

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16/6/2017

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

Civil Miscellaneous Appeal No.1928 of 2016

The Divisional Manager

The New India Assurance Company Limited

Cuddalore 607 001.

... Appellant/2nd Respondent

Vs

1.Varadarajan

2.R.Alavanthar

... Respondents/Petitioner &
1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 9/9/2015, made in M.C.O.P.No.1095 of 2011, on the file of the Motor Accident Claims Tribunal (II Additional Subordinate Judge), Cuddalore.

For Appellant : Ms.R.Sreevidhya

For respondents : Mr.S.Kalyanaraman
for R.1.

J U D G M E N T

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

On 9/7/2010, when the first respondent was traveling as a pillion rider in the second respondent's Hero Honda Splendor, bearing Registration No.TN31AB-5941, from north to south, on Kuthusi Gurusamy road, opposite to Uzhavar Santhai main gate, Tiruppapuliyur, Cuddalore, an accident occurred. He sustained fracture of right Mandible & Zygoma, lacerated injury on right hand and fingers and multiple grievous injuries all over the body. At that time, Varadarajan, aged about 51 years, claimed to have worked as a Plant Operator, TANFAC Company, SIPCOT, Cuddalore, and earned Rs.14,000/- p.m.,

2. Though M/s.New India Assurance Company Limited, Cuddalore, defended the claim on various grounds, on evaluation of pleadings and evidence, the Tribunal held that the rider of the motorcycle, bearing Regn.No.TN-31AB-5941, owned by 1st respondent herein, and insured with M/s.New India Assurance Company Limited, was negligent in causing the accident, which caused permanent disability to the pillion rider, to an extent of 75% and arrived at a total compensation of Rs.15,63,820/-, with interest, at the rate of 7.5% p.a., from the date of claim, till realisation, under the following heads.

Loss of earning capacity	...	Rs.11,17,120.00
Transportation	...	Rs. 10,000.00
Special Diet	...	Rs. 10,000.00
Loss of income (2 months)	...	Rs. 10,000.00
Pain and sufferings	...	Rs. 30,000.00
Attendant charges	...	Rs. 5,000.00
Medical expenses	...	Rs. 3,06,700.00
Loss of amenities	...	Rs. 75,000.00

		Rs.15,63,820.00

3. Being aggrieved by the quantum of compensation, New India Assurance Company Limited, Cuddalore, has filed the instant appeal, on the ground that there is no proof, for the loss of earning capacity, except marking the salary certificate, Ex.P.7.

4. While admitting the appeal on 14/9/2016, this Court in C.M.P.No.14053 of 2016, in C.M.A.No.1928 of 2016, has granted interim stay on condition that the appellant/Insurance Company deposits Rs.10,00,000/- with proportionate interest and costs, to the credit of M.C.O.P.No.1095 of 2011, on the file of the Motor Accident Claims Tribunal (II Additional Sub-Judge), Cuddalore, within a period of four weeks, from the date of the aforesaid order.

5. On this day, when the matter came up for hearing, Mrs.R.Sree Vidhya, learned counsel for the appellant submitted that the conditional order has been complied with and further submitted that after deliberations and negotiations, parties to the lis have arrived at a full and final settlement of Rs.7,00,000/- (Rupees Seven lakhs only), as full quit, with interest. Submission is placed on record.

6. In view of the above consensus, arrived at between the parties, the claimant is entitled for the full and final settlement of Rs.7,00,000/- (Rupees Seven Lakhs only), with interest, at the rate of 7.5% p.a., from the date of claim till realisation.

7. It is represented by the learned counsel for the Insurance Company that pursuant to the order, dated 14/9/2016, made in C.M.A.No.1928 of 2016, a sum of Rs.10,00,000/-, with proportionate interest and costs, has already been deposited, to the credit of M.C.O.P.No.1095 of 2011, on the file of Motor Accidents Claims Tribunal (II Additional Subordinate Judge), Coimbatore.

8. In view of the above, first respondent/claimant is permitted to withdraw the amount, now arrived at, by making necessary applications, before the tribunal. The excess amount now lying to the credit of the said M.C.O.P., be refunded to the Insurance Company.

9. The Civil Miscellaneous Appeal is allowed, as indicated above. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mvs

To

The Motor Accident Claims Tribunal
(II Additional Subordinate Judge),
Cuddalore.

+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No. 42963
+1cc to Mrs.S.Pavithra Praba, Advocate, S.R.No.42780

C.M.A.No.1928 of 2016

EV(CO)
CA(20/09/2017)

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