# IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2024

CORAM:

**THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE**

**C.M.A. No.984 of 2021 and C.M.P. Nos.5471 of 2021 & 1316 of 2022**

The Divisional Manager,
The New India Assurance Co. Ltd.,
No.8, 2nd Floor, J.N.Street,
Puducherry-1. .. Appellant

vs.

1.Ezhilarasi

2.Suganya Krishnaraju .. Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against and judgment and decree dated 30.04.2019 made in M.C.O.P. No.304 of 2016 on the file of the Motor Accidents Claims Tribunal (Additional Sub Court), Puducherry.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Mr.S.Shanmitha for R1
R2-exparte

## JUDGMENT

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

2.According to the appellant/Insurance Company, the Tribunal ought not to have adopted the multiplier method for assessing the loss of earning capacity of the first respondent/claimant and ought to have awarded disability compensation based on percentage basis. They also contend that the compensation awarded by the Tribunal under various heads is excessive and it has to be reduced.

3.Under the impugned award, the Tribunal had directed the appellant/Insurance Company to pay the first respondent/claimant a compensation of Rs.16,11,918/- as detailed hereunder:

| S.No. | Head | Amount awarded by the Tribunal |
|---|---|---|
| 1. | Future income | Rs.10,80,000.00 |
| 2. | Pain and sufferings | Rs. 1,50,000.00 |
| 3. | Medical expenses | Rs. 2,86,918.00 |
| 4. | Rich and nutritious food | Rs. 25,000.00 |
| 5. | Attender charges | Rs. 10,000.00 |
| 6. | Transport expenses | Rs. 10,000.00 |
| 7. | Loss of expectation of life | Rs. 50,000.00 |
| | Total | Rs.16,11,918.00 |

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

> *'Malunited, left Femur supra condylar with healed, right tibial plateau and malunited distal radius and rheumatoid arthiritis'*

5.The Medical Board has assessed the disability of the first respondent/claimant at 60% as seen from Ex.C1. The Tribunal had accepted the disability certificate produced by the Medical Board and has assessed the disability of the first respondent/claimant at 60% and has adopted the multiplier method for assessing the loss of earning capacity of the first respondent/claimant. The Tribunal has assessed the notional monthly income of the first respondent/claimant at Rs.10,000/-. The accident happened in the year 2015.

6.Learned counsel for the appellant/Insurance Company would submit that the first respondent/claimant is a Home Maker, aged 45 years. He relied upon a judgment of the Hon'ble Supreme Court in the case of **Raj Kumar vs. Ajay Kumar and others reported in 2011 (1) SCC 343**. Relying upon the said decision of the Hon'ble Supreme Court, he would submit that since the claim made by the first respondent/ claimant is an injury claim, the Tribunal ought not to have awarded compensation towards loss of earning capacity by adopting the multiplier method. He would submit that the nature of injuries sustained by the first respondent/claimant as assessed by the Medical Board (Ex.C1) includes the assessment for rheumatoid arthiritis, which was a pre-existing disease of the first respondent/claimant and therefore, the assessment made by the Medical Board (Ex.C1) is not on account of the permanent disability and hence, the compensation ought not to have been awarded towards loss of earning capacity. He would also submit that only in case of fatal accident claims, the assessment of the notional monthly income of the accident victim, who is a Home Maker, is necessary to be assessed. But in case of injured/accident victim, the assessment of the notional monthly income is not required. However, according to him, the Tribunal has erroneously assessed the notional monthly income of the first respondent/claimant, who is an injured/accident victim despite the fact that she has not suffered any permanent disability as a result of an injury

caused to her due to an accident, caused by a vehicle, insured with the appellant/Insurance Company.

7.On the contrary, the learned counsel for the first respondent/ claimant drew the attention of this Court to a judgment of the Hon'ble Supreme Court in the case of **Kirti and others and vs. Oriental Insurance Company Ltd. reported in AIR 2021 SC 353** and would submit that the Hon'ble Supreme Court has made it clear in the said decision that grant of compensation, on a pecuniary basis, with respect to a Home Maker, is a settled proposition of law. She would submit that in the said decision, the Hon'ble Supreme Court has taken into account the gendered nature of house work and has observed that the fixing of notional income of the Home Makers attain special significance and has also observed that in fixing of the notional income of a Home Maker becomes a recognition of the work, labour and sacrifices of Home Makers and a reflection of changing attitudes.

8.However, the learned counsel for the appellant/Insurance Company would submit that the decision relied upon by the learned counsel for the first respondent/claimant pertains to a fatal accident claim, whereas, the case on hand is a claim made by an injured/accident victim.

9.As seen from the decision relied upon by the learned counsel for the first respondent/claimant, referred to supra, it does not distinguish between the injured/accident victim's claim and a fatal accident claim. The Hon'ble Supreme Court had highlighted the role of Home Makers in the said decision and only thereafter has come to the conclusion that notional monthly income will have to be fixed for the Home Makers as well.

10.The Tribunal, under the impugned award, has fixed the notional monthly income of the first respondent/claimant at Rs.10,000/- for an accident happened in the year 2015. The said assessment cannot also be faulted with as the Tribunal has given due consideration to the year of the accident and only thereafter has fixed the notional monthly income. Applying the principles laid down by the Hon'ble Supreme Court in the case of **Kirti and others and vs. Oriental Insurance Company Ltd. reported in AIR 2021 SC 353**, relied upon by the learned counsel for the first respondent/claimant, this Court is of the considered view that the Tribunal has not committed any error in assessing the notional monthly income of the first respondent/claimant, who was a Home Maker, aged 44 years. The nature of injuries sustained by the first respondent/claimant has also not been disputed by the appellant/ Insurance Company as seen from the evidence available on record. However, the appellant/Insurance Company only disputed that the Tribunal has committed an error in adopting the multiplier method for assessing the loss of earning capacity of the first respondent/claimant since according to them, the injuries sustained by the first respondent/ claimant will not entitle the first respondent/claimant to claim compensation towards loss of earning capacity and the Tribunal ought to have awarded compensation only on percentage basis.

