

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA No.2825 of 2014

M/s.New India Assurance Co. Ltd.,
No.74, G.S.T. Road, II Floor,
Balaji Towers, Guindy,
Chennai - 600 032.

... Appellant

-vs-

1.P.Priya
2.S.Ismail
3.S.Manmadan
4.M.S.Seena Poullose
5.C.Jayabalan
6.C.C.Balan
7.M/s.Bajaj Allianz General Insurance Co. Ltd.,
3rd Floor, Finance Tower,
Near Indian Express, Kaloor,
Cochin, Kerala State.

.... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 06.06.2013 made in M.C.O.P.No.60 of 2010 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Erode.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.S.Partheeban
for Mr.C.S.Saravanan for R1
Mr.V.S.Senthil Kumar
for R5 and R6
Mr.S.Manohar for R7

J U D G M E N T

[Judgment of the Court was made by
R.SUBRAMANIAN,J.]

This appeal has been filed by the Insurance Company, who was the 4th respondent in M.C.O.P.No.60 of 2010 on the file of the Motor Accidents Claims Tribunal, Erode, challenging the quantum of compensation awarded by the Tribunal for the injuries

sustained by the claimant viz., P. Priya in a motor accident that occurred on 25.09.2009.

2. Mr. N. Vijayaraghavan, learned counsel for the Insurance Company is not challenging the findings of the Tribunal on the question of negligence. As regards the disability, the Tribunal assessed the permanent disability at 65% and granted a sum of Rs.19,50,000/- towards loss of earning capacity for the period of six years at Rs.5,000/- per percentage. The claimant was referred to the Medical Board by this Court. The Medical Board has given its opinion on 25.04.2018, wherein, it is stated that the percentage of disability suffered by the claimant is 50% temporary disability. Therefore, we do not think that multiplier method could be adopted since there is no functional disability resulting in loss of earning capacity.

3. In view of the percentage of disability assessed by the Medical Board, the loss of earning capacity granted by the Tribunal requires to be modified as follows:- $\text{Rs.}5000 \times 50 \times 6 = \text{Rs.}15,00,000/-$. The compensation awarded by the Tribunal under other heads are sustained. Thus, the total compensation works out to Rs.22,52,700/-.

4. The Tribunal had apportioned the compensation between two Insurance Companies viz., the appellant and the 7th respondent at 50% each. The 7th respondent has not questioned the Award and has satisfied the Award. It is only the liability of the appellant Insurance Company that has to be determined in this appeal. Since we have arrived the total compensation at Rs.22,52,700/-, the Appellant Insurance Company is liable to pay 50% of the same i.e., Rs.11,26,350/-.

5. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

(i) The award of the Tribunal is modified and reduced from Rs.27,02,700/- to Rs.22,52,700/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit with proportionate costs.

iii) It is made clear that the 7th respondent Insurance Company will not seek recovery of the amount already paid by it.

iv) It is stated that the appellant Insurance Company has deposited its share of the compensation and the claimant has been permitted to withdraw 50% of the same. In view of the reduction of the compensation, the claimant is permitted to withdraw the balance amount as per the Award granted by this Court.

v) The remaining amount, if any, is to be paid
over to the appellant Insurance Company.
No costs.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

svki

To
The Motor Accidents Claims Tribunal,
II Additional District Court, Erode.

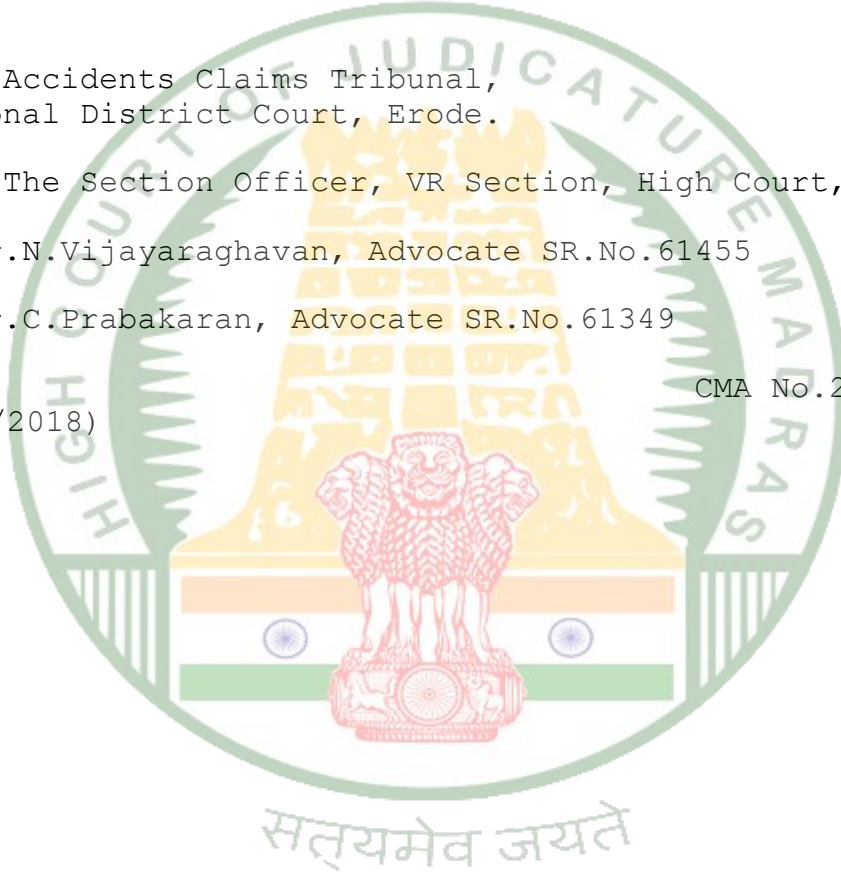
Copy To : The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.N.Vijayaraghavan, Advocate SR.No.61455

+1cc to Mr.C.Prabakaran, Advocate SR.No.61349

CMA No.2825 of 2014

GMV (27/09/2018)



WEB COPY