

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2019

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THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.19093 of 2018 and
W.M.P.No.22466 of 2018

The Management,
Eagle Burgmann Ke Pvt. Ltd.,
Survey No.109/2A1B,
Old GNT Road,
Karanodai, Sholavaram,
Chennai 600 067. Petitioner

Vs

1.The Joint Commissioner of Labour-II
(The Commissioner for Workmen Compensation-II)
Tamil Nadu Labour Welfare Board Building,
DMS Compound,
Teynampet,
Chennai 600 006.

2.Mr.R.Palani Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records and quash the exparte order dated 16.04.2018 in E.C.No.137 of 2015, on the file of the first respondent, the Joint Commissioner of Labour-II (The Commissioner for Workmen Compensation -II), Teynampet, Chennai 600 006.

Prayer amended vide order dated 19.03.2019, made in W.M.P.No.8694 of 2019 in W.P.No.19093 of 2018.

For Petitioner : M/s.Gupta and Ravi

For Respondents : Mr.J.Ramesh,
Additional Government Pleader for R1
: Mr.K.Thilageswaran for R2

O R D E R

The petitioner has filed the present writ petition against the exparte order dated 16.04.2018 in E.C.No.137 of 2015, on the file of the first respondent, the Joint Commissioner of Labour-II (The Commissioner for Workmen Compensation -II), Teynampet, Chennai 600 006.

2. The facts which led to the filing of the present writ petition are stated hereunder:-

(i) The second respondent was claiming to be an employee of the petitioner Management, appeared to have sustained injury during the course of his employment on 06.12.2014. In view of sustaining injury due to the accident arising out of in the course of the employment, the petitioner approached the first respondent by filing the Employee Compensation Application in E.C.No.137 of 2015, for determination of compensation payable for the loss of earning capacity on account of the alleged injuries sustained due to the accident during the course of the employment.

(ii) According to the petitioner Management, a detailed counter affidavit has been filed in the proceedings and on behalf of the workman, proof affidavit has also been filed. The workman was also cross examined by the learned counsel for the petitioner Management. Thereafter, it appears that the case was posted on 27.03.2018 for examining the doctor on behalf of the second respondent workman. The case was further posted to 16.04.2018 for the evidence of the doctor. In view of the wrong noting of the date, there was no representation on behalf of the Management on 16.04.2018. In view of their absence, the first respondent closed the doctor's evidence on 16.04.2018 and reserved orders. Thereafter, on learning about the first respondent's action of reserving orders in the absence of the Management, it appears that the Management has filed an application on 08.05.2018, to set aside the exparte order passed by the first respondent.

(iii) According to the Management, though the said petition was received by the first respondent, the same was not numbered and therefore, the petitioner Management filed the present writ petition, seeking direction to the first respondent to number and dispose of the petition filed by the Management to set aside the exparte order dated 16.04.2018 as well as the petition to re-call and re-open the evidence of P.W.2 in the proceedings of the first respondent.

3. According to the learned counsel for the petitioner Management that notice was ordered in the writ petition on 26.07.2018 and the notice was served on the first respondent on 30.07.2018. While so, on behalf of the second respondent workman, counter has been filed, in which, it is stated that the authority had already passed an order in E.C.No.137 of 2015 and the same was served on the workman on 24.08.2018. The learned counsel appearing for the petitioner Management would submit that the Management had not received any copy of the final order passed by the first respondent. They became aware of the final

order passed on 16.04.2018, after the workman entered appearance through counsel and counter affidavit filed on his behalf. In the said circumstances, the petitioner Management moved this Court by miscellaneous petition, seeking to amend the prayer by challenging the order passed by the first respondent dated 16.04.2018, which is obviously an exparte order.

4. According to the learned counsel for the petitioner Management, after the receipt of notice from this Court, the first respondent has hurriedly signed the final order as it was passed on 16.04.2018 itself and communicated the same only to the second respondent workman. In any event, the learned counsel for the petitioner Management would submit that the final order of the first respondent being exparte order, the same has to be interfered with and the Management may be allowed to participate in the enquiry before the first respondent.

5. The learned counsel for the second respondent workman would submit that though due opportunities were offered to the petitioner Management, they remained absent. Therefore, the authority has rightly reserved orders and set them exparte and passed final orders. Therefore, it is not open to the Management to seek any relief before this Court.

6. Heard the learned counsel for the petitioner as well as the learned counsel appearing for the first and second respondents. From the above narrative, it is clear that the first respondent appears to have passed the order hurriedly without taking any decision in regard to the application filed by the Management on 08.05.2018, to set aside the exparte order passed by him on 16.04.2018. The petitioner Management was constrained to approach this Court with this writ petition, seeking direction to number the Interim Application filed to set aside the order passed on 16.04.2018. When notice was ordered in the writ petition, unfortunately, it appears that the first respondent has signed the order hurriedly as its final order was passed on 16.04.2018, without giving any opportunity to the Management to participate in the proceedings before the first respondent.

7. For the above said reasons, this Court is of the considered view that the Management ought to have been given opportunity to put forth its defence before the first respondent. In view of the same, the impugned order passed by the first respondent in E.C.No.137 of 2015 dated 16.04.2018, is hereby set aside and the matter is remanded back to the first respondent to proceed with the enquiry from the stage where the Management was set exparte on 16.04.2018. The first respondent is directed to issue notice of hearing to both the Management as well as the second respondent workman and proceed to complete the enquiry as expeditiously as possible, but not later than three months from

the date of receipt of a copy of this order.

8. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

9. Registry is directed to forward the records back to the first respondent.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

gsk

To

1. The Joint Commissioner of Labour-II
(The Commissioner for Workmen Compensation-II)
Tamil Nadu Labour Welfare Board Building,
DMS Compound,
Teynampet,
Chennai 600 006.
2. The Section Officer, VR Section, High Court, Madras.
(2 copies)

+1cc to Mr.Gupta & Ravi, Advocate SR.No.28869

W.P.No.19093 of 2018

AK (CO)
GMY (03/04/2019)

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