

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO. 28 OF 2013**

1. Rajendra Datta Halarnkar,
r/o. H.No.464, Near Central Garage,
St. Inez, Panaji, Tiswadi, Goa
(Driver & Owner of car)

2. United India Insurance Company,
Verekar Building, above Dena Bank,
Mapusa, Bardez – Goa. Appellants.

Versus.

M^{rs} Deepali Dinesh Halarnkar,
aged 45 years, married, r/o
House No.8225, Balabai,
Vasco-Da-Gama, Mormugao, Goa. Respondent.

Mr. A.R. S. Netravalkar, Advocate *for the Appellants.*

Mr. Parikshit Sawant, Advocate *for the Respondents.*

CORAM : M. S. SONAK, J.

Reserved on : 4th February 2022

Pronounced on : 10th February 2022

JUDGMENT: -

1. Heard Mr. Netravalkar for the Appellants and Mr. P. Sawant for the Respondent.

2. United Indian Insurance Co. Ltd., along with the driver-cum-owner of the culprit vehicle bearing registration No.GA 07/C-0989 appeal the Judgment and Award dated 2/3/2012, made by the Motor Accident Claims Tribunal, Panaji (Tribunal) in Claim Petition No.30/2010, awarding compensation of ₹3,62,500/-, together with interest at the rate of 9% per annum, from the date of application, till the date of award towards the permanent disablement to the extent of 50% suffered by the Claimant-Deepali out of the injuries arising from the accident that took place on 25/8/2009, when the culprit vehicle dashed against her when she was standing along with 2 other ladies on the left side of the road.

3. Mr. Netravalkar, at the outset, made it clear that the Appellants were challenging only the quantum of compensation awarded by the Tribunal, since, according to the Insurance Company, the same was excessive.

4. Mr. Netravalkar submitted that there is no evidence whatsoever about Deepali operating Alankar Restaurant at Vasco-Goa, particularly since, the license produced by her was valid only up to 31/3/2007. Mr. Netravalkar submitted that even this license is not a trade license, but a license to exhibit a board. He

submitted that Deepali neither produced any tax returns, nor bank records in support of her claim that she was earning a net income of ₹50,000/- per month from the restaurant business.

5. Mr. Netravalkar submitted that even the Tribunal has not believed the case of Deepali about operating the restaurant and earning ₹50,000/- per month. He, however, submitted that the Tribunal has seriously erred in taking the monthly income of Deepali as ₹4,000/-, after accepting that she was only a housewife. Despite several decisions of the Hon'ble Supreme Court clarifying the position, Mr. Netravalkar, no doubt based on insensitive instructions from the Insurance Company whom he represents, went on to submit that the net income of a housewife should be taken at a maximum of ₹15,000/- per annum *i.e.* ₹1500/- per month, having regard to Note No.6(b) in the Second Schedule appended to the Motor Vehicles Act, 1988. Mr. Netravalkar, however, submitted that out of a charity, he would not object to the income of Deepali being taken as ₹20,000/- per annum, *i.e.* ₹1,666/- per month.

6. The above submissions were made by Mr. Netravalkar in the context of an accident that took place on 25/8/2009 in the teeth of the following decisions of the Hon'ble Supreme Court

which have settled the position about the assessment of income of a housewife in such matters :

(I) Lata Wadhwa and others vs. State of Bihar and others¹;

(II) Arun Kumar Agrawal & another vs. National Insurance Company Limited and others²;

(III) Urviben Chiragbhai Sheth vs. Vijaybhai Shambhubhai Joranputra and others³;

(IV) Laxmidhar Nayak & others vs. Jugal Kishore Behera and others⁴;

(V) Rajendra Singh and others vs. National Insurance Company Limited and others⁵; and

(VI) Kirti and another vs. Oriental Insurance Company Limited⁶.

7. Mr. Netravalkar, without prejudice, submitted that there is no question of making any addition on account of future prospects to the notional income of a housewife, because, such additions can be made only where the actual income is proved.

