

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.01.2021
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
C.M.A.No.716 of 2016

Mr.Anandraj

..Appellant

Vs.

1.Mr.S.Sathish

2.M/s.Sriram General Insurance Co.Ltd.,
No.36, 3rd Floor,
S.P.Complex,
Sowcarpet,
Chennai - 79.

..Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, 1923, against the Award dated 29.02.2016 and made in W.C.No.460 of 2014 on the file of the Deputy Commissioner of Labour - II, Chennai.

For Appellant : Ms.A.Subadra

For Respondents : Mr.P.Dakshinamoorthy for R2
R1 - no appearance

J U D G M E N T

The appeal is filed by the claimant seeking enhancement of compensation as well as challenging the fixation of monthly income and the interest granted by the Deputy Commissioner of Labour.

2. The learned counsel appearing on behalf of the second respondent Insurance Company contended that it is an exparte award passed by the Deputy Commissioner of Labour and the award was passed based on the cancelled policy. However, the second respondent Insurance Company filed an application to set aside the exparte award and such application was not taken up for hearing due to the fact that the original case bundles were transmitted to the Madras High Court in order to hear the present civil miscellaneous appeal. Once the petition is filed to set aside the exparte order, the said petition is to be heard by the Deputy Commissioner of Labour and order is to be passed. It is improper to deal with the exparte award when one of the parties in the litigation already filed a petition to set aside the exparte award. The said petition is to be decided and thereafter, the award is to be passed.

3. In the present case, it is an admitted fact that the exparte award was passed. The Insurance Company has not defended the case before the Deputy Commissioner of Labour. A petition is filed to set aside the exparte award. The said petition was not taken up for hearing due to the non-availability of the case papers before the Deputy Commissioner of Labour as the papers were sent for adjudication before this Court.

4. This being the factum, this Court is of the opinion that beyond the interest of justice, opportunity is to be given to all the parties to adjudicate the issue in accordance with law. This view of the matter, the award dated 29.02.2016, is set aside and the matter is remanded back to the Deputy Commissioner of Labour seeking for re-adjudication by providing opportunity to all the parties in the litigation. The Deputy Commissioner of Labour, Chennai, is directed to dispose of the W.C.No.460 of 2014, within a period of three months from the date of receipt of a copy of this order. The petition filed by the Insurance Company to set aside the exparte decree is also to be taken on file and to be considered and order is to be passed. The parties to the W.C.No.460 of 2014, are directed to cooperate for the earlier disposal and no unnecessary adjournment is to be granted. However, adjournments on genuine reasons are to be granted by recording the reasons.

5. The High Court Registry is directed to send back all the original case papers in W.C.No.460 of 2014 to the Deputy Commissioner of Labour, Chennai, within a period of two weeks from today.

6. Accordingly, the civil miscellaneous appeal stands disposed of. No costs.

-s/d-

सत्यमेव जयते Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Deputy Commissioner of Labour - II,
Chennai.

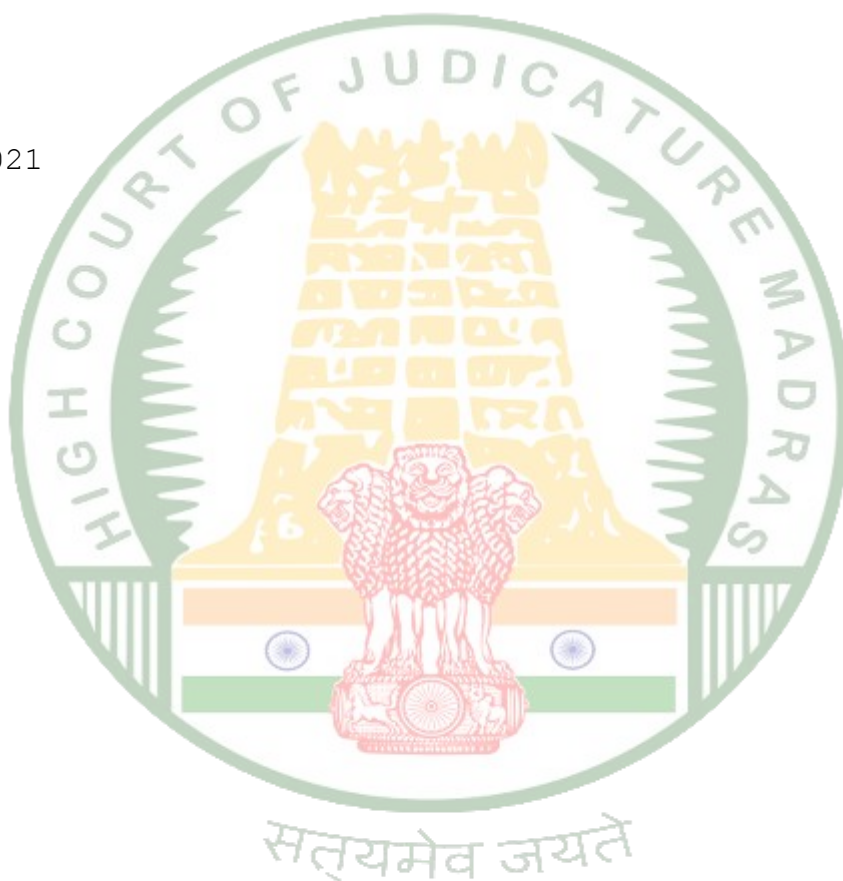
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+1 cc to M/s.S.Dhakshnamoorthy Advocate sr3821
+1 cc to M/s.M.Malar Advocate sr3873

C.M.A.No.716 of 2016

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