

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2016

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THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.3078 of 2016

Minor H.Anish
rep by his mother and natural guardian
Mrs.R.Bhavani

... Petitioner

Vs.

1.D.Jayakumar

2.ICICI Lombard General Insurance Company Ltd.,
ICICI Lombard House,
414, Veer Savarkar Marg,
Prabhadevi, Mumbai - 400 025.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order made in M.P.No.2217 of 2016 in M.C.O.P.No.6160 of 2012 dated 02.09.2016 on the file of the II Small Causes Judge, Chennai.

For Petitioner : Mr.Sirajudeen, Senior Counsel
for M/s.R.Rajamani

For Respondents : Mr.J.Michael Visuvasam (R2)

R1 - not ready in notice

ORDER

Challenging the order passed in M.P.No.2217 of 2016 in M.C.O.P.No.6160 of 2012 on the file of the II Judge, Court of Small Causes, Chennai, the 4th claimant has filed the above Civil Revision Petition.

2.The legal heirs of Hemachandran filed M.C.O.P.No.6160 of 2012, claiming a total compensation of Rs.5,00,00,000/- for the death of the said Hemachandran in a road accident.

3.The Motor Accidents Claims Tribunal awarded a total sum of Rs.1,14,67,620/- together with interest at the rate of 7.5%. Out of the said award amount, the 1st claimant - father was awarded a sum of Rs.4,67,620/- , the 2nd claimant - mother was awarded a sum of Rs.10,00,000/-, the 3rd claimant - wife was awarded a sum of Rs.60,00,000/- and the 4th claimant - minor son was awarded a sum of Rs.40,00,000/-. The share of the 4th claimant was ordered to be deposited in a Nationalised Bank till he attains majority and his mother was permitted to withdraw 50% of the interest once in three months directly from the Bank and the balance 50% of interest was directed to be invested in a Nationalised Bank in re-investment scheme.

4.Challenging this Award, the claimants filed an appeal in C.M.A.No.1658 of 2015 for enhancement of the compensation. This Court, by its judgment dated 22.12.2015, enhanced the total compensation to Rs.2,42,33,572/-. This Court, while enhancing the compensation, apportioned the total Award amount as follows:

1st claimant - father is entitled to Rs.32,33,572/-;

2nd claimant - mother is entitled to Rs.30,00,000/-;

3rd claimant - wife is entitled to Rs.90,00,000/- and

4th claimant - minor son is entitled to Rs.90,00,000/- with proportionate interest.

Further, this Court also observed that the share of the minor shall be deposited in anyone of the Nationalised Bank in Fixed Deposit in re-investment scheme initially for a period of three years.

5.Challenging the order passed in C.M.A.No.1658 of 2015, the 2nd respondent - Insurance Company filed an Appeal before the Hon'ble Supreme Court of India, which was dismissed by the Apex Court, giving liberty to the Insurance Company to file a Review Application.

6.The learned counsel appearing for the 2nd respondent - Insurance Company submitted that the 2nd respondent has not filed any Review

Application yet, since they have not received the copy of the order passed by the Supreme Court.

7. Thereafter, the 4th claimant filed an application in C.M.P.No.10120 of 2016 in C.M.A.No.1658 of 2015 seeking permission to withdraw a sum of Rs.50,28,336.15. However, this Court, by order dated 19.07.2016, dismissed the petition directing the petitioner to file relevant petition before the Motor Accidents Claims Tribunal. Subsequently, the 4th claimant filed an application in M.P.No.2217 of 2016 seeking permission to withdraw a sum of Rs.50,28,336.15 subject to any condition that may be imposed by the Tribunal.

8. In the affidavit filed in support of the petition, the mother of the 4th claimant has stated that she has entered into an Agreement of Sale with one Krishnavel to purchase a property bearing Door No.222/59, Survey No.202/1 situated in Village Street, Sathangadu Village, Thiruvottiyur, Chennai. Further, she has stated that she has paid Rs.2,00,000/- as advance out of the amount she received as her share out of the total compensation. Further, she has paid a sum of Rs.40,00,000/- as part payment of the Sale Consideration. Hence, the mother of the 4th claimant has prayed for permission to withdraw the sum of Rs.50,28,336.15, which is the share of

the 4th claimant awarded by the Motor Accidents Claims Tribunal in M.C.O.P.No.6160 of 2012. The Tribunal dismissed the petition finding that the Motor Accidents Claims Tribunal has no power and jurisdiction to grant the relief prayed for by the petitioner for the reason that the 4th claimant is a minor.

9.The learned senior counsel appearing for the petitioner submitted that the mother of the petitioner is going to get the Sale Deed executed in the joint name of herself and the minor son, the 4th claimant, each entitled to half share. Further, the learned senior counsel submitted that the mother of the 4th claimant had fixed the execution of the Sale Deed tomorrow (i.e.) on 02.11.2016.

10.Since the petitioner has satisfactorily explained the reasons for withdrawing the minor's share of Rs.50,28,336.15 as awarded by the Motor Accidents Claims Tribunal, I am of the view that if the amount is permitted to be withdrawn by the 4th claimant that would be only for his benefit.

11.In the case on hand, the mother of the 4th claimant is intending to purchase a property in the joint name of herself and the minor son, the 4th

claimant. Therefore, instead of the money lying in the Bank, it would be more beneficial for the 4th claimant, if a property is purchased in his name. That apart, the 4th claimant is only withdrawing the amount as awarded by the Motor Accidents Claims Tribunal and is not withdrawing any enhanced compensation as awarded by this Court in the appeal in C.M.A.No.1658 of 2015.

12. In these circumstances, I am of the considered view that the withdrawal of the amount will be beneficial for the minor. In such view of the matter, the fair and decretal order passed in M.P.No.2217 of 2016 are set aside. The 4th claimant, minor H.Anish, represented by his mother and natural guardian R.Bhavani, is permitted to withdraw Rs.50,28,336.15/- (Rupees fifty lakhs twenty eight thousand three hundred and thirty six and fifteen paise only). The 3rd claimant viz., the mother of the 4th claimant is directed to produce the certified copy of the Sale Deed to be registered in the joint name of the minor and herself before the Tribunal as proof of purchase of property in the name of the minor son, the 4th claimant within a period of two weeks from the date of withdrawal of the amount. The mother of the 4th claimant viz., R.Bhavani shall not dispose of the property to be purchased in the joint name of herself and the minor, 4th claimant till the 4th claimant attains majority. To that effect, the mother of the 4th claimant is

directed to file an affidavit of undertaking before the Tribunal along with the certified copy of the Sale Deed.

13. With these observations, the Civil Revision Petition is allowed. No costs.

Index : No

01.11.2016

Internet : Yes

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Note: Issue order copy on 04.11.2016.

To

The II Small Causes Judge,
Chennai.

M.DURAIWAMY,J.
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