1. (2001) 8 SCC 197

2. (2010) 9 SCC 218

3. (2011) 12 SCC 582

4. (2018) 1 SCC 746

5. (2020) 7 SCC 256

6. (2021) 2 SCC 166

This submission was made on behalf of the Insurance Company in the teeth of the decision of the Hon'ble Supreme Court in the case of *Kirti* (supra), rejecting such precise contentions.

8. Mr. Netravalkar finally insisted that the compensation, in this case, could be determined at a maximum of ₹1,30,000/- by taking Deepali's annual income at ₹20,000/- by applying the multiplier of 13 and thereafter, reducing the compensation amount by 50% since this was the percentage of disability suffered by Deepali. He submitted that the impugned Award, to the extent the same exceeds this amount of ₹1,30,000/-, warrants interference.

9. Mr. P. Sawant, learned Counsel for Claimant-Deepali submitted that the contentions of behalf of the Insurance Company are contrary to the law laid down by the Hon'ble Supreme Court on the subject. In particular, he focussed on the decision in *Arun Kumar Agrawal* (supra). He submitted that in this case, what is awarded by the Tribunal, is far from a just compensation and, therefore, this Court should determine the just compensation in these proceedings and award the same to Deepali, in the interest of justice. He submits that by following the decision of the Hon'ble Supreme Court, it is evident that the

claim of ₹11.19 lakhs made by Deepali represented just compensation and the Tribunal was not justified in awarding the compensation of only ₹3,62,500/- to Deepali. He, therefore, submits that this appeal should be dismissed with exemplary costs, and further, just compensation should be determined and awarded to Deepali in these proceedings itself.

10. Rival contentions now fall for my determination.

11. In this case, the Tribunal has discarded the evidence about Deepali operating Alankar Restaurant and earning from the same ₹50,000/- per month. This evidence has been discarded basically on two grounds:- (a) The license produced by Deepali was valid up to the year 2007; and (b) Deepali failed to produce any income-tax returns or bank records to prove her income of ₹50,000/- per month.

12. Though the aforesaid grounds are not quite irrelevant, the Tribunal should have considered the affidavit-in-lieu of Examination-in-Chief filed by Deepali on 21/12/2010 and the cross-examination on behalf of the present Appellants. In the affidavit, Deepali has clearly stated that she was operating Alankar Restaurant and earning ₹2000/- to ₹2500/- per day, taking her net income to ₹50,000/- per month. She has also deposed that

on account of the accident, she is unable to walk and, therefore, could not start the restaurant, thereby losing her only source of income and becoming financially handicapped. She has also deposed to her husband expiring on 1/8/2010 *i.e.* hardly within a year from the date she suffered the accident on 25/8/2009. She has also deposed that she has two children and an aged mother-in-law, who was bedridden to look after and maintain.

13. In her cross-examination, Deepali admitted that she has not produced any income tax returns of her late husband, who expired on 1/8/2010, though she stated that returns were filed till 2005, but not thereafter. She deposed that she did not produce the bank records since there was no bank balance. Only a general suggestion was put to her about the contents of paragraphs 10 to 12, which concerns her operating the restaurant, her income, and her inability to restart the restaurant on account of the injuries and disablement suffered by her.

14. This means that Deepali had produced on record license from the local authorities, as also receipts in support of her plea that she was operating the restaurant at Vasco-da-Gama. The circumstance that the license was renewed up to the year 2007, cannot lead to the only inference that post-2007 Deepali was not

carrying on the business. Similarly, simply because the income tax returns were not produced, the case of Deepali could not have been completely disbelieved or discarded, as has been done by the Tribunal. The statement in the deposition that on account of the accident, Deepali was unable to restart the restaurant and the loss of her only source of income and becoming financially handicapped, has virtually been disbelieved by the Tribunal, though coupled with the evidence of permanent disablement suffered by Deepali and the time spent by her for taking treatment, to a great extent corroborate this version.

15. Though it is possible to say that Deepali's version of earning ₹50,000/- per month, is not proved, based on the evidence on record, the income of Deepali could have been taken at ₹8,000/- to 10,000/- per month, after excluding all expenses.

