



C.M.A.No.2632 of 2023

IN THE HIGH OF JUDICATURE AT MADRAS

DATED : 29.02.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.2632 of 2023

Miss. D.Saritha

... Appellant

Vs.

1. B.Ashok

2. The Manager,

Tata AIG General Insurance Company Ltd.,

2nd Floor, Samson Towers,

No.403/1 Pantheon Road,

Sulaiman Zackria Avenue,

Egmore, Chennai – 600 008.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 07.03.2023 made in M.C.O.P.No.5464 of 2019, on the file of the Motor Accident Claims Tribunal/II Judge, Court of Small Causes, Chennai.



C.M.A.No.2632 of 2023

For Appellant : Mr.G.Balaji Prasad

Respondent-1 : Notice dispensed with

For Respondent-2 : Mr.J.Michael Viswasam

JUDGEMENT

This Civil Miscellaneous Appeal is preferred by the appellant/claimant aggrieved by the award passed by the Motor Accident Claims Tribunal (hereinafter, referred to as 'the Claims Tribunal') in M.C.O.P.No.5464 of 2019 dated 07.03.2023.

2. On 29.09.2005, at 16.15 hours, when the claimant was a Pedestrian, walking along with three women from North to South on ECR Road, Neelangarai, Chennai, a Car, viz., Tata Indica, bearing Regn.No.TN-07-U-9819, proceeding from Chennai towards Mahabalipuram North to South was driven by its driver in a rash and negligent manner and dashed against the four women (inclusive of the appellant/claimant) from behind, as a result, all the four women were thrown off and sustained injuries. Hence, the appellant/claimant, who is one among such four victims filed a Petition



C.M.A.No.2632 of 2023

seeking a sum of Rs.2,00,00,000/- as compensation.

WEB COPY

3. The Claims Tribunal, on consideration of both oral and documentary evidence held that the accident occurred due to rash and negligence on the part of the driver of the first respondent's Vehicle (Car) and hence, directed the second respondent/Insurance Company, viz., the Insurer to pay a compensation of Rs.29,37,900/- to the claimant together with interest at the rate of 7.5% p.a. from the date of filing of the Petition till the date of realization and to recover the same from the first respondent, owner of the offending Vehicle, insured.

3.1 The break up details of the award passed by the Claims Tribunal under various head is as follow:-

<i>Sl. No.</i>	<i>Heads</i>	<i>Award</i>
1	Disability	Rs.24,19,200/-
2	Pain and Sufferings	Rs. 1,00,000/-
3	Loss of Earning during Treatment	Rs. 90,000/-
4	Medical Expenses	Rs. 78,649/-
5	Loss of Amenities	Rs. 1,00,000/-



C.M.A.No.2632 of 2023

<i>Sl. No.</i>	<i>Heads</i>	<i>Award</i>
6	Attender's Charges	Rs. 50,000/-
7	Transportation	Rs. 50,000/-
8	Extra Nourishment	Rs. 50,000/-
		Rs.29,37,849/-

4. Questioning the quantum of compensation awarded by the Claims Tribunal, the present Appeal has been preferred by the appellant/claimant seeking for enhancement.

5. Since the present Appeal is filed only questioning the quantum of compensation, it is not necessary for this Court to traverse into the other aspects of the award passed by the Claims Tribunal.

6. Mr.G.Balaji Prasad, learned counsel appearing for the appellant/claimant would submit that due to the accident, the appellant/claimant sustained i) Fracture of D-2 Vertebra in Dorsal Spine resulting in **Paraplegia (Paralyzed below waist)**; ii) Fracture and abrasions all over the body; iii) Lacerations and abrasions all over the body, that due to the accident she has sustained disability at 100%; that but the Doctors of the



C.M.A.No.2632 of 2023

Government Institute of Rehabilitation assessed the disability sustained by the appellant/claimant only at 80% and issued a Disability Certificate in that regard, which has been marked as Ex.P.7; that the Claims Tribunal based on the same determined the compensation under the head, 'Disability' which has resulted in awarding such an inadequate compensation of Rs.24,19,200/- under the said head. The learned counsel further submitted that the accident occurred in the year 2005 and right from the date of the accident, she is suffering, as her body below hip got completely paralysed and became bed ridden. Therefore, the learned counsel submitted that the disability sustained by the appellant/claimant has to be taken at 100%.

