



*C.M.A(MD)No.1451 of 2016*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.06.2023**

CORAM

**THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR**

**C.M.A(MD)No.1451 of 2016**

Thirunavukkarasu

... Appellant/Petitioner

Vs.

1.Rajakannu

2.The Manager,

Reliance General Insurance Company Ltd.,  
80 Feet Road, Anna Nagar Extension,  
Madurai-625 020.

... Respondents/Respondents

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree, dated 02.09.2016 passed in M.C.O.P.No.1366 of 2012 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Madurai.

For Appellant : Mr.I.Robert Chandrakumar

For R2 : Mr.V.Sakthivel

**JUDGMENT**

The present appeal has been filed by the claimant seeking enhancement of compensation.



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2. According to the claimant, he sustained injuries in an accident that took place on 10.02.2012. According to the claimant, he is a Village Assistant and he is in service of Government of Tamil Nadu, drawing a salary of Rs.10,000/- per month. In the said accident, the claimant has lost his 3 toes and he had sustained 54% disability as per Exhibit P.15 disability certificate. The medical records indicate that he has been implanted with plates and screws. Therefore, according to the claimant, the tribunal was not right in reducing the said disability from 54% to 30%. Considering the fact that he has been implanted with plates and screws, the tribunal ought to have awarded more amount towards future medical expenses. He further contended that in view of the fact that he has to undergo a second surgery, the tribunal ought to have awarded more amount under the heads of attender charges, pain and suffering and extra nourishment.

3. Per contra, the learned counsel appearing for the insurance company had contended that even assuming that the claimant has lost 3 toes, the same cannot be considered to be a functional disability and for the mere loss of 3 toes in one of the legs, doctor has certified 54% which is highly excessive. Therefore, the learned counsel appearing for the



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respondent contended that the tribunal was right in fixing the disability at 30%. He further contended that no records have been placed before the Court to establish that the claimant has to undergo a second surgery for exit of steel implanted. Hence, he prayed for confirming the award passed by the tribunal.

4. I have carefully considered the submission made on either side.

5. A perusal of Exhibit P.15 indicates that it is a disability certificate issued by the doctor disclosing that there is a permanent disability of 54%. It also points out that he cannot work as before. A perusal of the said certificate indicates that there is a malunion and he has got loss of power in the left ankle with regard to the mobility and the claimant will not be able to go up and down in a stair case and his stability is affected. Calculating the loss of toes number 3,4 and 5, the doctor has certified the disability to an extent of 54%. In the said certificate, the doctor has also pointed out that the claimant requires another surgery for removal of wire which will cost him Rs.20,000/-. He has further pointed out that the claimant requires a special footwear which will cost him Rs.2,000/- once in 2 years.



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6. Considering Exhibit P.15 certificate, this Court is of the opinion that though the claimant would not have incurred physical disability to an extent of 54%, certainly the disability could be assessed at 40%. However, the tribunal was not right in fixing the disability at 30%. Therefore, towards permanent disability, this Court is inclined to award a sum of (40x3,000=1,20,000) Rs.1,20,000/- instead of Rs.90,000/-. As far as pain and suffering, extra nourishment and attender charges are concerned, considering the fact that he has to undergo another surgery, the award under these heads have to be enhanced. The compensation towards attender charges shall be enhanced from Rs.15,000/- to Rs.20,000/-, pain and suffering shall be enhanced from Rs.20,000/- to Rs.25,000/- and extra nourishment shall be enhanced from Rs.5,000/- to Rs.10,000/-. As per the evidence of P.W.2, the claimant will incur a sum of Rs.20,000/- towards future medical expenses. Therefore, the future medical expenses have to be enhanced from Rs.10,000/- to Rs.20,000/-.

Therefore, the compensation amount is modified as follows:

|                                                |                 |
|------------------------------------------------|-----------------|
| Partial permanent disability 40x3000           | : Rs.1,20,000/- |
| Medical expenses as per Exhibits P.10 and P.11 | : Rs.2,21,150/- |
| Attender charges                               | : Rs. 20,000/-  |
| Pain and suffering                             | : Rs. 25,000/-  |
| Extra nourishment                              | : Rs. 10,000/-  |



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|                               |                 |
|-------------------------------|-----------------|
| Future medical expenses       | : Rs. 20,000/-  |
| Transport to hospital         | : Rs. 26,500/-  |
| Damage to clothe and articles | : Rs. 500/-     |
|                               | -----           |
| Total                         | : Rs.4,43,150/- |

7. In view of the above said deliberations, the award of the tribunal is enhanced from Rs.3,88,150/- (Rupees Three Lakh Eighty Eight Thousand and One Hundred and Fifty only) to Rs.4,43,150/- (Rupees Four Lakh Forty Three Thousand and One Hundred and Fifty only). The appeal is allowed to the extent as stated above. The insurance company is directed to deposit the balance amount within a period of eight (8) weeks from the date of receipt of a copy of this order. The said amount will carry interest at the rate of 7.5% from the date of the claim petition.

8. With the above said observations, this Civil Miscellaneous Appeal stands allowed. No costs.

**05.06.2023**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No

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To

- 1.The Motor Accident Claims Tribunal,  
Chief Judicial Magistrate,  
Madurai.
- 2.The Section Officer,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**R.VIJAYAKUMAR,J.**

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Judgment made in  
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