16. However, even if this entire version of Deepali running the restaurant, is to be discarded, as has been discarded by the Tribunal, the evidence on record establishes that Deepali was a housewife, taking care of her husband, two children, and the bedridden mother-in-law. The most insensitive contention, no doubt, urged by Mr. Netravalkar based on the instructions from the Insurance Company, that Deepali's income as a housewife,

could be taken at a maximum of ₹20,000/- per annum i.e. ₹1,666/- per month and, further, there is no question of any addition towards the future prospects, is required to be rejected by observing that such a contention ought not to have been made, whatever may be the instructions from the Insurance Company. Such contentions have been specifically considered and rejected by the Hon'ble Supreme Court on several occasions and based on such insensitive contention, the Insurance Company, in this case, was certainly not justified in either instituting this Appeal or resisting even the payment of meagre compensation awarded by the Tribunal in this matter.

17. Simply because the Insurance Company officers do not have to pay for the litigation costs through their own pockets, they should not launch such proceedings and raise contentions or instruct their Advocates to raise the contentions which have been expressly considered and rejected by the Hon'ble Supreme Court, time and again. The officers of the Insurance Company seem to carry an impression that even if the appeals are dismissed and costs are imposed on the Insurance Companies, the same will not affect them personally because such imposition of costs will have to be borne from the funds of the Insurance Companies, which are again public funds.

18. In *Lata Wadhwa* (supra), the Hon'ble Supreme Court held that in the case of housewives aged between 34 to 59 years, who are in active life, their annual contribution can be safely taken at ₹36,000/- and it is only for those in the age group of 62-72 that the annual contribution can be taken at ₹20,000/-. These observations were made in the year 2001 and the accident in the present case has taken place in the year 2009. Besides, there are decisions of the Hon'ble Supreme Court that commend a greater value to be accorded to the services rendered by housewives in India. Suffice to note that even in the year 2001, the Hon'ble Supreme Court held that the annual contribution of a housewife ought to be taken at ₹36,000/-. Despite the same, Mr. Netravalkar, in all solemnity, urged before this Court that the annual income ought to be taken at only ₹15,000/- and, out of a charity, the same can be enhanced to ₹20,000/- per annum.

19. In *Arun Kumar Agarwal* (supra), the Hon'ble Supreme Court, after considering *Lata Wadhwa* (supra) and other decisions rendered in the meanwhile, reviewed the position about the determination of income of a housewife/mother, not having a regular income, in a motor vehicle accident.

20. The Hon'ble Supreme Court, taking into account certain

decisions in the context of Section 163-A of the Motor Vehicles Act, 1988 and the Second Schedule, based on which Mr. Netravalkar contended that the annual income of Deepali could be taken at ₹15,000/- or the highest, at ₹20,000/- per annum held that in *Sarla Verma vs. DTC*⁷ itself it was noticed that the principles relating to the determination of liability and quantum of compensation for claims made under Section 163-A and the claims under Section 166 of the Motor Vehicles Act are different and the rates in Second Schedule, in terms, do not apply to the determination of compensation in the applications under Section 166.

21. Hon'ble Supreme Court, after considering several foreign precedents, noted that in India, the courts have recognized that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money and the gratuitous services rendered by the wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for

7. (2009) 6 SCC 121

particular hours. She takes care of all the requirements of the husband and children, including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean, etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

22. The Hon'ble Supreme Court held that it is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family *i.e.* the husband and children. However, for the award of compensation to the dependants, some pecuniary estimate has to be made of the services of the housewife/mother. In that context, the term "services" is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants, cannot be diminished on the ground that some close relations like a grandmother may volunteer to render some of the services to the family which the deceased was giving

earlier.

23. The Hon'ble Supreme Court disapproved the reasoning of the High Court in taking the income of the housewife/mother at ₹5,000/- per month and thereafter, making a host of deductions and estimating total income only at ₹1240/- per month. Hon'ble Supreme Court, in the facts of the said case, required her income to be taken at ₹ 5,000/- per month.

