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*C.M.A. (MD) No. 208 of 2016*

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Dated: 11.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

**C.M.A.(MD)No.208 of 2016**

**and**

**Cross Objection(MD) No.42 of 2023**

**C.M.A(MD) No.208 of 2016**

State Express Transport Corporation Limited  
through its Managing Director  
Office at Pallavan salai  
Chennai

... Appellant/ 1<sup>st</sup> Respondent

Vs.

1. Muthukumari
2. M/s.Sri Sai Diesal  
Office at Number 1, Vasantham Nagar  
Melapalayam, Tirunelveli.
- 3.Christopher Selvaraj
4. ICICI Lombard General Insurance Company Limited  
Through its Branch Manager,  
Office at ICICI Bank Towers,  
Bandra- Kurla Complex  
Mumbai

... 1<sup>st</sup> Respondent/Petitioner

..Respondents2 to 4/Respondents 2 to 4

**Prayer :** This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 to set aside the judgment and decree dated 31.01.2014 passed in M.C.O.P.No.521 of 2013 on the file of the Motor Accident Claims Tribunal/Special Sub Court, Tirunelveli



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For Appellant : Mr.P.Prabhakaran  
For R-1 : Mr.T.Selvakumaran  
For R2 & R3 : No appearance  
For R4 : Mr.V.Muthukamatchi

**Cross Objection (MD) No.42 of 2023**

Muthukumari ... Cross Objector/ 1<sup>st</sup> Respondent

Vs.

1. State Express Transport Corporation Limited  
through its Managing Director  
Office at Pallavan salai  
Chennai ... 1<sup>st</sup> Respondent/Petitioner
2. M/s.Sri Sai Diesel  
Office at Number 1, Vasantham Nagar  
Melapalayam, Tirunelveli.
- 3.Christopher Selvaraj
4. ICICI Lombard General Insurance Company Limited  
Through its Branch Manager,  
Office at ICICI Bank Towers,  
Bandra- Kurla Complex  
Mumbai ..Respondents/Respondents

**Prayer :** This Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure to allow this cross objection and enhance the award amount.

For Cross objector : Mr.T.Selvakumaran  
For R-1 : Mr.P.Prabhakaran  
For R2 & R3 : No appearance  
For R4 : Mr.V.Muthukamatchi

**COMMON JUDGMENT**

This Civil Miscellaneous Appeal has been preferred as against the order passed in M.C.O.P.No. 521 of 2013 on the file of the Motor Accident



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Claims Tribunal/Special Sub Judge, Tirunelveli, wherein the first respondent in appeal and cross objector in cross objection has filed the above claim petition seeking compensation of Rs.10,00,000/-towards compensation.

2. The Tribunal has awarded a sum of Rs.6,73,900/- with interest @ 9% per annum from the date of petition till the realization of the amount

3. As against the order of the Tribunal, the first respondent/TNSTC Corporation has preferred this Civil Miscellaneous Appeal and the claimants have filed cross objection on the ground for enhancement of the award amount

**4. The brief averments of the petitioner before the Tribunal are as follows:**

The petitioner on 09.11.2012 at about 2.15 a.m.,when travelling in a bus bearing Reg.No. TN 01 N 7990 from Chennai to Tirunelveli at that time near Vachakarapatti, RR. Nagar, the driver of the bus drove the bus in a rash and negligent manner and dashed against the parked eicher lorry bearing Reg .No. TN 72 L 4748 which belongs to the second respondent and insured with the fourth respondent Insurance company. Due to which the petitioner sustained grievous injuries and thereby he is claiming a sum of Rs.10,00,000/- towards compensation.



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**5.The brief facts of the counter filed by the first respondent are as follows:**

The petition is not maintainable either in law or facts. The accident occurred due to negligence on the part of the driver of the second respondent/Eicher lorry. On the date of accident the second respondent's lorry was parked in the bypass road without any sign and caution, thereby the accident occurred due to negligence on the part of the driver of second the respondent. The driver of the first respondent drove the vehicle in a slow speed since there was no sign in the parked lorry, the first respondent vehicle dashed against the parked lorry, thereby the first respondent is not liable to pay any compensation to the petitioner.

**6.The brief facts of the counter filed by the second respondent are as follows:**

The petition is not maintainable either in law or facts. The driver of the second respondent parked the vehicle after blinking parking lights. At that time the driver of the first respondent had driven the vehicle in a rash and negligent manner and without noticing the parked lorry dashed against the lorry, thereby the first respondent alone is liable to pay compensation to the petitioner. However this respondent denied the age, occupation, income,



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injuries sustained by the victim, hence the petition is liable to be dismissed as against this respondent.

**7.The brief facts of the counter filed by the third respondent are as follows:**

The petition is not maintainable either in law or facts. The petitioner has denied the age, occupation, income and the injuries sustained by the petitioner. The lorry bearing Reg.No. TN 72 L 4748 was insured with the fourth respondent on the date of accident and thereby this petitioner is not liable to pay any compensation.

**8.The brief facts of the counter filed by the fourth respondent are as follows:**

The petition is not maintainable either in law or facts. There is no negligence on the part of the lorry driver when the driver of the lorry parked the vehicle by blinking parking lights without minding the same, the first respondent dashed against the lorry. The second respondent driver has no valid license on the date of occurrence, thereby there is violation of condition policy, hence the petition is liable to be dismissed as against this respondent.



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9. Before Tribunal on the side of the first respondent/petitioner they have examined P.W.1 and P.W.2 and marked Exs.P.1 to P.9. On the side of the respondents they have examined R.W.1 and R.W.2 and no documents were marked. After hearing both sides and perusing the records, the Tribunal has applied multiplier method and awarded a sum of Rs. 6,73,900/- with interest @ 9% per annum by directing the first respondent to pay the amount and dismissed the petition as against the respondents 2 to 4.

