IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 03.06.2024

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THE HONOURABLE **MR. JUSTICE ABDUL QUDDHOSE**

C.M.A.No.3519 of 2021

M/s.National Insurance Company Limited,
74-A, Paramathi Road,
Namakkal Town – 637 001. .. Appellant

Vs

1.Subbulakshmi
2.Logeswaran .. Respondents

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 24.10.2017 made in M.A.C.T.O.P.No.766 of 2015, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Namakkal.

For Appellant : Ms.N.B.Surekha

For Respondents : No appearance

JUDGMENT

This appeal has been filed by the Insurance Company challenging the award on the following grounds:-

(a) The Tribunal has failed to take note of the fact that the first respondent/claimant had earlier sustained injuries caused by another vehicle even prior to the injuries sustained by her caused by a vehicle insured with the appellant insurance company. According to the appellant, since the first respondent/claimant sustained injuries even earlier, she cannot claim compensation from the appellant insurance company, which has insured the Omni Car, as the accident was a subsequent accident.

(b) The Tribunal has erroneously adopted multiplier method in assessing the disability compensation, despite the fact that the first respondent/claimant was hospitalized only for a period of 8 days and she had incurred medical expenses only amounting to Rs.65,658/-.

(c) There is no evidence produced by the first respondent/claimant to prove that due to the injuries, the first respondent/claimant had suffered loss of earning capacity.

2. Insofar as the first ground is concerned, the appellant has not examined the driver of the vehicle, which is alleged to have caused injuries to the first respondent/claimant prior to the injuries caused by the vehicle insured with the appellant insurance company. Since no evidence was let-in and only based on preponderance of probability and based on the fact that the FIR was registered only against the driver of the vehicle insured with the appellant insurance company, the Tribunal has rightly held the appellant insurance company liable to pay the compensation to the first respondent/claimant. The Tribunal has given a correct finding on that aspect and there is no scope for interference by this Court with regard to the said ground raised by the appellant in this appeal.

3. Insofar as the quantum of compensation awarded by the Tribunal is concerned, as rightly contended by the learned counsel for the appellant insurance company in this appeal, since the first respondent/claimant was hospitalized only for a period of 8 days as seen from the discharge summary marked as Ex.P5 and since no evidence has been produced by the first respondent/claimant to prove that the injuries

caused to her has resulted in loss of earning capacity, the Tribunal ought not to have adopted the multiplier method in assessing the disability compensation to the first respondent/claimant. The Tribunal ought to have taken into consideration the fact that the first respondent/claimant has incurred medical expenses only to the extent of Rs.65,658/-, which will reveal that there is no loss of permanent earning capacity by the first respondent/claimant. In view of the said fact, the Tribunal ought to have assessed the disability compensation of the first respondent/claimant on percentage basis, instead of adopting multiplier method. The Tribunal has accepted the disability certificate issued by the doctor at 45% and has erroneously adopted the multiplier method and no medical board has also examined the first respondent/claimant.

4. For the foregoing reasons, this Court is of the considered view that the Tribunal has erroneously adopted the multiplier method and instead, it ought to have assessed the disability compensation based on percentage basis. The accident happened in the year 2015. For an accident having happened in the year 2015, it is settled practice to assess the disability compensation of the accident victim at Rs.4,000/- per

percentage of disability. There is also no contra evidence produced by the appellant insurance company to disprove the 45% disability assessed by the doctor, who was examined as a witness before the Tribunal. Therefore, this Court fixes the disability compensation payable to the first respondent/claimant at Rs.1,80,000/- calculated at Rs.4,000/- per percentage of disability for the 45% disability suffered by the first respondent/claimant. Therefore, instead of Rs.3,15,900/- awarded by the Tribunal to the first respondent/claimant towards loss of earning capacity, this Court awards a sum of Rs.1,80,000/- as disability compensation.

5. Insofar as compensation awarded by the Tribunal towards medical expenses at Rs.65,658/- is concerned, this Court is of the considered view that since the said sum is supported by medical bills, there is no scope for interference by this Court with regard to the same.

6. However, the compensation awarded by the Tribunal, under the heads of pain and suffering, loss of amenities, extra nourishment and transport expenses, is low, considering the nature of injuries sustained by

the first respondent/claimant and considering the fact that the first respondent was hospitalized for a period of 8 days. This Court, therefore, enhances the compensation towards pain and suffering from Rs.10,000/- to Rs.25,000/-; towards loss of amenities from Rs.10,000/- to Rs.25,000/-; towards extra nourishment from Rs.5,000/- to Rs.10,000/-; and towards transport expenses from Rs.5,000/- to Rs.10,000/-.

7. For the foregoing reasons, the compensation awarded by the Tribunal is reduced from Rs.4,11,558/- to Rs.3,15,658/- as detailed hereunder:-

Disability compensation	- Rs.1,80,000/-
Medical expenses	- Rs.65,658/-
Pain and suffering	- Rs.25,000/-
Loss of amenities	- Rs.25,000/-
Extra nourishment	- Rs.10,000/-
Transport expenses	- Rs.10,000/-
Total	- Rs.3,15,658/-

8. In the result, the Civil Miscellaneous Appeal is disposed of and the impugned award passed by the Tribunal is modified. The appellant Insurance Company is directed to deposit the entire award amount as

awarded by this Court to the credit of MACT.O.P.No.766 of 2015 on the file of Motor Accident Claims Tribunal, Additional District Judge, Namakkal, together with interest at 7.5% per annum from the date of claim petition till the date of realization, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said compensation amount, along with accrued interest therein, to the bank account of the first respondent/claimant through RTGS/NEFT transfer. No Costs. Consequently, connected CMP.No.20375 of 2021 is closed.

03.06.2024

Index: yes/no
Neutral citation: yes/no
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To

Motor Accidents Claims Tribunal,
Additional District Judge,
Namakkal.

ABDUL QUDDHOSE,J.

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