24. In concurring the opinion rendered, Hon'ble Shri Justice A.K. Ganguly observed that even the valuation of the income of the homemaker as one-third of the income of the earning spouse is not based on any apparently rational basis. His Lordship held that this bias is shockingly prevalent in the work of census. It was further held that gender bias has been reflected in the judgment of the High Court whereby the High Court has accepted the Tribunal's reasoning of assessing the income of the victim at ₹1250/- per month.

25. In concurring the opinion, reference was made to the decision of the Madras High Court in *National Insurance Co. Ltd. v. Deepika* – (2009) 6 MLJ 1005. In the said Judgment, the Madras High Court referred to General Recommendation 17 of the Convention on the Elimination of All Forms of

Discrimination Against Women (CEDAW). India is a signatory to the said Convention and ratified the CEDAW Convention on 9/7/1993. But even then no law has been made for proper evaluation of the household work done by women as homemakers. The Madras High Court referred to what was noted by the UNICEF in 2000 that ‘unpaid care work is the foundation of human experience’. The care work is that which is done by a woman as a mother and in India, the woman herself will be the last person to give this role an economic value, given the social concept of the role of a mother. But, when evaluating the loss suffered by the child because her mother died in an accident, we must give a monetary value to the work of a caregiver, for, after all, the home is the basic unit on which our civilized society rests.

26. Despite the ruling in *Arun Kumar Agrawal* (supra), the Insurance Company argues that the income of the housewife/mother can be taken at a maximum of ₹ 15,000/- per annum or ₹1250/- per month. This is most unfortunate. The various decisions referred to above, have considered similar contentions and rejected them by observing that such contentions stem from gender bias and are not sound.

27. Most of the aforesaid decisions were recently considered by

the Hon'ble Supreme Court in *Kirti* (supra). The specific issue as to whether addition towards future prospects should apply to the notional income of a housewife was considered in this matter. The Supreme Court held that once the notional income has been determined, the benefit of addition towards future prospects will have to be granted in terms of the law laid down in *National Insurance Co. Ltd. v. Pranay Sethi* – (2017) 16 SCC 680.

28. The Hon'ble Supreme Court noted that there is a shift in jurisprudence regarding future prospects with the five-Judge Bench decision of the Supreme Court in *Pranay Sethi* (supra). The Supreme Court extended the benefit regarding future prospects to even self-employed persons, or those on a fixed salary. Taking the above rationale into account, the situation is quite clear concerning notional income determined by a court in the first category of cases outlined earlier, those where the victim was employed but claimants are unable to prove the income before the court. Once the victim has been proved to be employed at some Venture, the necessary corollary is that she would be earning some income. It is clear that no rational distinction can be drawn with respect to the granting of additions due to future prospects merely on the basis that the housemaker's income was not proved, particularly when the court has

determined the issue of notional income. Further, when it comes to cases, relating to notional income for non-earning victims, the above principle applies with equal vigour, particularly with respect to homemakers. Once the notional income is determined, the effects of inflation would equally apply. Further, no one would ever say that the improvements in skills that come with experience do not take place in the domain of work within the household. The Supreme Court referred to its earlier decisions where it has been granting additions towards future prospects even in cases about notional income.

29. Finally, in paragraph 41, the Hon'ble Supreme Court summarized the legal position, as follows :

(i) Grant of compensation, on a pecuniary basis, with respect to a homemaker is a settled proposition of law,

(ii) Taking into account the gendered nature of housework, with an overwhelming percentage of women being engaged in the same as compared to men, the fixing of notional income of homemaker attains special significance. It becomes a recognition of the work, labour, and sacrifices of homemakers and a reflection of changing attitudes. It is also in furtherance of our nation's international law obligations and our constitutional vision of social equality

and ensuring dignity to all,

(iii) Various methods can be employed by the court to fix the notional income of a homemaker, depending on the facts and circumstances of the case.

(iv) The court should ensure while choosing the method, and fixing the notional income, that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively, nor too liberally.

(v) The granting of future prospects, on the notional income calculated in such cases, is a component of just compensation.

