IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1276 OF 2017

IFFCO TOKIO General Insurance Co. Ltd., 7-A First Floor, Shreeji Arcade, Near Nitin Casting Co. Almeda Road, Panchpakhadi, Thane (West)-400 602.	}	(Org. Respondent No.2-being the insurer) **...Appellant**

Versus

1. Nasreen Ebrahim Khan Age-32 years, Occ : Service, R/at Dronagiri Apartment, 1st Floor, Room No-105, Ganesh Chowk, Bahtt Wadi, Kisan Nagar No.3, Wagle Estate, Thane (W)	}	(Org. Applicant)
2. Rajesh Dharamraj Gupta R/at Shanti Loklks Chawl, Kahirani Road, Subhash Nagar, Ghatkopar, Mumbai-85	}	(Org. Insured) **...Respondents**

Ms.Kalpana Trivedi, for the Appellant.

CORAM : SHIVKUMAR DIGE, J.

DATE : 3rd APRIL 2024

ORAL JUDGMENT :-

. The issue involved in this Appeal is income of the Claimant is considered on higher side.

2. It is contention of the learned counsel for the Appellant-Insurance Company that, the Claimant was employed with Pratiksha Steel Corporation and was earning Rs.7,000/- per month as salary and Rs.1,000/- as conveyance allowance. No evidence is produced on record to prove the salary of the Claimant, but the Tribunal has considered her monthly income at Rs.5,000/- per month, which is on higher side and on that basis compensation is awarded, which is erroneous. Hence, requested to allow the Appeal.

3. Though Respondent is served and sufficient chances given to the Respondent to argue the matter, but the Respondent is absent. The Appeal is of the year 2017. Hence, I am deciding this Appeal on merit.

4. I have heard learned counsel for the Appellant. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Thane.

5. To prove the income, the Claimant has examined herself. She has stated that due to accidental injuries she has suffered 70% permanent physical disability. The disability of the

Claimant has not been challenged by the Appellant-Insurance Company. The Claimant has stated that at the time of the accident she was employed with Pratiksha Steel Corporation and she was getting salary of Rs.7,000/- per month and conveyance allowance of Rs.1,000/- per month. In support of her evidence the Claimant has examined Mr.Sunil Ahuja, Proprietor of Pratiksha Steel Corporation. He has stated that the Claimant was working with him and he was paying Rs.7,000/- per month salary to the Claimant and Rs.1,000/- per month as conveyance allowance. In cross-examination he has admitted that no appointment letter was issued to the Claimant and he has no separate document to show about salary given to the Claimant, besides the attendance cards and vouchers. The vouchers are at Exhibit-80/3.

6. While dealing with the issue of income of the Claimant the Tribunal has observed that Voucher at Exhibit-80/3 shows the salary of Rs.7,000/- received by the Claimant. It is difficult to accept that the Claimant was getting salary of Rs.7,000/- per month and she was getting Rs.1,000/- per month

as conveyance allowance. Considering the evidence on record the Tribunal has considered monthly income of the Claimant at Rs.5,000/- per month. I do not find infirmity in it.

7. In my view, admittedly, the Claimant was working with Pratiksha Steel Corporation, the Proprietor of that Corporation has stated on oath that the Claimant was working with him and he was paying salary of Rs.7,000/- per month to her as well as Rs.1,000/- per month as conveyance allowance. There is no reason to disbelieve the evidence of P.W.2. Moreover, due to accidental injuries the Claimant has suffered 70% permanent physical disability The Claimant is suffering from neurological problem due to accidental injuries. Though she has suffered 70% permanent physical disability but her functional disability is 100%, but the Tribunal has awarded compensation on lower side. Considering these facts, the Appeal is devoid of merit and I pass following order.

ORDER

(i) The Appeal is dismissed.

(ii) The Claimant is permitted to withdraw deposited amount along with accrued interest thereon.

(iii) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.

(iv) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)