



W.P(MD)No.11373 of 2012

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **31.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.11373 of 2012

and

M.P(MD)No.1 of 2012 & W.M.P(MD)No.5447 of 2018

Batcha @ Badhusha

... Petitioner

Vs.

1.The Deputy Commissioner of Labour,
147, Sundaram Theater Road,
K.K.Nager, Madurai-625 020.

2.M.Angalaeswari

3.Selvi Ramya

4.Seak Abdullah

5.National Insurance Company Ltd.,
706, Tenkasi Road,
Rajapalayam,
Virudhunagar District.

6.K.Manickam

7.Subbulakshmi

... Respondents



W.P(MD)No.11373 of 2012

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent leading to order in அதிமு.ஆ 4/1359/2012, dated 28.06.2012 and quash the same and direct the 1st respondent to entertain the application filed to set aside the exparte order dated 10.10.2011 in W.C. 165 of 2009.

For Petitioner : Mr.T.Ravichandran
For R1 : Mr.N.G.A.Natraj
Government Advocate
For R2 : Mr.A.Jayarama Chandran
For R4,R6&R7 : Mr.P.Ulaganathan
For R5 : Mr.S.Ramachandran

ORDER

The present petition has been filed seeking to quash the order passed by the Deputy Commissioner of Labour rejecting the request of the petitioner for setting aside the ex-parte order passed against him in proceedings arising under the Workmen's Compensation Act.

2. According to the petitioner, he was arrayed as the 1st respondent in the claim petition filed by the 2nd respondent herein. The 2nd respondent had claimed that her husband one Murugan had died out of



W.P(MD)No.11373 of 2012

an accident while he was employed with the 1st respondent.

WEB COPY

3. According to the learned counsel appearing for the petitioner, he had not received any information or notice from the office of Deputy Commissioner of Labour with regard to the filing of W.C petition. He had received the order only on 13.02.2012. Only after receiving the order copy, he came to know that he had been set ex parte on 31.01.2011 and subsequently, enquiry has been conducted and the matter has been disposed of on 10.10.2011.

4. Thereafter, the writ petitioner had filed an application to set aside the ex parte order on 08.03.2012. Since the final orders have been passed on merits, the application to set aside the ex parte order was returned by the Deputy Commissioner of Labour on 28.06.2012. According to the learned counsel appearing for the petitioner, even though the order has been passed after hearing the claimant and other respondents, he had been set ex parte and therefore, the said application to set aside the ex parte order is maintainable ever after the disposal of the claim petition on merits.

5. A perusal of the order impugned in the writ petition indicates



W.P(MD)No.11373 of 2012

that it is an order of return passed by the Deputy Commissioner of Labour refusing to entertain an application to set aside the ex parte order on the ground that already the claim petition in W.C.No165 of 2009 has been disposed of on merits. The said order is under challenge in the present writ petition.

6. According to the learned counsel appearing for the petitioner, the award has been passed as against him without issuing any notice to him. Therefore, as far as the writ petitioner is concerned, the award is an ex parte order and therefore, the said order should have been set aside and the claim petition should have been re-heard.

7. Per contra, the learned counsel appearing for the claimant had contended that notice was served upon the 1st respondent in the claim petition and despite receipt of notice, he has not appeared for the enquiry. Hence, he was set ex parte and thereafter, an enquiry was conducted and an award was passed. Therefore, there are no merits in the writ petition.

8. I have carefully considered the submissions made on either side.



W.P(MD)No.11373 of 2012

WEB COPY

9. The issue that arises for consideration is whether the Deputy Commissioner of Labour is empowered to set aside an ex parte award after the award has been passed on merits. Admittedly, the award has been passed as against the writ petitioner. It is the case of the petitioner that he did not receive any notice in the W.C petition and he came to know about the proceedings only after he received an order copy belatedly from the office of the Workmen's Compensation Commissioner.

10. The 1st respondent in the writ petition has not filed any counter to establish the fact that notice was served upon the writ petitioner before an order was passed in the claim petition. Therefore, this Court is of the view that the award is an ex parte award as against the writ petitioner and it is clearly in violation of principles of natural justice. The order impugned in the writ petition is set aside and the matter is remitted back to the file of the 1st respondent.

11. The learned counsel appearing for the respondents agrees that the application for setting aside the ex parte order may be allowed and



W.P(MD)No.11373 of 2012

the W.C petition may be restored. He further submits that after restoration of the W.C petition, he would like to withdraw the said application with a liberty to approach the Motor Accident Claims Tribunal seeking appropriate remedy. The said statement is recorded.

12. In view of the above said deliberations, the writ petition is allowed and the award passed in W.C.No.165 of 2009 on the file of the 1st respondent is set aside and the matter is remitted back to the file of the 1st respondent to enable the claimants to withdraw the said claim petition in order to pursue their remedy before the Motor Accident Claims Tribunal.

13. With the said observations, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

31.03.2023

Index : Yes / No
Internet : Yes / No

gbg



WEB COPY



W.P(MD)No.11373 of 2012

To
The Deputy Commissioner of Labour,
147, Sundaram Theater Road,
K.K.Nager, Madurai-625 020.



WEB COPY



W.P(MD)No.11373 of 2012

R.VIJAYAKUMAR ,J.

gbg

Order made in
W.P(MD)No.11373 of 2012

Dated:
31.03.2023