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CMA.No.530 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 24.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.530 of 2025

R.Kumaresan

... Appellant

Vs.

1. R.Pandiyan

2. The New India Assurance Co., Ltd.,
Motor Third Party Hub, VI Floor,
Bombay Muthal Building,
No.232, NSC Bose Road,
Chennai 600 001.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree dated 28.09.2022 made in MACT OP No.7549 of 2017 on the file of the III Small Causes Court, Motor Accident Claims Tribunal, Chennai.

For appellant : M.Mahendran

For Respondents : Mr.T.Jayaraman

for Mr.M.K.Elango - second respondent



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JUDGMENT

Not satisfied with the quantum of compensation awarded by Tribunal, the injured/claimant has come before this court by filing the present appeal.

2. It is not in dispute that the appellant/claimant suffered an injury in his right toe in a road accident that had taken place on 16.09.2017, while he was riding his motorcycle bearing registration No.TN 04 B 2214 from Neelankarai to Vadapalani. It is the case of the claimant that a lorry owned by the first respondent insured with the second respondent came in a rash and negligent manner and hit against the claimant, as a result of which, he sustained fracture in the right great toe, resulting in amputation of his right toe. Further, the claimant also suffered fracture in the middle of the second toe.

3. The Tribunal, based on the evidence available on records, came to the conclusion that the accident had occurred due to the negligence on the part of the driver of the lorry owned by the first respondent, insured with the second respondent and granted a



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compensation of Rs.2,27,600/-. Not satisfied with the quantum of compensation, the claimant has come before this court.

4. The first respondent remained *exparte* before the Tribunal and hence, notice to the first respondent is dispensed with.

5. Heard the learned counsel for the appellant and the learned counsel for the second respondent/insurance company.

6. Both the counsel for the appellant and the second respondent have not advanced any arguments on the question of negligence and liability and therefore, the facts necessary for fixing negligence and liability have not been considered in the present appeal.

7. The learned counsel for the appellant would submit that the claimant/appellant was a Stunt Assistant Master in South Indian Cine & TV Stunt Directors' Stunt Artists' Union and hence, amputation of right great toe will have an effect on his avocation. He further submits that taking into consideration the avocation of the claimant/appellant,



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the Tribunal should have adopted multiplier method while calculating the disability. He also submits that the amount awarded under the head loss of income during the treatment period is also very much on lower side and the same should be enhanced.

8. The learned counsel for the second respondent/ insurance company would submit that the claimant suffered amputation of great toe in his right leg and the same will not cause any interference with his avocation and hence, the Tribunal rightly adopted the percentage method.

9. It is the case of the claimant that he was a Stunt Assistant Master and therefore amputation of great toe in his right leg will have adverse effect on his avocation. Ex.P13 is the salary certificate issued by the South Indian Cine & TV Stunt Directors' Stunt Artists' Union and perusal of the same would indicate that the claimant/appellant is a member of the said union and he is working as a Stunt Artist. However, the appellant/claimant has not produced any evidence to show that the amputation of right toe actually interfered with his



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avocation. Therefore, the Tribunal was justified in calculating the compensation amount by adopting percentage method.

10. In the case on hand, the accident had occurred in the year 2017. Following the law laid down by a ***Division Bench of this Court in CMA No.3334 of 2021, dated 15.06.2022 in Future General India Insurance Company Limited Vs. Manivannan and two others***, this court is inclined to fix a sum of Rs.7000/- per percentage of disability.

11. As per Ex.C1 disability certificate, the disability suffered by the claimant is 20%. Therefore, he is entitled to Rs.1,40,000/- under the head disability.

12. Taking into consideration the amputation suffered by the claimant in the said accident, this court is inclined to confirm the compensation of Rs.75,000/- awarded by the Tribunal under the head pain and sufferings. Further, since an amount of Rs.75,000/- was awarded under the head pain and sufferings, this court is not inclined to grant any amount separately towards loss of amenities.



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13. The Tribunal awarded a sum of Rs.21,000/- under the head loss of earnings for two months by fixing monthly income at Rs.10,500/-. However, taking into consideration the year of accident, notional income is fixed at Rs.15,000/-. In view of the amputation suffered by the claimant, he is entitled to the compensation under the head loss of earnings atleast for four months and accordingly, a sum of Rs.60,000/- is awarded under the head loss of earnings.

14. As far as the other compensation amounts viz., transportation expenses, extra nourishment, attender charges, etc. are concerned, the same are just and reasonable and hence, they are confirmed.

15. Accordingly, the revised compensation awarded by this Court is tabulated as under:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	1,00,000	1,40,000	enhanced
2.	Pain and sufferings	75,000	75,000	confirmed
3.	Transportation	4,000	4,000	confirmed

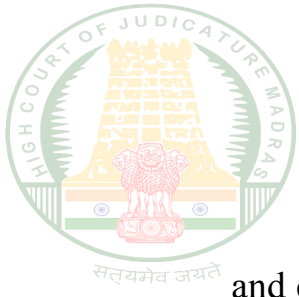


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4.	Medical expenses	6,479	6,479	confirmed
5.	Extra Nourishment	10,000	10,000	confirmed
6	Attender charges	11,100	11,100	confirmed
7	Loss of earnings	21,000	60,000	enhanced
	Total	2,27,579	3,06,579	
	Rounded off to	2,27,600	3,06,600	enhanced by 79,000

16. With the above modifications, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,27,600/- is hereby enhanced to **Rs.3,06,600/-** together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit.

17. The **second respondent** is directed to deposit the compensation amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of **four weeks** from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/ claimant shall be permitted to withdraw the compensation amount along with interest



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and costs, less the amount if any, already withdrawn, by making formal application before the Tribunal. There shall be no order as to costs.

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Index:Yes/No
Internet:Yes/No
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To

1. The III Judge,
Motor Accident Claims Tribunal,
Court of Small Causes, Chennai.



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S.SOUNTHAR, J.

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