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C.M.A. No.2216 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.2216 of 2021 and C.M.P. No.12224 of 2021

National Insurance Company Limited,
No.16, State Bank Road,
Coimbatore-641 018.

.. Appellant

vs.

S.Vimala Mary

.. Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against and judgment and decree dated 24.01.2020 made in M.C.O.P. No.43 of 2016 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Coimbatore.

For Appellant : Ms.N.B.Sureka

For Respondent : Mr.L.Mouli

JUDGMENT

This appeal has been filed by the appellant/Insurance Company, questioning the quantum of compensation, awarded by the Tribunal under the impugned award.



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2.The Tribunal, under the impugned award, has directed the appellant/Insurance Company to pay the respondent/claimant a compensation of Rs.9,58,070/- for the injuries sustained by her as a result of an accident, caused by a vehicle, insured with the appellant/ Insurance Company as detailed hereunder:

S.No.	Head	Amount awarded by the Tribunal
1.	Compensation for grievous injury	Rs.1,25,000.00
2.	Loss of income (8000x5)	Rs. 40,000.00
3.	Medical bills	Rs.1,68,070.00
4.	Pain and suffering	Rs.4,00,000.00
5.	Loss of amenities	Rs.2,00,000.00
6.	Extra Nourishment	Rs. 10,000.00
7.	Transport	Rs. 10,000.00
8.	Damage to clothing and articles	Rs. 5,000.00
	Total	Rs.9,58,070.00

3.Apart from questioning the quantum of compensation awarded by the Tribunal, the appellant/Insurance Company has also challenged its liability to pay compensation to the respondent/claimant as according to them, after the death of the husband of the respondent/claimant, the respondent/claimant, has become the owner of the insured vehicle and therefore, the respondent/claimant is not entitled to claim compensation



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from the appellant/Insurance Company.

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4. With regard to the liability of the appellant/Insurance Company to pay compensation, it is an un-disputed fact that on the date of the accident, the respondent's/claimant's husband was the owner of the vehicle and the respondent/claimant, who had also sustained injuries due to the accident, caused by a vehicle, insured with the appellant/Insurance Company, was a third party. Only after the death of the husband of the respondent/claimant, due to the accident, which is the subject matter of the claim, the respondent/claimant became the owner of the vehicle, which has been insured with the appellant/Insurance Company.

5. To decide whether the claim made by the respondent/claimant is a third party claim or not, this Court will have to decide based on the fact that as on the date of the accident, who was the owner. Admittedly, in the case of hand, when the accident happened, the respondent/claimant was not the owner of the vehicle and she was a third party. Though she may be the wife of the owner of the vehicle, she cannot be treated to be the owner for the purpose of deciding the Motor Accidents Claims. Admittedly, she became the owner of the vehicle, only after the death of



the owner, due to the accident, which has resulted in the present claim.

Hence, the contention of the appellant/Insurance Company that they are not liable to pay compensation to the respondent/claimant is rejected by this Court.

6.Insofar as the quantum of compensation awarded by the Tribunal under the impugned award is concerned, this Court notices the following:

a)The respondent/claimant had sustained the following injuries as a result of an accident, caused by a vehicle, insured with the appellant/Insurance Company:

'Fractures on her left arm, swelling in left arm, left clavicle area, left shoulder, left hand and all over the body'.

b)She was hospitalised for a period of 24 days. The nature of injuries sustained by the respondent/claimant and the period of her hospitalisation have not been disputed by the appellant/Insurance Company as seen from the evidence available on record.

c)The Tribunal has awarded compensation at Rs.1,25,000/- towards 'compensation for grievous injury' on the basis of the fractures sustained by the respondent/claimant by fixing Rs.25,000/- each for five



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grievous injuries sustained by the respondent/claimant.

