



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2023

CORAM:

The HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.Nos.2697 of 2014 and 1054 of 2015

Bajaj Allianz General Insurance Co. Ltd.,
Branch Office Address at,
38, Kamaraj Street, Rajaji Road,
West Tambaram, Chennai-600 044. ...Appellant in CMA.No.2697 of 2014

Beulah Sweety ...Appellant in CMA.No.1054 of 2015

Vs.

1. Beulah Sweety
2. Gopalakrishnan
3. Venkatesan
4. Kalsar College of Engineering,
Rep., by its the Principal,
109, Mannur, Valarpuram Post,
Sriperumpudur Taluk,
Kanchipuram District-602 105. ... Respondents in CMA.No.2967 of 2014

1. Gopalakrishnan
2. Venkatesan
3. Bajaj Allianz General Insurance Co. Ltd.,
4. Branch Office Address at,
38, Kamaraj Street, Rajaji Road,
West Tambaram, Chennai-600 044.
Kalsar College of Engineering,
Rep., by its the Principal,
109, Mannur, Valarpuram Post,
Sriperumpudur Taluk,
Kanchipuram District-602 105. ... Respondents in CMA.No.1054 of 2015



Prayer in C.M.A.No.1054 of 2015: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 31.01.2014 made in M.C.O.P.No.1733 of 2012 on the file of the Motor Accident Claims Tribunal, Special Sub Court at Coimbatore.

Prayer in C.M.A.No.2697 of 2014: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 31.01.2014 made in M.C.O.P.No.1733 of 2012 on the file of the Motor Accident Claims Tribunal, Special Sub Court at Coimbatore.

In C.M.A.No.1054 of 2015:

For Appellant : M/s.Ma.P.Thangavel

For Respondents : Mr.S.Arunkumar for R.3
: R1, R2 and R4 -Exparte

In C.M.A.No.2697 of 2014:

For Appellant : Mr.S.Arunkumar

For Respondents : M/s.Ma.P.Thangavel

COMMON JUDGMENT

C.M.A.1054 of 2015 is filed by the claimant seeking enhancement of compensation awarded in MCOP.No.1733 of 2012 and C.M.A.No.2694 of 2014 is filed by the Insurance Company for reducing the compensation awarded in favour of the claimant.



2. Both the Appeals are arising out of one award, hence both the Appeals are taken up together and common judgment is passed.

3. The parties are referred to hereunder according to status and ranking before the Tribunal.

4. The case of the claimant is that the claimant is 19 years old student of Kalsar Engineering College, Kanchipuram. On 25.08.2011, she was returning from Ooty, Hindustan Photo Films Company after her Industrial Visit in a Mini Bus bearing Registration No.TN-22-BD 8710 along with other students at about 02.30 p.m., while they reached near Head Post Office, Koodalur, the driver of the mini bus driven the vehicle in high speed in a rash and negligent manner, lost the control and hit on the left hand side wall of the road which resulted in causing severe injuries to the claimant herein including amputation of her left hand, hence come forward with the claim petition seeking compensation for a sum of Rs.15,00,000/- by the petitioner under Section 166 of Motor Vehicles Act.

5. The owner and driver of the vehicle were remained exparte and have not contested the claim petition. Third respondent insurer of the mini bus filed the counter affidavit and contested stating that about 25 passengers



were travelled in the vehicle which is more than the permitted capacity of the Maxi Cab, hence there is a violation of the policy condition, thereby, the insurance company is not liable to pay the compensation. It is further contended that the driver was also not having the valid driving license at the time of accident and the compensation claimed under the various heads are also on higher side, hence prays for dismissal of the claim petition.

6. In the accident more than seven persons sustained injuries and they all filed separate claim petitions before the Tribunal, Coimbatore and all the cases were taken up together and common evidence was recorded and common award also passed by the Tribunal.

7. Before the Tribunal, on the side of the claimants P.W.1 to P.W.9 were examined and Exs.P.1 to P.25 were marked in support of their claim. On the side respondent insurance company R.W.1 was examined and Exs.R.1 to R.3 were marked in support of their contention.

8. Based on the evidence and the records, the Tribunal held that the negligent act of the driver of the Maxi cab is responsible for the accident.

