



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Monday, the Sixteenth day of April Two Thousand Eighteen

WEB COPY

PRESENT

The Hon`ble Mr.Justice K.RAVICHANDRABAABU
and
The Hon`ble Mrs.Justice T.KRISHNAVALLI

CMP(MD) No.3649 of 2018

IN

CMA(MD) No.830 of 2017

1 INDIRANI
2 PRADEEP
3 NIRANJAN,
4 SARADHAMBAL

...RESPONDENTS 1-4/PETITIONERS

Vs

1 THE MANAGER,
NATIONAL INSURANCE CO. LTD.,
NO.74A, PARAMATHI ROAD, NAMAKKAL

...APPELLANT

2 MATHIYALAGAN,

...5th RESPONDENT

3 THE MANAGER,
BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.,
NO.126 VP TOWERS, OPPOSITE TO CHENNAI SILKS
KOVAI MAIN ROAD, KARUR

... 6th RESPONDENT

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to permit the petitioners withdraw the entire amount of rs.16,21,425/- (Rupees Sixteen laksh twenty one thousand four hundred and twenty five only) deposited into the credit of the M.C.O.P.No.32 of 2013 on the file of the Motor Accidents Claims Tribunal (Principal District Judge) Karur

Prayer in CMA(MD). 830/ 2017 :

To allow this appeal and set-aside the Judgment and Decree dated 15/09/2016 passed in MCOP.No. 32 of 2012 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Karur.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.E.K.KUMARESAN, Advocate for the petitioner and OF MR.A.S.MATHIALAGAN, Advocate for the Appellants in CMA, the court made the following order:-



(Order of the Court was made by **K.RAVICHANDRABAABU, J**)

The respondents 1 to 4 in this appeal filed the present Miscellaneous Petition seeking permission to withdraw the entire award amount deposited by the appellant/Insurance Company, in pursuant to the order passed by this Court on 13.10.2017, while granting interim stay.

2.The respondents are the legal heirs of the deceased, who lost his life resulting out of the subject-matter accident. The Tribunal awarded a sum of Rs.32,42,850/- with interest as compensation payable to the claimants/respondents. Challenging the said award amount, the Insurance Company preferred the present appeal.

3.This Court while entertaining the appeal, granted interim stay on condition that the appellant/Insurance Company shall deposit 50% of the award amount. Accordingly, it is stated that the Insurance Company/appellant has deposited 50% of the award amount, which comes to Rs.16,21,425/-, within the time stipulated by this Court.

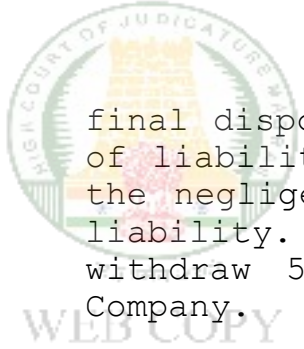
4.When this application is filed by the respondents/claimants seeking permission to withdraw the entire award amount of Rs.16,21,425/- deposited by the appellant/Insurance Company, such request is opposed strongly by the learned counsel for the appellant/Insurance Company by contending that the appellant is disputing the very liability on the ground that it is only the deceased who was a wrong-doer, which resulted in the accident and therefore, fixing the entire liability on the appellant is not justifiable.

5.In other words, it is the contention of the learned counsel for the appellant that it is due to the fault of the deceased, accident had taken place and therefore, the appellant/Insurance Company is not liable to pay the compensation.

6.The Tribunal while answering the issue dealing with the rash and negligent driving by the driver of the first respondent/Lorry, has specifically observed that the lorry driver was not examined to speak about the manner of accident and that merely based on the First Information Report marked as Ex.P1, it cannot be said that the deceased was the wrong-doer. It is further observed by the Tribunal that the driver of the Heavy Motor Vehicle/lorry should have taken all care and caution while driving his vehicle. These observations of the Tribunal prima facie satisfy us to grant the interim relief for the claimants for withdrawing at least 50% of the amount already deposited, so that the rights and contentions of the parties with regard to question of liability can be decided at the time of final hearing of the appeal.

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7.Needless to say that only when the matter is taken up for



final disposal, it will be known as to what could be the quantum of liability, even assuming that the deceased also contributed to the negligence, so as to fix the proportionate quantum, of such liability. Therefore, we are convinced to permit the Petitioners to withdraw 50% of the amount deposited by the appellant/Insurance Company.

8. Accordingly, the Petitioners/claimants are permitted to withdraw 50% of the amount already deposited by the appellant/Insurance Company with proportionate accrued interest and costs, as apportioned by the Tribunal, by filing appropriate application before the Tribunal, where the amount is deposited in compliance of the earlier interim order granted by this Court on 13.10.2017.

9. Post the appeal for final hearing, during second week of June 2018.

sd/-
16/04/2018

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

THE PRINCIPAL DISTRICT JUDGE,
THE MOTOR ACCIDENTS CLAIMS TRIBUNAL
KARUR

+1. C.C. to M/S.E.K.KUMARESAN Advocate SR.No.6354

+1 cc to MR.J.S.MURALI, Advocate SR.No.6308

ORDER
IN
CMP(MD) No.3649 of 2018
IN
CMA(MD) No.830 of 2017
Date :16/04/2018

SMA/PMI/ASVM/19.04.2018:2P/4C