



C.M.A.No.2414 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.11.2023

Pronounced on : 30.11.2023

CORAM : JUSTICE N.SESHASAYEE

C.M.A.No.2414 of 2023

Masilamani

... Appellant / Petitioner

Vs

1.Porselvi

2.Minor Srinivasan

3.Minor Vasanth

[Respondents 2 and 3 are represented by their
mother Porselvi as natural guardian and next friend]

4.Ramanujam

5.Kamsala

6.The Manager

The Oriental Insurance Company Limited

Hub, 3rd Party Claims, Vijayalakshmi Complex

I Floor, No.32/13, Phase No.2, Sathuvachari

Vellore - 632 009.

... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to enhance and set aside the award dated 11.06.2018 made in M.A.C.T.O.P.No.1517 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai.



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C.M.A.No.2414 of 2023

For Appellants : Ms.M.Malar

For Respondents : Mr.M.Krishnamoorthy for R6
R1 to 5 - Dispensed with

JUDGMENT

The appellant herein is the victim of a road accident, who challenges what he perceives as an inadequate compensation awarded to him by the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai.

2.1 The accident involved in this case had taken place on 21.05.2011. Two vehicles were involved, one a motorcycle and the other a van. The appellant was traveling as a pillion rider of the motorcycle, when the two wheeler he was travelling was hit by the offending van.

2.2 In the accident, the appellant suffered multiple injuries to his right leg besides fracture to his right femur, tibia and fibula. He also suffered crush injury to his right foot so much so two of his right toes required amputation as it could be seen from Ex.P6, photographs. In the claim petition which he filed seeking compensation against the owner of the motorcycle in which he was travelling before the Tribunal, the petitioner was referred to the



C.M.A.No.2414 of 2023

Medical Board, which vide Ex.C1 assessed his disability at 50%. Turning to compensation, the Tribunal awarded Rs.3,000/- for every percentage of disability, without treating the disabilities suffered by the appellant as a functional disability. In all, the Tribunal had passed an award for Rs.2,92,000/-, and the breakup is as below:

<i>Sl. No.</i>	<i>Head</i>	<i>Amount</i>
1.	Disability (50%)	Rs.1,50,000/-
2.	Pain and sufferings	Rs.50,000/-
3.	Loss of earning during the treatment period	Rs.12,000/-
4.	Medical and Transport expenses	Rs.75,000/-
5.	Extra Nourishment	Rs.5,000/-
	Total	Rs.2,92,000/-

3.Learned counsel for the appellant submitted that the appellant is working in a TASMACH shop. Even though he is employed as of today, the nature of injury that he had suffered has literally limited his opportunity to seek a better employment elsewhere. At the relevant time of the accident, he was barely 33 years old. The learned counsel argued further that the functional disability need not be understood as a mere ability to earn. The learned counsel for the appellant also placed reliance on ***I.Pavithra Vs.R.Alan Joy and another*** [CDJ 2018 MHC 8192] and ***the Royal Sundaram Alliance***



C.M.A.No.2414 of 2023

Insurance Company Limited Vs. R.S.Raghunathan and another

WEB C [CMA.No.2438 of 2016].

4.Per contra, the learned counsel for the sixth respondent insurance company submitted that it is an indisputable fact that the appellant continues to be in employment and is receiving the salary that he has been receiving prior to the accident. Therefore, the Tribunal had very rightly held that the disability suffered by the appellant is not a functional disability and for the loss of toes and damages caused to his leg, if at all any, he is only entitled to compensation under the head of loss of amenities. He placed reliance on ***M.Moorthy Vs.A.Mahaboob Ali and another*** [2021 (1) TN MAC 509 (DB)], ***Managing Director, Tamil Nadu State Transport Corporation Vs. Ponnusami*** [2021(1) TN MAC 32 (DB)], ***New India Assurance Co. Ltd., Vs.Boopathy Kannan and others*** [2013(1) TN MAC 445 (DB)], and ***Raj Kumar Vs. Ajay Kumar & Anr.*** [2010 (2) TN MAC 581 (SC)]. The learned counsel for the respondent submitted that in terms of Schedule I Part 2 of the EC Act, for amputation of toes, only 14% disability is concerned.



C.M.A.No.2414 of 2023

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5. The rival submissions are fairly considered. So far as the second limb of the argument of the learned counsel for the respondent is concerned, compensation payable both under EC Act and Motor Vehicles Act are operating on different spheres and hence this court is not inclined to telescope the percentage of disability as statutorily fixed in the Employees Compensation Act into the method of determination of compensation under the Motor Vehicles Act.

6. The nature of injuries suffered can be split into three. First, the ability of the victim's future earning capacity, permanent disability and the loss of amenities. If the compensation as has been awarded by the Tribunal is perused, it only shows it has awarded a compensation at a flat Rs.3,000/- for every percentage of disability and stops it there. It may be seen that the appellant might have been working in TASMAL, but there is no job security in TASMAL nor is there any career prospects and the accident very apparently has taken away his right to better job opportunities. Reckoning his income at Rs.3,000/- per month and reducing it to 30%, this court



C.M.A.No.2414 of 2023

arrives at a net value of loss of earning capacity at Rs.4,03,200/-. So far as loss of toes are concerned, this court deems it appropriate to grant Rs.1,50,000/- under the head 'Loss of amenities'. Other conventional heads are also interfered with as shown below:

<i>Sl. No.</i>	<i>Head</i>	<i>Amount</i>
1	Loss of earning capacity	Rs.4,03,200/-
2	Permanent Disability	Rs.1,50,000/-
3	Pain and suffering	Rs.75,000/-
4	Loss of earning during treatment period	Rs.12,000/-
5	Medical and Transport Expenses	Rs.75,000/-
6	Extra Nourishment	Rs.25,000/-
7	Loss of amenities	Rs.1,50,000/-
	Total	Rs.8,90,200/-

7. In the result, the civil miscellaneous appeal is allowed and the compensation awarded by the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai in M.A.C.T.O.P.No.1517 of 2017 is enhanced to Rs.8,90,200/- from Rs.2,92,000/- awarded by the Tribunal. The respondent/insurance company is directed to deposit the entire compensation along with interest @ 7.5% per annum from the date of claim



C.M.A.No.2414 of 2023

petition less interest for the delay period of 1234 days in preferring the claim petition, within a period of six weeks from the date of receipt of a copy of this judgment. The appellant/claimant is now required to pay additional court fee on the enhanced value of compensation, as ordered by this court. No costs.

30.11.2023

Tsg/Asr

Index : Yes/No

Speaking/Non Speaking order

To

The Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai.



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C.M.A.No.2414 of 2023

N.SESHASAYEE, J.

Tsg/Asr

Pre-Delivery Judgment in
C.M.A. No.2414 of 2023