6.1 The learned counsel further submitted that even the quantum of compensation awarded under the other conventional heads, i.e i) Pain and Sufferings; ii) Attender Charges; iii) Transportation Charges and iv) Extra Nourishment are on the lower side and as against the principles laid down by the Hon'ble Supreme Court, in the cases of i) **Chaus Taushif Alimiya etc. vs. Memon Mahmmad Umar Anwarbhai and others** reported in **2023 SCC Online SC 148** and ii) **Rahul Ganpatrao Sable Vs. Laxman Maruti**



C.M.A.No.2632 of 2023

Jadhav (Dead) through Lrs. reported in **2023 ACJ 1465** and therefore, prays for appropriate enhancement.

6.2 Further, the learned counsel for the appellant submitted that the Claims Tribunal also failed to award any compensation towards Loss of Marital Prospects and Future Medical Expenses, therefore, prayed for awarding just and fair compensation under the said head.

7. Per contra, Mr.J.Michael Viswasam, learned counsel appearing for the second respondent/Insurance Company vehemently opposed the contentions putforth by the learned counsel appearing for the appellant by contending that though the appellant/claimant claimed to have worked as Lab Technician at Sneha Laboratory Service, situated at Tiruvanmiyur, and earned a sum of Rs.8,000/- however, in the absence of income proof produced by the appellant, the Claims Tribunal ought not to have taken the notional monthly income at Rs.8,000/- which is against the law laid down by the Hon'ble Supreme Court, in **Syed Sadiq Vs. United India Insurance Company**, reported in **2014 (1) TNMAC 459 (SC)**, inasmuch as, in the



C.M.A.No.2632 of 2023

said case, for a claimant, who was only a vegetable vendor and met with a accident occurred in the year 2008, the Hon'ble Supreme Court fixed the notional monthly income only at Rs.6,500/-.

7.1 The learned counsel further submitted that the Claims Tribunal ought not to have taken into consideration of the value of multifarious domestic services rendered by the appellant to her family and awarded Rs.4,000/- towards Future prospects, which has resulted in awarding such an exorbitant sum of Rs.24,19,200/- as compensation under the head, 'Disability'. Therefore, the learned counsel contended that the compensation awarded by the Claims Tribunal under the head, 'Disability' is, in fact, on the higher side and not low, as contended by the appellant and requires appropriate reduction and at any cost, it should not be above Rs.10,000/- p.m. Further, the learned counsel submitted that the photostate copy of the Diploma Certificate produced by the appellant, marked as Ex.P.11, need not be relied on, since, the veracity of Ex.P.11 has not been tested properly.

8. Refuting the above said contention, the learned counsel appearing for the appellant/claimant contended that, the present Appeal is preferred



C.M.A.No.2632 of 2023

only by the claimant and not by the Insurance Company and therefore, the Insurance Company has no locus standi to raise any questions, if at all, there is any dispute with regard to the enhancement of compensation, they can putforth the same only by way of Cross Appeal/Cross Objection, and in the absence of the same, it is not open to them to raise any contentions/questions, that too, in an Appeal preferred by the claimant.

9. In reply, the learned counsel for the second respondent/Insurance Company would submit that though the present Appeal is preferred by the claimant, the same would not curtail the power of the respondent/Insurance Company to putforth their contentions, leaving it open to the Court for reappreciation. Thus, by contending so, the learned counsel insisted the Court to re-appreciate the evidence and to re-determine the notional monthly income of the appellant/claimant fixed by the Claims Tribunal.

10. I have given due considerations to the submissions made by the learned counsel appearing for the appellant/claimant and the learned counsel for the second respondent/Insurance Company and perused the materials



C.M.A.No.2632 of 2023

placed on record.