30. Again, despite the above clear and categorical decision of the Hon'ble Supreme Court delivered on 5/1/2021, Mr. Netravalkar, no doubt based on instructions from the Insurance Company, submitted that no addition can be made on account of future prospects in cases of notional income. This submission is directly contrary to the law laid down by the Hon'ble Supreme Court in several decisions referred to in *Kirti* (supra), or in any case in *Kirti* (supra). The submission is, therefore, required to be rejected.

31. For all the aforesaid reasons, it is quite clear that there is no merit whatsoever in the contentions raised on behalf of the Appellants in the present Appeal. The contentions are contrary to the law laid down by the Hon'ble Supreme Court in several decisions. The contentions, no doubt made on instructions from the Insurance Company, reek of both, gender bias, as well as insensitivity. The fact that such contentions were raised, even though identical contentions have already been rejected by the Hon'ble Supreme Court, calls for the imposition of costs on the Appellants in this matter.

32. In such matters, it is well settled that the Courts must determine just compensation. Since the appeal is in continuation of the original proceedings, the duty of determining just compensation also continues. The Tribunal, in this case, has not determined the just compensation because its award overlooks the evidence on the record and several well-settled principles in the matters of determination of compensation.

33. In *Surekha and ors. Vs. Santosh and ors*⁸, the issue involved before the Supreme Court was whether the Bombay High Court, after agreeing with the claimant that just

8. C.A. No.476 of 2020, decided on 21/01/2020 – (2021) 201 PLR 795

compensation amount ought to have been determined at ₹49,85,376/-, declined to grant enhancement merely on the ground that the appellants had failed to file cross-appeal. The Hon'ble Supreme Court reversed the High Court decision by observing the following :

“2. This appeal takes exception to the judgment and order dated 4.1.2019 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in First Appeal No. 2564 of 2016 [Shriram General Ins. Co Lid v Surekha, 2020 ACJ 434 (Bombay)], whereby the High Court, even though agreed with the stand of the Appellants that just compensation amount ought to be ₹ 49,85,376, however, declined to grant enhancement merely on the ground that the Appellants had failed to file cross-appeal.

3. By now, it is well settled that in the matter of insurance claim compensation in reference to the motor accidents, the court should not take hyper-technical approach and ensure that just compensation is awarded to the affected person or the claimants.

4. As a result, we modify the order passed by the High Court to the effect that compensation amount payable to the Appellants is determined at ₹ 49,85,376, with interest thereon as awarded by the High Court.”

34. Besides, there are several decisions in which this Court has

also determined the just compensation and awarded the same to the Claimants even though there were no cross-appeals or cross-objections filed by the claimants. Several decisions take the view that the Tribunal can award compensation above what may have been claimed if the excess compensation awarded represents just compensation, which, the Tribunal must determine.

35. In this case, as noted earlier, there is evidence on record based on which the income of Deepali could have been determined at ₹8,000/- to ₹10,000/- per month. However, even if all this evidence is ignored, as has been ignored by the Tribunal, the notional income of Deepali based on her status as a homemaker, in this case, ought to be taken as not merely ₹4,000/- per month, but at least ₹6,000/- per month. To this, applying the law laid down in *Pranay Sethi* (supra), an addition to the extent of 25% is warranted because the evidence on record suggests that the age of Deepali on the date of the accident was around 44 years. This means that Deepali's income should be taken at ₹8,000/- per month. Applying the prescribed multiplier of 14, the compensation, were Deepali to expire in the accident, would come to ₹13,44,000/-. Since there is no dispute about Deepali having suffered permanent disablement to the extent of 50% on account of the injuries sustained by her in the accident,

this amount will have to be determined at ₹6,72,000/-.

36. In this case, there is evidence that Deepali, on account of the accident, suffered grievous injuries to her left thigh, femur fracture, head injuries with a serious injury to the scalp, neck/cervical spinal injury. There is evidence that Deepali had to take treatment at the Goa Medical College at Bambolim from 25/8/2009 to 23/10/2009 and even thereafter, as an outdoor patient. Dr. S.M. Bandekar (AW.4), the doctor who treated Deepali, has deposed that she suffered two following injuries:- (i) C5-C6 subluxation with quadriparesis with bowel/bladder involvement; and (ii) Grade II compound fracture lower 1/3rd shaft femur left leg.