11.The first respondent/claimant was hospitalised for a period of 12 days. She had sustained seven fractures all over her body, which includes her ribs as well as the legs. Surgeries were also performed on her, which is not disputed by the appellant/Insurance Company as seen from the evidence available on record.

12.Learned counsel for the first respondent/claimant would submit that even now the first respondent/claimant is having difficulty in moving freely and she needs a support of an Attender to take care of her daily needs. To ascertain the present medical condition of the first respondent/claimant, this Court once again directed the first respondent/ claimant to appear before the Medical Board. As directed by this Court, the first respondent/claimant had appeared before the Medical Board on 30.01.2024 and the Medical Board by its report dated 18.03.2024, submitted to this Court has once again confirmed that the fist respondent/ claimant has suffered 60% disability. Despite lapse of more than 7 years from the date of the accident, the disability of the first respondent/ claimant continues as seen from the recent Medical Board Report, which has been taken on record by this Court during the pendency of this appeal.

13.The Tribunal has rightly given due consideration to the nature of injuries sustained by the first respondent/claimant and only thereafter has adopted the multiplier method for assessing the compensation payable to the first respondent/claimant towards loss of earning capacity. Though the first respondent/claimant may be the wife of a tort feasor, the law does not dis-entitle her to make claim for the injuries sustained by her as a result of an accident, caused by a vehicle, insured with the appellant/Insurance Company.

14.In the subject Insurance Policy, the Insurance Policy gives coverage for the pillion rider. In the instant case, the first respondent/ claimant was a pillion rider and the rider of the vehicle, insured with the appellant/Insurance Company was the Tort Feasor. Though the learned counsel for the appellant/Insurance Company vehemently contended that being the wife of a Tort Feasor, the first respondent/claimant is not entitled to claim compensation, the same is rejected by this Court as the insurance policy does not distinguish between a wife and any other third party claimant, as a pillion rider, they are entitled to claim compensation for the injures caused to them as a result of an accident, caused by a vehicle insured with the appellant/Insurance Company. Hence, the contention of the learned counsel for the appellant/Insurance Company, as stated supra, is rejected.

15.However, the Tribunal has erroneously awarded higher compensation towards pain and suffering at Rs.1,50,000/-. The first respondent/claimant was hospitalised only for a period of 12 days. There is no evidence available on record to enable the first respondent/claimant to claim a huge compensation of Rs.1,50,000/- towards pain and suffering. The accident happened in the year 2015. After giving due consideration to the evidence available on record, this Court reduces the compensation payable to the first respondent/claimant towards pain and suffering from Rs.1,50,000/- to Rs.1,00,000/-.

16.Even though the compensation awarded by the Tribunal towards Extra Nourishment charges at Rs.25,000/- is on the higher side, considering the fact that the Tribunal has awarded a meagre compensation towards Attender charges at Rs.10,000/-, this Court is not interfering with the same. The compensation awarded by the Tribunal towards Transportation expenses at Rs.10,000/- is a just compensation and it does not call for any interference. Though it may not be correct to award compensation towards Loss of expectation of life at Rs.50,000/- as there is no evidence placed on record, this Court is confirming the same due to the fact that the Tribunal, while awarding compensation of Rs.10,80,000/- towards Future income, has not granted any compensation towards Loss of future prospects. The Tribunal, while awarding compensation at Rs.10,80,000/- towards Future income, has erroneously adopted the multiplier of '15'. Since the first respondent/ claimant is aged 44 years, the correct multiplier to be adopted is '14'. If '14' multiplier is taken into consideration, the compensation towards Future income payable to the first respondent/claimant will be Rs.10,08,000/-. The compensation awarded by the Tribunal towards Medical expenses at Rs.2,86,918/- is supported by the medical bills and the same is confirmed by this Court.

17.For the foregoing reasons, the compensation awarded by the Tribunal at Rs.16,11,918/- is reduced to Rs.14,89,918/- as detailed hereunder:

| S.No. | Head | Amount awarded by this Court |
|---|---|---|
| 1. | Future income | Rs.10,08,000.00 |
| 2. | Pain and sufferings | Rs. 1,00,000.00 |
| 3. | Medical expenses | Rs. 2,86,918.00 |
| 4. | Rich and nutritious food | Rs. 25,000.00 |
| 5. | Attender charges | Rs. 10,000.00 |
| 6. | Transport expenses | Rs. 10,000.00 |
| 7. | Loss of expectation of life | Rs. 50,000.00 |
| | Total | Rs.14,89,918.00 |

18.Accordingly, the appellant/Insurance company is directed to deposit the reduced award amount of Rs.14,89,918/-, 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.304 of 2016 on the file of the Motor

Accidents Claims Tribunal, Additional Sub Court, Puducherry, within a period of four weeks from the date of receipt of a copy of this judgment.

19.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.

20.The first 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.304 of 2016 to the bank account of the first respondent/claimant directly through RTGS, within a period of one week thereafter. Accordingly, this appeal is partly allowed. No costs. Consequently, connected C.M.Ps are closed.

10.07.2024

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To

1.The Motor Accidents Claims Tribunal,
Additional Sub Court, Puducherry.

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

**ABDUL QUDDHOSE, J.**

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