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7.Since no evidence regarding disability has been placed on record before the Tribunal and the Tribunal has awarded compensation under the head 'compensation for grievous injury' based on the injuries sustained by the respondent/claimant, this Court, by its order dated 05.01.2024 directed the respondent/claimant to appear before the Dean of Government Medical College Hospital, Coimbatore on 23.01.2024 for assessing the disability sustained by her. As directed by this Court, the Medical Board has submitted its report dated 12.02.2024, fixing 30% physical disability on the respondent/claimant.

8.The accident happened in the year 2012. It is settled practice adopted by this Court to award disability compensation on percentage basis at Rs.3,000/- per percentage of disability if the accident had happened in the year 2012. Since the respondent/claimant had sustained 30% disability, the disability compensation to be awarded to her is Rs.90,000/- (3000x30). However, the Tribunal has erroneously awarded a higher compensation of Rs.1,25,000/- without any basis.

9.This Court confirms the disability of the respondent/claimant at



30% as the said assessment is only based on the nature of injuries sustained by the respondent/claimant and the period of her hospitalisation. This Court reduces the disability compensation to Rs.90,000/- instead of Rs.1,25,000/- erroneously awarded by the Tribunal.

10.Insofar as the compensation awarded by the Tribunal towards Loss of income, Medical bills, Extra Nourishment, Transportation and Damages to clothing and articles at Rs.40,000/-, Rs.1,68,070/-, Rs.10,000/-, Rs.10,000/- and Rs.5,000/- respectively are concerned, this Court is of the considered view that the same is a just compensation and does not call for any enhancement or reduction by this Court.

11.However, the Tribunal has erroneously awarded a huge compensation of Rs.4,00,000/- towards Pain and suffering and Rs.2,00,000/- towards Loss of amenities. This Court, after giving due consideration to the year of the accident, avocation of the respondent/claimant and the period of her hospitalisation, is of the considered view that the compensation awarded by the Tribunal towards Pain and suffering at Rs.4,00,000/- has to be reduced to Rs.1,50,000/- and towards Loss of amenities at Rs.2,00,000/- has to be reduced to Rs.1,00,000/- by this Court.



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12. For the foregoing reasons, the compensation awarded by the Tribunal at Rs.9,58,070/- is reduced to Rs.5,73,070/- as detailed hereunder:

S.No.	Head	Amount awarded by this Court
1.	Compensation for grievous injury	Rs. 90,000.00
2.	Loss of income (8000x5)	Rs. 40,000.00
3.	Medical bills	Rs.1,68,070.00
4.	Pain and suffering	Rs.1,50,000.00
5.	Loss of amenities	Rs.1,00,000.00
6.	Extra Nourishment	Rs. 10,000.00
7.	Transport	Rs. 10,000.00
8.	Damage to clothing and articles	Rs. 5,000.00
	Total	Rs.5,73,070.00

13. Accordingly, the appellant/Insurance company is directed to deposit the reduced award amount of Rs.5,73,070/-, after deducting the amount already deposited, if any, together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit to the credit of M.C.O.P. No.43 of 2016 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Coimbatore, within a period of four weeks from the date of receipt of a copy of this judgment.



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14.The excess amount deposited with the Tribunal in accordance with the impugned award is permitted to be withdrawn by the appellant/ Insurance Company by filing an appropriate application before the Tribunal.

15.The respondent/claimant is permitted to withdraw the said amount, once it is deposited by the appellant/Insurance Company, by filing an appropriate application. On such an application being made, the Tribunal shall transfer the amount lying to the credit of M.C.O.P. No.43 of 2016 to the bank account of the respondent/claimant directly through RTGS, within a period of one week thereafter. Accordingly, this appeal is partly allowed. No costs. Consequently, connected C.M.P. is closed.

10.07.2024

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To

1.The Motor Accidents Claims Tribunal,
Special Sub Judge, Coimbatore.

2.The Section Officer,
V.R. Section, High Court, Madras.



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ABDUL QUDDHOSE, J.

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