37. Dr. Bandekar-AW.4 deposed that Deepali was treated surgically for the above injuries and discharged on 23/10/2009, with advice to follow up at OPD regularly. He deposed that having examined her on 3/11/2010 for the evaluation of the percentage of permanent disability and on such examination, he certified that the percentage of permanent disability suffered by Deepali in terms of the Government of India Scale, 1981 is 50%. He deposed to the certificate of disability dated 8/11/2010 issued by him and he also identified the medical bills at Exhibit 34 shown to him and stated that the same was necessary for

Deepali's treatment.

38. Dr. Bandekar AW-4, in his cross-examination, stated that Deepali had a spinal injury and was put in skeletal traction. He also deposed that the permanent disability will not affect her in her running of the restaurant.

39. The aforesaid means that Deepali soon after the accident was in the hospital for almost about 2 months and had to undergo surgeries and take further treatment. There is evidence that she was advised to follow up at OPD for quite some time. The injuries must have caused Deepali immense pain and suffering and, therefore, the award of only ₹10,000/- towards pain and suffering, warrants interference. According to me, the minimum award for pain and suffering in such a situation should have been ₹1,00,000/-.

40. The Tribunal has awarded ₹12,500/- towards medical bills and since this is based on the documentary evidence, there is no reason to disturb the same.

41. Towards transportation, the Tribunal has awarded only ₹1,000/-. According to me, Deepali's claim of ₹7,050/- towards transportation was most reasonable, having regard to the evidence

on record. She had to be taken to the hospital by private transportation and thereafter, considering the nature of the injuries she had to attend the hospital for follow-up. In this state, it could hardly be expected that she would travel by a mode of public transport. Therefore, there is no reason to deny the claim of ₹7,050/- made by Deepali towards traveling expenses/ transportation.

42. Towards loss of income, the Tribunal has awarded ₹25,000/-. Since the notional income of Deepali has been taken into account, and the compensation has been determined after making an addition towards future prospects, this amount can be said to have been subsumed and included in the amount of ₹6,72,000/-, in the peculiar facts of the present case and the evidence on record.

43. Towards engaging services of an attendant, the Tribunal has awarded only ₹2,000/- as compensation. The evidence on record bears out the nature of the permanent disability suffered by Deepali. There is also evidence about her hospitalization for two months, followed by restrictions in her functioning on account of the permanent disablement suffered by her. Therefore, the compensation of ₹ 20000/- represents the just compensation on

this ground.

44. Therefore, the just compensation, in this case, is, determined at ₹8,11,550/-. This compensation will have to be paid by the Appellants jointly and severally to Claimant-Deepali, after adjusting the compensation amount already paid.

45. This appeal is, therefore, disposed of by making the following order :

(I) Though the Appeal instituted by the Appellants is, hereby, dismissed, the just compensation is determined at ₹8,11,550/-, payable by the Appellants jointly and severally to the Respondent-Deepali;

(II) The Respondent-Deepali is permitted to withdraw the balance compensation amount from out of the deposit made by the Appellants in this Court, along with the interest that may have accrued on this amount. The Registry to facilitate such withdrawal, expeditiously. The amount will have to be deposited directly into the bank account of Respondent-Deepali and the bank details must be furnished by the learned Counsel for the Respondent-Deepali within two weeks from today.

(III) The Appellants, including, in particular, the Insurance

Company is directed to deposit the enhanced compensation amount in this Court within 6 weeks from today, together with interest.

(IV) Upon such deposit, the Respondent-Deepali will be entitled to withdraw the same. The Registry to facilitate such withdrawal by making a deposit directly in the bank account of Deepali.

(V) The Appellants, in this case, will pay costs of ₹10,000/- to the Respondent-Deepali, within 6 weeks from today. The costs can either be directly paid to Deepali or deposited in this Court. If the amount of costs is deposited, the Registry to facilitate such withdrawal.

46. The Appeal is disposed of in the aforesaid terms.

M. S. SONAK, J.