WEB COPY

Disability :-

11. It is an admitted fact that due to the accident, which occurred on 29.05.2005, the appellant/claimant sustained following injuries:-

- i) Fracture of D-2 Vertebra in Dorsal Spine resulting in **Paraplegia**
(Paralyzed below waist)
- ii) Fracture and abrasions all over the body
- iii) Lacerations and abrasions all over the body.

12. Now, it is the grievance of the learned counsel for the appellant/claimant that the Claims Tribunal, while determining compensation under the head, 'Disability' has taken the disability only at 80% as per Ex.P.7/Disability Certificate, but, according to the learned counsel, the disability sustained by the appellant has to be taken at 100%, since, due to the accident, the appellant/claimant has sustained whole body functional disability, which is permanent in nature and that, even the



C.M.A.No.2632 of 2023

compensation awarded under other conventional heads are on the lower side and requires appropriate enhancement.

13. This Court, in order to find out whether the disability sustained by the appellant/claimant at the time of the accident has resulted in whole body functional disability at 100%, vide order dated 14.02.2024, directed the appellant/claimant to appear before this Court on 29.02.2024 (i.e.today) Accordingly, the appellant/claimant appeared before this Court. It is so pathetic to see that the appellant/claimant has been brought inside the Court Hall through a Wheelchair and during the course of interaction, which the Court had with the appellant/claimant, it transpired that due to the unfortunate accident, the appellant/claimant, who was aged 22 years at the time of accident, is affected by **Paraplegia (Paralyzed below waist)**; that though the accident occurred in the 2005, even after passage of 19 years, (i.e. nearly two decades), there is no improvement in her health condition as she is still confined to bed and for all these years, she has been suffering both physically and mentally, as she got completely bed ridden, and she cannot stand/walk on her own and only through a wheelchair, she can move



C.M.A.No.2632 of 2023

anywhere, for which purpose even, she need an Assistant/Helper; that above all, she is attending her nature calls only through the urine bag and even for defecate; that for each and everything she has to depend on others. Thus, taking into consideration of all these aspects, this Court is inclined to take the disability at 95%.

13.1 So far as fixation of notional monthly income of the appellant is concerned, it is seen that the Claims Tribunal taking into consideration of the aspect that the appellant/claimant worked as Lab Technician in Sneha Laboratory Service and also rendered multifarious domestic services to her family, fixed a sum of Rs.10,000/-as notional monthly income of the appellant/claimant and this Court does not find any infirmity in the same. In fact, this Court feels that it ought to have been more considering the fact that due to the disability sustained by the appellant, the appellant can no longer do any services rather she would be in need of services of others, to be specific, she has to engage a servant for domestic services, for which also, she has to incur additional expenditures.



C.M.A.No.2632 of 2023

13.2 Therefore, the objection raised by the learned counsel

appearing for the second respondent/Insurance Company with regard to the fixation of notional monthly income of the appellant at Rs.10,000/- by the Claims Tribunal as the same is against the ratio laid down by the Hon'ble Supreme Court in **Syed Sadiq's case (cited supra)** is untenable for the reason that in the said case, the claimant is just a vegetable vendor, whereas, in the present case, the claimant has worked as a Lab Technician and the vegetable vendor cannot be treated on par with a Lab Technician. Similarly, the contention raised by the second respondent/Insurance Company as regards the authenticity of Ex.P.11/Diploma Certificate that the said Certificate is only a photostate copy, which shows that the appellant has completed the Diploma in Medical Lab Technician Course under TAHDCO Self Employment Training Subsidy Scheme from 01.01.2003 to 31.12.2023 and normally, such course would commence only during April or May for the concerned academic year, and certificates would be issued in June or July, whereas, in the said Certificate, it is stated, as if, the appellant completed the Course only during 31.12.2003 and therefore, its validity has to be tested is also not tenable, inasmuch as, this Court is proceeding to



C.M.A.No.2632 of 2023

determine the compensation not on the basis of the course Completion Certificate but only on the basis of avocation carried out by the appellant.

