

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.09.2015

CORAM :

THE HON'BLE MR. JUSTICE S. MANIKUMAR
AND
THE HON'BLE MR. JUSTICE M. VENUGOPAL

C.M.A. No: 1965 of 2015

The Divisional Manager
The New India Assurance Co. Ltd.
Divisional Office
Officer's Lane
Vellore.

... Appellant/R2

-Vs-

1. S. Kumar
S/o. Subramani

... R1/P1

2. K. Ramya
D/o. Kumar

... R2/P2

(both residing at No:37/11
Kamarajar Street, LIC Colony
Sankaranpalayam, Vellore)

3. P. Rajagopal
No: 89 K.T.S. Main Street
Mamallan Nagar
Kancheepuram District.

... R3/R1

4. V. Thayumanavan
No: 105 New No: 156
K.C. Samy Nagar, Bagyam
Vellore - 2.

... R4/R3

5. I.C.I.C.I. Lombard General Ins. Co. Ltd.
No: 140 Nungambakkam High Road
Chottabai Centre, Chennai - 34.

... Respondents No.5/R4

Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree made in M.A.C.T.O.P. No: 81 of 2011 on the file of the Motor Accident Claims Tribunal (I Additional District & Sessions Judge) Vellore dated 01.02.2013.

For appellant : M/s.M.Krishnamoorthy

J U D G M E N T

(Judgment of the Court was delivered by S. Manikumar, J.)

Challenge in this appeal by New India Assurance Co. Ltd. Vellore, is to the finding of the Tribunal fixing the negligence on the part of the driver of the vehicle/bus bearing registration No. TN-21-7474 insured with the appellant New India Assurance Co. Ltd. Vellore, and the consequential liability to pay compensation. The quantum of compensation is also challenged.

2. However, on this day, when the appeal in C.M.A. No: 1965 of 2015, came up for Admission, Mr. M. Krishnamoorthy, learned counsel appearing for New India Assurance Co. Ltd. Vellore, fairly submitted that not satisfied with the quantum of compensation of Rs.24,61,760/- awarded with interest, at the rate of 7.5% per annum, from the date of claim petition till deposit, the claimants / respondents have filed C.M.A. No: 2730 of 2013. In the said C.M.A., the appellant herein viz. New India Assurance Co. Ltd. Vellore, was duly represented by a learned counsel. Adverting to the prayer for enhancement, this Court, vide order made in C.M.A. No: 2730 of 2013 dated 01.07.2015, has allowed the claim and enhanced the compensation to a sum of Rs. 33,50,000/- along with interest, at the rate of 7.5% per annum from the date of claim till deposit. When C.M.A. No: 2730 of 2013 was heard, the appellant has not filed any Cross Objection, challenging the finding fixing the negligence on the driver of the bus bearing registration No: TN-21-7474, insured with New India Assurance Co. Ltd.. A perusal of the order made in C.M.A. No: 2730 of 2013 dt. 1.7.2015 also did not indicate that the Insurance Company has advanced any argument on the aspect of negligence fixed on the driver of the vehicle insured with them. The only question that was considered by the learned single Judge was the quantum of compensation. For brevity, paragraph 3 of the order made in C.M.A. No: 2730 of 2013 dated 01.07.2015 is reproduced hereunder :

" 3. The only question is to be decided with regard to the quantum of compensation and there is no appeal by the Insurance Company."

3. In the light of the decision made in C.M.A. No: 2730 of 2013 dated 01.07.2015 and the submission of the learned counsel appearing for the Insurance Company recorded in paragraph 3 of the order, the decision rendered in the former C.M.A. would stand against the insurance company applying the doctrine of estoppel.

4. For the reasons stated supra, we are not inclined to entertain the present appeal in C.M.A. No: 1965 of 2015. Accordingly, it is dismissed. Consequently, connected miscellaneous petition is also dismissed. There shall be no orders as to the costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gp

To

The Motor Accident Claims Tribunal
I Additional District & Sessions Judge
Vellore.

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.47526

सत्यमेव जयते

C.M.A. No: 1965 of 2015

EV(CO)
CA(20/10/2015)

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