With regard to the quantum of compensation, the Tribunal has quantified the compensation and awarded a sum of Rs.26,41,000/-. Aggrieved over the



award of compensation, the claimant has filed CMA.No.1054 of 2015 for enhancement of compensation and insurance company has filed CMA No.2697 of 2014 for reduction of the compensation awarded in favour of the claimant.

9. Learned counsel for the claimant has submitted that the injured who was aged about 19 years is a Engineering college student has lost her left upper limb. The Tribunal has not properly awarded the compensation for the disability and also under the head loss of earning capacity. Learned counsel also contended that the compensation awarded under heads pain and suffering, future medical expenses are on the lower side and the same needs to be modified. Learned counsel also relied on the judgment of the Hon'ble Apex Court in ***Mohd. Sabeer alias Shabir Hussain vs. Regional Manager, U.P.State Road Transport Corporation***, reported in 2022 SCC OnLine SC 1701, and the judgment of this Court in ***Oriental Insurance Co. Ltd vs. Minor Soundarya***, reported in 2019 (1) TN MAC 197 (DB) in support of her claim.

10. Learned counsel for the Insurance company has submitted that the Tribunal has improperly accepted the disability putforth by the claimant



herein and the compensation awarded under the other heads are also on higher side and prays to reduce the compensation awarded in favour of the claimant.

11. I have considered the submissions made by both sides and perused the records.

12. Admittedly, the claimant herein has lost left upper limb in the accident. On perusal of the Accident Register which is marked as Ex.P.16 and the Discharge Summary which is marked as Ex.P.17, shows that the claimant has sustained crush injury on her left upper limb with total amputation at the level of proximal 3rd – middle 3rd junction of forearm. The doctor who treated the claimant was examined as P.W.9 and he stated that if the hand left above elbow is more than 20.32 cm, the permanent disability is only 70%. In Ex.24 there is no mention about the measurement of the left hand above the elbow after amputation. Based on the this evidence, the Tribunal has fixed the permanent disability at 70%. This fixation of the permanent disability at 70% has been challenged by the claimant herein. According to the learned counsel for the claimant, permanent disability should be fixed at 80% and reduction of the same is not proper.



13. The Hon'ble Apex Court in ***Raj Kumar vs. Ajay Kumar***

reported in (2011) 1 SCC 343 has laid down the guidelines to assess the disability of the injured persons and the doctor who has given treatment shall adduce evidence regarding the extent of the permanent disability and the same shall be given due weightage. It is the case of amputation. It is also held in the above referred judgment that if the Court have any difficulty in assessing the disability in case related to amputation, the schedule in the Employees Workman compensation Act 1923 shall be taken into account. In P.W.8 the Doctor in his evidence has stated that on 25.08.2011, the injured claimant was brought to the hospital for the injuries sustained by her in the road traffic accident and in examination it is found that hands above the left elbow was totally crushed and they have conducted surgery and left hand above the elbow was removed and thereafter she was discharged from hospital on 27.08.2011. Once again she was examined by the P.W.8 for the purpose of assessing the disability and by following the guidelines, the permanent disability was assessed at 80% and disability certificate was also marked as Ex.P.24. In the cross examination, it is admitted by him that the extent of the hand which was amputated has not been mentioned in the medical records, however it was suggested to him that the hand amputated was less than the 20.32 cm from the acromion and he has denied the same



WEB COPY

14. On a perusal of the schedule of Employees Workman Compensation Act shows that if the injured hand is more than 20.32 cm from the acromion, then the assessment shall be fixed at 80% if it is less than 20.32 cm and the same shall be assessed as 70%. Even though, it is admitted that length of the amputated hand has not been properly mentioned in the discharge summary or in the disability certificate, this Court finds no infirmity in the order of the Tribunal in accepting the evidence of the P.W.6 with regard to the disability. This Court in ***Oriental Insurance Co, Ltd vs. Mionr Soundarya*** reported in 2019 (1) TN MAC 197 (DB) has held that if the disability is 85%, the loss of earning capacity is absolute and based on the judgment of the Hon'ble Apex Court passed in ***V.Mekala v. M.Malathi & another*** reported in 2014 (2) TN MAC 6 (SC), has held that for a 16 year old 11th standard student who suffered 70% disability, the notional income was fixed at Rs.6,000/- per month and Future Prospects was fixed at 40%. The Hon'ble Apex Court in ***Mohd. Sabeer alias Shabir Hussain vs. Regional Manager, U.P. State Road Transport Corporation***, reported in 2022 SCC OnLine SC 1701, has held that for the injured who was aged about 37 years with permanent disability of 70 % and considering the nature of avocation of the injured has awarded Rs.2,00,000/- as compensation for



Pain and Suffering, Rs.2,00,000/- as compensation for Loss of Amenities of Life and Rs.2,00,000/- as compensation for Disability and Disfigurement. It is also held that disability adds to discrimination faced by the persons from socially or economically weaker sections of the society and in such cases, the Tribunals and Court should award of the compensation liberally.

