

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2017

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(NPD)No.4447 of 2015  
& M.P.No.1 of 2015

The New India Assurance Co. Ltd.  
Motor Third Party Cell, No.46  
Moore Street, Regina Mansion  
Chennai-1.

.. Petitioner

Vs.

1.Er.K.Jothilingam

2.J.Nitya Janani (minor)  
represented by her father and next  
friend the 1<sup>st</sup> respondent

3.D.Balaraman

4.B.Kanniammal

5.M.Kothandaraman

.. Respondents

**PRAYER:** Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 05.08.2015 made in E.P.No.1679 of 2014 in M.C.O.P.No.1150 of 2003 on the file of the Chief Court of Small Causes, Chennai.

For Petitioner : Mr.S.Manohar  
For R2 to R4 : Mr.N.M.Muthurajan  
For R5 : Mr.M.Vijayakumar  
For R1 : Not ready in notice

**ORDER**

The Civil Revision Petition is filed against the order dated 05.08.2015 made in E.P.No.1679 of 2014 in M.C.O.P.No.1150 of 2003 on the file of the Chief Court of Small Causes, Chennai.

2. The petitioner is second respondent, respondents 1 to 4 are the claimants and fifth respondent is first respondent in M.C.O.P.No.1150 of 2003 on the file of the Motor Accidents Claims Tribunal (Chief Small Causes Court), Chennai. The respondents 1 to 4 filed the said M.C.O.P. claiming a sum of Rs.55,00,000/- as compensation for the death of one Dr.Sujatha, who is the wife of the first respondent, mother of second respondent and daughter of respondents 3 and 4. The Tribunal awarded a sum of Rs.19,29,736/-. Challenging the said award, the petitioner/Insurance Company filed C.M.A.No.4145 of 2005.

3. At the time of filing C.M.A., the petitioner deposited statutory deposit of Rs.25,000/-. This Court directed the petitioner to deposit 50% of the award amount as the condition for stay. The petitioner deposited, principal amount of Rs.9,49,868/-, interest calculated from 12.12.2002 to 16.02.2006 of Rs.2,15,278/- and cost of Rs.49,012/-, total sum of Rs.12,14,158/- and complied with the conditional order of this Court. The Division Bench of this Court by judgment dated 28.04.2009 partly allowed the C.M.A. and dismissed the cross objection filed by the respondents 1 to 4. The Division Bench of this Court while allowing the CMA, modified the award amount to Rs.18,88,060/- and it also held that the first respondent, who is the husband of the deceased, is not entitled to any compensation. This Court directed the petitioner to deposit the balance amount after deducting the amounts withdrawn by the first respondent and directed the first respondent to redeposit 15% of the amount withdrawn by him. Para-26 of the judgment dated 28.04.2009 reads as follows:

“26. The Appellant had deposited only 50% of the award as a condition for grant of stay. The first claimant, the husband, who is now transposed as

respondent, had withdrawn 50% of what he was awarded i.e., 15% of the awarded amount. He is the tort-feasor and he ought not to have taken the money. Therefore, in accordance with law of equity he has to refund the amount to the appellant. Instead the appellant shall deposit the balance amount less what was withdrawn by the first respondent. To explain, the appellant is bound to deposit a sum of Rs.18,88,060/-. But since they have already deposited 50% of the original award, it has to deposit the remaining 50% of the award amount deducting the amount withdrawn by the first respondent. It has to be noted that the amount which has been withdrawn by the first respondent must be insisted by the Tribunal to be deposited by him in the name of his daughter.”

4. The petitioner as per the judgment of this Court deducted 15% of the amount withdrawn by the first respondent, which is Rs.1,75,473/- and calculated interest on the balance amount of Rs.7,62,719/- for 80 months, as Rs.3,87,079/-, the total amounting to Rs.11,24,372/-. The petitioner deposited a sum of Rs.10,86,497/- on 02.03.2010 after deducting TDS a sum of Rs.37,875/-.

5. The respondents 1 to 4 filed E.P.No.1679 of 2014 in

M.C.O.P.No.1150 of 2003 claiming a sum of Rs.5,34,834/- and they have given a memo of calculation in the E.P.

6. The petitioner filed counter and memo of calculation and contended that no amount is due and payable by them.

7. The learned Judge by order dated 05.08.2015 accepting the memo of calculation filed by the respondents 1 to 4 directed the petitioner to pay a sum of Rs.4,77,050/- on or before 19.08.2015.

8. Against the said order dated 05.08.2015 made in E.P.No.1679 of 2014 in M.C.O.P.No.1150 of 2003, the present Civil Revision Petition is filed by the petitioner/Insurance Company.

9. Heard the learned counsel for the petitioner as well as the respondents 2 to 5 and perused the materials available on record.

10. The respondents 1 to 4 in the Civil Revision Petition filed a memo of calculation claiming a total sum of Rs.5,98,363/- is due and payable by the petitioner. In the memo of calculation, they have also stated that the first respondent has deposited the amount

withdrawn by him into Court. In the judgment of this Court in C.M.A.No.4145 of 2005, dated 28.04.2009, the Division Bench directed the petitioner to deduct 15% of the amount withdrawn by the first respondent from balance 50% of amount and deposit balance amount into Court. The amount withdrawn by the first respondent as per the memo of calculation filed by the petitioner in E.P. is Rs.1,75,473/-. The respondents have not disputed that the first respondent has withdrawn and subsequently, as per the Judgment of this Court in C.M.A.. redeposited the said amount into Court.

11. In the memo of calculation filed by the respondents 1 to 4 in E.P. as well as in the Civil Revision Petition, they have not deducted Rs.1,75,473/- withdrawn by the first respondent and calculated interest of this amount and arrived at Rs.5,98,363/- is due and payable by the petitioner. This calculation is not correct. On the other hand, in the calculation filed by the petitioner, they have deducted Rs.1,75,473/- withdrawn by the first respondent and calculated the interest on the balance amount and deposited a sum of Rs.10,86,497/- in consonance with the direction given in the

Division Bench judgment of this Court.

12. The learned Judge failed to consider the direction of this Court permitting the petitioner to deduct the amount withdrawn by the first respondent and a direction given to the first respondent to redeposit the said amount. The respondents 2 to 4 are not entitled to claim the interest on the amount already withdrawn by the first respondent and such claim is contrary to the Division Bench judgment of this Court dated 28.04.2009 made in C.M.A.No.4145 of 2005. The learned Judge committed irregularity and illegality in not considering the Division Bench judgment of this Court and directed the petitioner to deposit Rs.4,77,050/-.

13. For the above reason, the Civil Revision Petition is allowed by setting aside the order dated 05.08.2015 made in E.P.No.1679 of 2014 in M.C.O.P.No.1150 of 2003. No costs. Consequently, connected Miscellaneous Petition is closed.

31.10.2017

Index : Yes/No  
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**V.M.VELUMANI, J.**

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To

The Chief Court of Small Causes, Chennai.

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