(i) This Civil Miscellaneous Appeal is dismissed;

(ii) The order passed in E.C.No.80 of 2018, dated 27.02.2023 on the file of the Commissioner, Employees Compensation Tribunal, Dindigul, hereby confirmed; and

(iii) There shall be no order as to costs.

18.11.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

The Commissioner,
Employee's Compensation Tribunal,
Dindigul.

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The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai

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DR. P. MURUGAN, J.
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