

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **25.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) Nos.2237 and 2238 of 2016

S.Ponmariappan : Petitioner
versus

1.M/s.Hindustan Coca-cola Beverages Pvt. Ltd.,
Madhura Nemam Village,
Vellavedu, Thiruvallur,
Chennai 602 107

2.The Regional Director,
Employees State Insurance Corporation,
Sterling Road, Chennai : Respondents

PRAYER: Revision filed under Article 227 of the Constitution of India against the order dated 15.3.2016, in I.A.Nos.163 and 164 of 2015 in W.C.No.110 of 2012 by the Deputy Commissioner of Labour -I, (Commissioner for Employee's Compensation-I), Chennai 600 006.

For petitioner :: Mr.K.A.Ravindran

For respondents :: Mr.S.Ravindran for R-1
Mrs.J.Jeyakumari, for R-2

COMMON ORDER

The petitioner filed a claim petition before the Commissioner Labour Court No.1, Chennai in W.C.No.110 of 2012. The respondent was set *exparte*. The statutory authority passed an award on 24 September 2013 on merits. Thereafter, the respondent filed interlocutory applications before the Deputy Commissioner of Labour to condone the delay of 739 days and another application to set aside the *exparte* order. The Deputy Commissioner of Labour allowed both the applications. Feeling aggrieved, the unsuccessful claimant in I.A.No.110 of 2012 is before this Court.

2. The second respondent was impleaded in this civil revision petition on account of the contention taken by the first respondent that the said authority is empowered to pay compensation to the petitioner.

3. The only question that arises for consideration is as to whether the Deputy Commissioner of Labour was correct in allowing the applications filed by the first respondent without even compensating the petitioner.

4. The documents available on record would clearly show that the first respondent was served in W.C.No.110/2012. Even after such service, the first respondent failed to appear before the Deputy commissioner of Labour. It was only after giving sufficient opportunity, the Deputy Commissioner of

Labour passed an order declaring the first respondent exparte. Thereafter, the matter was taken up and after examining P.Ws. 1 and 2, and marking Exs.P-1 to P-7, the claim petition was allowed.

5. The first respondent filed a petition to set aside the exparte order with an application to condone the delay of 739 days. In the affidavit filed in support of the interlocutory application, it was not the case of the first respondent that notice was not served. According to the first respondent, there are no records available with the office with regard to the accident suffered by the petitioner or notice sent by the authority. It was contended that the first respondent was not in a position to ascertain as to whether summons were received from the office of the Deputy Commissioner of Labour. The affidavit is bereft of details. There are no reasons given by the first respondent to condone the delay of 739 days.

6. It is true that number of days delay alone is not material. It is only the reasons given alone are material. The affidavit filed by the first respondent does not contain any reason muchless justifiable reason to condone the delay or to allow the application without liability to pay cost.

7. In a matter like this, while allowing the application and setting aside

the exparte order, the Deputy Commissioner ought to have awarded cost.

8. The first respondent, who was the petitioner in I.A.No.163 and 164 of 2015 is a multi national company. The petitioner was fighting against a mighty corporate giant. The claim was filed in the year 2012. Even now the claimant is wandering in the corridors of this Court on account of the interlocutory applications filed by the first respondent long after passing the award.

9. Since the first respondent has taken up a contention that the company has paid contribution and as such, the Employees State Insurance Corporation is bound to pay compensation to the petitioner, I am not inclined to set aside the order, condoning the delay or setting aside the exparte order. However, I am of the view that the Deputy Commissioner of Labour ought to have directed the first respondent to pay cost to the petitioner.

10. The order passed by the Deputy Commissioner of Labour dated 15 March 2016 is modified by directing the first respondent to pay a sum of Rs.50,000/- (Rupees Fifty Thousand only) as cost to the petitioner. The cost shall be paid within a period of two weeks from the date of receipt of a

copy of this order. In case the cost amount is not paid, it is open to the petitioner to approach the jurisdictional magistrate to recover the amount as if it is a fine imposed by the Court.

11. The learned Standing Counsel for the second respondent submitted that it is open to the petitioner to approach the concerned ESI Court after taking back papers from the Deputy Commissioner of Labour.

12. The Deputy Commissioner of Labour is directed to return the papers to the petitioner, after satisfying that the cost amount is paid by the first respondent. In case the claim petition is re-presented before the concerned ESI Court, the same shall be taken on file and a decision should be made on merits taking into account the background facts.

13. The civil revision petitions are disposed of with the above direction. No costs. Consequently, C.M.P.No.11606 of 2016 is closed.

25.11.2016

Index:Yes/no
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To
The Deputy Commissioner of Labour -I,
(Commissioner for Employee's Compensation-I),

Chennai 600 006.

K.K.SASIDHARAN, J.

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