13.3 Further, this Court would like to point out herein that where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Claims Tribunal, the Court will allow the appeal, if it is by the claimant and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the Court is lesser than the compensation awarded by the Claims Tribunal, the Court will dismiss any appeal by the claimant for enhancement, but allow any appeal by owner/insurer for reduction. Therefore, this Court cannot obviously reduce the compensation in an appeal by the claimant seeking enhancement of compensation. Further, it is pointed out that, in case, if it is an Appeal filed by the Insurer, if this Court proposes to reduce the award, the claimant can certainly entitled to defend the award passed by the Claims Tribunal by pointing out errors and



C.M.A.No.2632 of 2023

omissions in the award, even in the absence of any Appeal or Cross-Objection. Therefore, as rightly pointed out by the learned counsel for the appellant, second respondent/Insurance Company has no locus standi to meddle into the award passed by the Tribunal on the aspect of quantum, in a Claimant's Appeal. Hence, the contentions raised by the learned counsel for the second respondent/Insurance Company are brushed aside.

13.4 Thus, for the aforesaid reason, this Court confirms the notional monthly income fixed by the Claims Tribunal at Rs.10,000/-. Accordingly, by fixing the notional income of the appellant at Rs.10,000/- adding 40% towards future prospects; taking the disability at 95% and applying multiplier of '18', the compensation towards Disability is re-determined as follows:-

**Rs.10,000/- + 40% (Rs.4,000/-) x 95/100 x 12 x 18 =
Rs.28,72,800/-.**

13.5 Consequently, the compensation awarded by the Claims Tribunal towards Disability at **Rs.24,19,200/-** is modified and enhanced to **Rs.28,72,800/-.**



C.M.A.No.2632 of 2023

WEB COPY ii) **Pain and Sufferings:-**

14. So far as the compensation awarded by the Claims Tribunal towards Pain and Sufferings at a sum of Rs.1,00,000/- is concerned, as rightly submitted by the learned counsel for the appellant/claimant, the same is low and against the ratio laid down by the Hon'ble Supreme Court in the case of **Chaus Taushif Alimiya (supra)**, wherein, a sum of Rs.5,00,000/- was awarded to the Appellant therein, viz., Alimiya towards Pain and Sufferings. Therefore, following the said decision and considering the fact that the appellant/claimant is suffering from 2005 onwards, (i.e. for the past 19 years) and that nobody can suggest by arithmetical calculation to establish as to what would be the exact sum of money which would represent such a thing as the pain and suffering, which the appellant has undergone by reason of an accident right from her adulthood, its extent, length and duration, which cannot be compensated in monetary value, this Court is inclined to award a sum of Rs.5,00,000/- under the said head. Therefore, the sum of Rs.1,00,000/- awarded by the Claims Tribunal is modified and enhanced to **Rs.5,00,000/-**.



C.M.A.No.2632 of 2023

WEB COPY ii) **Attender's Charges :-**

15. Insofar as the compensation to be determined under the said head is concerned, there is no dispute that due to the disability sustained by the appellant/claimant at the time of the accident, she got paralyzed below waist and could not stand or walk on her own and require an attendant all her life. Therefore, it is clear that the condition of the appellant is no different from that of **Alimiya's case (cited supra)**, in which case, the Hon'ble Supreme Court has awarded Rs.10,80,000/- as compensation under the head 'Attendant Charges', and the said intra Court's decision was followed in **Rahul Ganpatrao Sable (cited supra)**. Hence, following the ratio laid down in the aforesaid two cases, this Court is inclined to fix a sum of Rs.5,000/- per month for the Attender and by applying the multiplier of 18, the annual charges for the Attendant is determined as follows:-

$$\text{Rs.5,000/-} \times 18 \times 12 = \text{Rs. 10,80,000/-}$$

15.1 Consequently, the sum of Rs.50,000/- awarded by the Claims Tribunal under the said head is modified and enhanced to **Rs.10,80,000/-**.