15. In the case on hand, the injured was 19 years, Engineering Student who lost her left upper limb and the accident was happened in the year 2011 and the Tribunal has fixed notionally income of the injured as Rs.10,000 per month and has not awarded future prospects. The Hon'ble Division Bench of this Court ***Oriental Insurance Co, Ltd vs. Mionor Soundarya*** has fixed the notional income for 8 years old child as Rs.10,000 per month. The Hon'ble Apex Court in ***V.Mekala vs. M.Malathi and another*** reported in 2014 ACJ 1441, has fixed the notional income of the 16 years old injured as Rs.15,000/- per month. In this case also the claimant is Engineering student and considering the academic standard and injured is a girl, this Court is of the view that considering the year of accident, fixing of the notional income at Rs.12,000/- per month would be proper and future prospects is fixed at 40%. Therefore, Loss of future earning capacity of the claimant is modified to Rs.25,40,160 ie $(12,000 + (12,000 \times 40/100)) \times 12 \times$



18 70/100). The Tribunal has also awarded Rs.1,50,000/- under the head Pain and Suffering and Rs.1,50,000/- under the head Loss of Amenities. The Hon'ble Apex Court in *Mohd. Sabeer alias Shabir Hussain vs. Regional Manager, U.P. State Road Transport Corporation*, cited supra has awarded Rs.2,00,000/- as compensation for Loss of Amenities of Life and Rs.2,00,000/- as compensation for Pain and Suffering, hence this Court inclined to enhance the Rs.2,00,000/- under the head Pain and Suffering and Rs.2,00,000/- under the head Loss of Amenities. Tribunal has also awarded Rs.3,00,000/- under the head marital alliance since the claimant is being younger lady and this Court is not inclined to disturb the same. This Court is of the view that the award of the compensation under the other heads are just, fair and proper and the same is hereby confirmed.

16. In the light of the above discussion, the award of the Claims Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Compensation for Loss earning capacity	15,12,000/-	25,40,160/-	Enhanced



2.	Medical Expenses	3,19,000/-	3,19,000/-	Confirmed
3.	Pain and suffering	1,50,000/-	2,00,000/-	Enhanced
4.	Loss of amenities and enjoyment of life	1,50,000/-	2,00,000/-	Enhanced
5.	Future Medical Expenses	2,00,000/-	2,00,000/-	Confirmed
6.	Extra Nourishment	5,000/-	5,000/-	Confirmed
7.	Transport	5,000/-	5,000/-	Confirmed
8	Compensation for Loss of proper marital alliance	3,00,000/-	3,00,000/-	Confirmed
	Total	Rs.26,41,000/-	Rs.37,69,160/-	Rs.11,28,160/- Enhanced

17. In fine, the claimant would be entitled to an enhanced compensation of Rs.37,69,160/-. Insurance Company directed to pay the above said enhanced compensation amount of Rs.37,69,160/- along with accrued interest at the rate of 7.5% per annum from the date of petition till the date of its realization along with proportionate costs, less the amount, if any, deposited within six weeks from the date of receipt of copy of the order.



The claimant thereafter will be entitled to withdraw the amount by making appropriate application.

18. This Civil Miscellaneous Appeal filed by the claimant is partly allowed and the Civil Miscellaneous Appeal filed by the Insurance Company is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

20.09.2023

jai

Index : Yes/No

Neutral Citation : Yes/No

To:

1.The Motor Accident Claims Tribunal,
Sub Court at Coimbatore.

2.The Section Officer,
VR Section,
High Court,
Madras.



WEB COPY



K.RAJASEKAR, J.

jai



WEB COPY



14

C.M.A.Nos.2697 of 2014 and 1054 of 2015

20.09.2023