

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 371 OF 2001.

Mr. K.G. Thomas,
Flat No. 3/F3, Models
Residency, St. Inez,
Panaji, Goa.

... Petitioner.

Versus

1. Commissioner for Workmen's
Compensation, Govt. of
Goa, Junta House, Panaji.
 2. Smt. O. Janaki,
House No. 19, Fatrade,
Varca, Goa.
 3. All India Radio Civil
Construction Wing,
Bambolim, Goa.
 4. Shri Mathew Contractor,
St. Cruz, Panaji, Goa.
- ... Respondents.

Mr. S.G. Bhobe, Advocate for the Petitioner.

Mr. G. Vijaychandra, Advocate for the Respondent No. 2.

Mr. J. Vaz, Addl. Central Govt. Standing Counsel for
the Respondent No. 3.

Coram: P.V. HARDAS, J.

Date: 26th September 2002.

ORAL JUDGMENT.

Rule. By consent, rule made returnable
forthwith.

2. This petition has been filed by the
petitioner, who was opposite party no. 2 before the
respondent no. 1 in the proceedings filed by the
present respondent no. 2, claiming compensation under
the Workmen's Compensation Act. The Order impugned in
the present petition is dated 17th October 2001 and is

at Exhibit 'G'. By the impugned Order, the respondent no. 1 declined to entertain the application for setting aside ex parte decision on the ground that a final Order had already been passed. By Order at Exhibit 'E', the respondent no. 1 had allowed the application for compensation filed by the respondent no. 2 and had directed the present petitioner and respondents 3 and 4 to jointly and severally pay an amount of Rs. 87,388/- as compensation for the death of her son K.V. Subhash, who died as a result of accident in the course of and arising out of employment.

3. The present petitioner had filed an application for setting aside the ex parte Order claiming therein that no notice similar to the notice, which was issued to the present respondent no. 3, had been issued to the petitioner. The petitioner did admit that the petitioner, though served in the proceedings, had participated in the proceedings, but, thereafter, was absent and, due to his absence, could not lead any evidence in support of the various pleas raised by the petitioner in his written statement/reply.

4. This Court, by its Order dated 10th January 2002, while issuing notice to the respondents, had

directed the petitioner to deposit the amount of compensation as awarded by the respondent no. 1. The petitioner, towards partial compliance of the Order of this Court, had deposited Rs. 29,130/- and sought time from this Court to deposit the balance amount on or before 19th February 2002. Thereafter, the petitioner had deposited the balance amount.

5. The learned counsel Mr. Vijaychandra, appearing for the respondent no. 2, has fairly submitted before me that the Order impugned in the present petition is unsustainable and the Award of the respondent no. 1 awarding compensation to the respondent no. 2 so far as it relates to the liability of the present petitioner be quashed and the petitioner be given an opportunity of leading evidence. According to the learned counsel for the respondent no. 2, the petitioner had made out a strong prima facie case for setting aside the Order as against the petitioner and giving him an opportunity of leading evidence.

6. In view of this submission of the learned counsel for the respondent no. 2, the Order of the respondent no. 1 dated 17th October 2001, Exhibit 'G', is, hereby, quashed and set aside and the application filed by the petitioner for setting aside the ex parte Award/Order is, hereby, granted. The ex parte

Award/Order of the respondent no. 1 is set aside as against the present petitioner and it is directed that the petitioner should be afforded an opportunity of examining witnesses on his behalf. The respondent no. 1 shall complete the examination of the witnesses on behalf of the petitioner as expeditiously as possible and pass the necessary order in accordance with law. The amount deposited in this Court by the petitioner will be subject to the further orders of this Court after the respondent no. 1 passes the necessary order.

7. In view of the above, the Writ Petition is allowed. Rule is made absolute in the above terms with no order as to costs. R. & P. be remitted to the learned trial Court.

(P.V. HARDAS)
JUDGE.

ed's.