C.M.A.No.2632 of 2023

WEB COPY

iii) Future Medical Expenses:

16. As rightly pointed out by the learned counsel appearing for the appellant/claimant the Tribunal has failed to award any compensation under the said head. Therefore, this Court taking into consideration of the fact that the appellant/claimant is still undergoing treatment and incurring expenditures towards regular consultation and medication, is inclined to award a sum of Rs.1,00,000/- under the said head.

iv) Marital Prospects:-

17. Then, coming to the contentions put forth by the learned counsel for the appellant/claimant that the Claims Tribunal has failed to award compensation on the component of Marital Prospects, this Court, following the decision rendered in **Alimiya's case (cited supra)**, wherein, the Hon'ble Supreme Court following it's intra Court's decision in **Master Ayush Vs. Branch Manager, Reliance General Insurance Company, in Civil Appeal No.2205-2206 of 2022, dated 29.03.2022**, awarded a sum of Rs.3,00,000/- towards Loss of Marriage Prospects, which decision was in



C.M.A.No.2632 of 2023

fact followed in **Rahul Ganpatrao Sable (cited supra)** is inclined to award the said amount to the appellant herein as well, since, the appellant's plight is also similar to that of **Alimiya (referred to above)**. Accordingly, a sum of Rs.3,00,000/- is awarded as compensation to the appellant under the head, Marital Prospects.

Other Conventional Heads:-

18. So far as the compensation awarded by the Claims Tribunal under the heads i) Loss of Earning During Treatment at Rs.90,000/- ii) Medical Expenses at Rs.78,649/- ; iii) Loss of Amenities at Rs.1,00,000/- iv) Transportation at Rs.50,000/- and v) Extra Nourishment at Rs.50,000/-, this Court finds the said compensation to be just and fair and the same stands confirmed.

19. Thus, the total compensation payable to the appellant/claimant under various Heads is as hereunder:-



C.M.A.No.2632 of 2023

<i>Sl. No.</i>	<i>Heads</i>	<i>Tribunal Award</i>	<i>High Court Award</i>	<i>Confirmed /Awarded/ Enhanced/ Set aside</i>
1	Disability	Rs.24,19,200/-	Rs.28,72,800/-	Enhanced
2	Pain and Sufferings	Rs. 1,00,000/-	Rs.5,00,000/-.	Enhanced
3	Loss of Earning during Treatment	Rs. 90,000/-	Rs.90,000/-	Confirmed
4	Medical Expenses	Rs.78,649/-	Rs.78,649/-	
5	Loss of Amenities	Rs. 1,00,000/-	Rs.1,00,000/-	Confirmed
6	Attender's Charges	Rs. 50,000/-	Rs.10,80,000/-	Enhanced
7	Transportation	Rs. 50,000/-	Rs.50,000/-	Confirmed
8	Extra Nourishment	Rs. 50,000/-	Rs.50,000/-	Confirmed
9	Furture Medical Expenses	-	Rs.1,00,000/-	Awarded
10	Marital Prospects	-	Rs.3,00,000/-	Awarded
	Total	Rs.29,37,849/-	Rs.52,21,449/-	Enhanced

20. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Claims Tribunal at **Rs.29,37,849/-** is hereby modified and enhanced to **Rs.52,21,449/-** together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The second respondent/Insurance Company

19/21



C.M.A.No.2632 of 2023

is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight (8) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellant is permitted to withdraw the compensation now determined by this Court along with interest and costs, less the amount if any, already withdrawn by making appropriate application before the Claims Tribunal for withdrawal. The appellant is directed to pay the necessary Court fee, if any, on the enhanced award amount. No costs.

29.02.2024

sd

Index : Yes/No

To
The II Judge, Court of Small Causes,
Motor Accident Claims Tribunal, Chennai.

Krishnan Ramasamy,J.,

sd

20/21



WEB COPY



C.M.A.No.2632 of 2023

C.M.A.No.2632 of 2023

29.02.2024