10. Aggrieved over the above said order, the first respondent/TNSTC has filed the present appeal and the petitioners/claimants have filed cross objection for enhancing the award amount on various grounds.

11. The learned counsel appearing for the appellant/first respondent would contend that the Tribunal has fixed liability only on the driver of the appellant. When the second and third respondents lorry was parked in the main road without any signals. Further the Tribunal has awarded compensation by adopting multiplier method, even the first respondent/ petitioner only sustained grievous injuries and no any functional disability to the first respondent/petitioner. Therefore the order passed by the Tribunal is liable to be set aside.



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12. The learned counsel appearing for the first respondent/petitioner and the petitioner in the cross objection would contend that the Tribunal has correctly fixed the negligence on the part of the driver of the appellant/first respondent, but at the same time the Tribunal failed to consider that cross objector/first respondent petitioner sustained grievous injuries and suffered permanent disability and she was earning a sum of Rs.10,000/- per month and only awarded meagre amount of Rs.6,900/- by taking monthly income of Rs.4500/- and therefore the award passed by the Tribunal is meagre amount the same is liable to be enhanced by allowing this appeal and the appeal filed by appellant/first respondent Transport Corporation is liable to be dismissed.

13. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal the point for determination in this appeal as well as cross objector are :

- i) Whether the appeal is liable to be allowed or not?
- ii) Whether the cross objection is liable to be allowed or not ?

***Points(i) and (ii)***

14. In this case according to the appellant/first respondent/Transport Corporation the accident took place due to rash and negligence on the part of the driver of the lorry which was parked in the main road without any signals.



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In order to prove the same, the respondents have examined R.W.2 who is the driver of the bus and he deposed about the parking of the lorry and the accident. Further the driver of the eicher lorry was examined as R.W.1 and he deposed that he parked the lorry on the right side of the road due to the fall of the tarpaulin which was covered in the lorry. Vehicle was also parked by putting some stones and plants in the back side of the lorry and also blinking indicators he parked the lorry. On perusal of the records it is revealed that before the first respondent bus, omni bus was proceeding and the omnibus driver turned the vehicle towards right side after seeing the parking of the vehicle but the first respondent vehicle had followed the omnibus was not turned towards right side without minding the parking of the vehicle and dashed against the lorry. After that the eicher lorry was dragged some distance and further over turned. Therefore the manner of accident itself shows the negligence on the part of the first respondent bus. The Tribunal also after taking into consideration of all the aspects clearly came to a conclusion that the accident took place due to the negligence on the part of the driver of the first respondent bus. Further the First Information Report also registered as against the driver of the bus. Therefore this Court holds that the accident took place due to negligence on the part of the driver of the first respondent, bus thereby the first respondent alone is liable to pay the compensation to the petitioner.





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15. As far as the quantum is concerned, the petitioner has produced Ex.P.8, disability certificate and the same is only partial permanent disability. The disability with regard to the right leg was fixed as only 9% and total partial permanent disability was fixed as 63% by calculating other aspects. Therefore there is no functional disability and thereby it is not proper to adopt multiplier method.

16. The learned counsel appearing for the appellant has relied on the Judgment of this Court in the case of **New India Assurance Co.Ltd.vs.E.Ponnurangam and others** reported in **2013(1)TN MAC 47 (DB)**.

17. On careful perusal of the above said judgment it reveals that this Court has awarded a sum of Rs.2000/- for 1% disability of the 70% disability. In the case on hand, the petitioner sustained grievous injuries and his disability as 63% and so far as his leg is concerned it is only 9%, thereby adopting multiplier method is not proper.

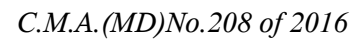
18. So far as quantum is concerned, the Tribunal has adopted multiplier method by taking the income of the petitioner as Rs.4500/- per



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month and adopted multiplier method and awarded compensation. Apart from that the Tribunal has awarded compensation in other heads, in total the petitioner was awarded a sum of Rs.6,73,900/- towards compensation.

19. In this case the petitioner sustained grievous injuries and also permanently disability and there was a fracture on the right leg. There is no evidence for functional disability. The Tribunal adopted multiplier method by reducing the disability from 63% to the disability as 55% without any basis. Since there is no any functional disability adopting multiplier method is not correct. Further the petitioner has not produced any medical bills to substantiate his contention and the fracture of bones were all united. Therefore it is not proper to adopt multiplier method. Thereby this Court is inclined to award a sum of Rs.3000/- for 1% disability and thereby the petitioner is entitled for Rs.1,89,000/- (63X Rs.3000 = Rs.1,89,000/-). The Tribunal has awarded a sum of Rs.54,000/- towards loss of income during the treatment period and the same is also reasonable one. Further the Tribunal has awarded a sum of Rs.5000/- towards transport expenses. Considering the period of treatment this Court awards a sum of Rs.25,000/- towards transport expenses. The Tribunal has awarded a sum of Rs.15,000/- towards extra nourishment. Considering the duration of treatment this Court is inclined to award Rs. 25,000/- towards extra nourishment. So far as Rs.5000/- towards attender



20. In view of the same, this Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is modified to the effect that the petitioner is entitled for a sum of Rs.4,20,000/-with interest @ 7.5% per annum and the first respondent is directed to deposit the entire award amount with interest and costs within a period of two months from the date of receipt of this order and the cross objection in Cross.Obj(MD) No.42 of 2023 is dismissed.

NCC : Yes/No  
Index : Yes/No  
Internet: Yes/No  
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**To:**

1. The Motor Accident Claims Tribunal/Special Sub Court, Tirunelveli
2. The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**P. DHANABAL,J.**

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