



C.M.A(MD)No.1196 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 04.04.2025

Pronounced on : 30.04.2025

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

C.M.A.(MD)No.1196 of 2023

&

C.M.P.(MD)No.1502 of 2025

and

Cros.Obj(MD)No.13 of 2025

C.M.A.(MD)No.1196 of 2023

The Oriental Insurance Company Limited,

Rep. Through its Branch Manager,

Sri Sankaran Buildings,

Near Chathanoor Junction,

Kollam-691 572.

... Appellant/2nd respondent

Vs.

1. Balamurugan

... 1st respondent/1st petitioner

2. Biju



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3. The Managing Director,
Indroyal Furniture Company Private Limited,
TC2/2465(5), (6) Royal Plaza,
Pattorn,
Trivandram-695 004.

4. National Insurance Company Limited,
Through its Divisional Manager,
St. Joseph's Press Building, Vazhuthacaud,
Thiruvananthapuram-695 014.

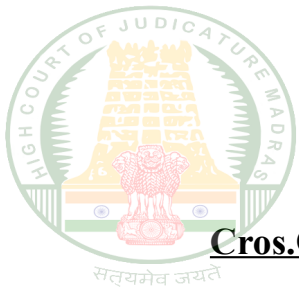
... Respondents 2 to 4 / respondents 1, 3 & 4

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 23.08.2023 made in M.C.O.P.No.984 of 2016 on the file of Motor Accident Claims Tribunal/Special Sub Court, Tirunelveli and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.A.Ilango

For Respondents : Mr.S.Mukesh
for Mr.G.Ravisankar – for R1

Mr.J.S.Murali – for R4



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Cros.Obj(MD)No.13 of 2025 in C.M.A.(MD)No.1196 of 2023

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Balamurugan

... Cross Objector/1st respondent

Vs.

1. The Oriental Insurance Company Limited,
Rep. Through its Branch Manager,
Sri Sankaran Buildings,
Near Chathanoor Junction,
Kollam-691 572

... 1st respondent/ Appellant

2. Biju

3. The Managing Director,
Indroyal Furniture Company Private Limited,
TC2/2465(5), (6) Royal Plaza,
Pattorn,
Trivandram-695 004.

4. National Insurance Company Limited,
Through its Divisional Manager,
St. Joseph's Press Building, Vazhuthacaud,
Thiruvananthapuram-695 014.

... Respondents 2 to 4 / respondents 2 to 4

PRAYER: Cross Objection filed under Order 41 Rule 22 of CPC, to set aside the fair and decreetal order dated 23.08.2023 made in M.C.O.P.No. 984 of 2016 on the file of Motor Accident Claims Tribunal/Special Sub Court, Tirunelveli, by enhance the award by Rs.20,00,000/- as further compensation.



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For Cross Objector : Mr.S.Mukesh

for Mr.G.Ravisankar

For Respondents : Mr.A.Ilango - for R1

Mr.J.S.Murali – for R4

COMMON JUDGMENT

(Judgment of this Court was delivered by R.POORNIMA, J.)

The appellant / 2nd respondent / Insurance Company has filed this Civil Miscellaneous Appeal against the fair order and decretal order dated 23.08.2023 passed in M.C.O.P.No.984 of 2016 by the Motor Accident Claims Tribunal/Special Sub Court, Tirunelveli. The claimant in the said case has also filed a cross-objection.

2. The Motor Accident Claim Tribunal awarded a sum of Rs.25,33,550/- towards compensation for the claimant. The learned Judge directed the appellant/ Insurance company to pay the entire award amount within 30 days from the date of the order.

3. Aggrieved by the said order, the Civil Miscellaneous Appeal has been filed by the Insurance Company who is the 2nd



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respondent before the lower Court in M.C.O.P.No.984 of 2016 against

the negligence and quantum with the following among other grounds :

a) The amount awarded by the Claims Tribunal is very high and excessive.

b) The Tribunal erroneously fixed the entire negligence on the Insured Vehicle and held the Appellant Insurance Company liable ignoring the factual evidence available before the Court.

c) The Tribunal in its finding held that the petitioner would have slept and could not have seen the manner of the accident and no other eye witness to the accident was examined to corroborate the nature of the accident.

d) As per the averments of the petitioner in the main petition, the Eicher van in which the petitioner travelled has dashed against the rear side of the Insured Vehicle, a lorry bearing registration no. AL-19-B-9507 parked without a parking lamp and indicator.

e) The petitioner in his attempt to suppress the negligence of the Eicher van in which he travelled had stated different versions about the nature and manner of an accident in the main petition, deposition before the Tribunal and in his proof affidavit which are conflicting and contradictory as follows :



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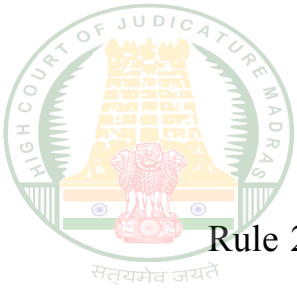
i) In the petition averment had stated that the Eicher van in which the petitioner travelled had dashed against the rear side of the Insured Vehicle Lorry bearing Registration No.AL-19-B-9507 parked without a parking lamp and indicator.

ii) Before the Tribunal, the petitioner stated that the Eicher van dashed against the rear side of the Insured Vehicle going in front with timber logs.

iii) In the proof affidavit, the petitioner stated that the driver of the Insured Vehicle had overtaken the vehicle in which he travelled and stopped suddenly which only resulted in the accident.

f) The appellant had categorically denied the suggestion during the examination of the witness that the Eicher van in which he travelled was negligent and affirmed both vehicles were negligent in causing the accident. Hence, he claimed compensation from the Insurers of both vehicles.

g) The appellant submitted that considering the facts that the vehicle in which the petitioner travelled alone hit the rear side of the insured vehicle without maintaining the distance as per requirements of



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Rule 23 of Road Regulations, 1989. The vehicle in which the petitioner travelled alone should be held liable for the accident and the Appellant Insurance Company should be absolved from its liability.

4. Aggrieved with the impugned award passed in M.C.O.P.No.984 of 2016, the 1st respondent/ petitioner has come out with the Cross Objection in Cros.Obj(MD)No.13 of 2025 for enhancement of compensation on the following grounds :

a) That the Tribunal has not awarded the Claim amount to be paid with the interest rate of 12% from the date of filing to the date of order and the Learned Tribunal has not approached a realistic view in fixing the quantum.

b) That the Tribunal should have awarded a reasonable amount for treatment expenses based on the nature of the injury.

c) That the Tribunal should have awarded future medical expenses considering the disability.

d) That the Tribunal erred in awarding a meagre amount under the head of transportation and failed to award any amount under the head of damage to clothes. Additionally, the amounts awarded under other heads were also inadequate and should be enhanced.



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e) That the Tribunal erred in awarding the future loss of earning capacity at the rate of Rs.7,000/- is very low and should be enhanced.

The Tribunal should have adopted Rs.14,000/- as a notional income per month.

f) That the Tribunal should have taken into account that the amount of Rs.2,00,000/- was awarded for future medical expenses.

Therefore, prayed to enhance the award amount by modifying the order of the trial Court.

5. The learned counsel appearing for the 1st respondent/ claimant argued that the accident took place due to the rash and negligent Act of the 2nd respondent's driver of the lorry bearing registration No.KL 19 B 9507 insured with the appellant. Hence, the 2nd and 3rd respondents are jointly liable to pay compensation. A criminal case has been filed against the driver of the lorry (insured with appellant) in Crime No.387 of 2016 for the offences under Sections 279, 338 IPC & 134(A)(B) of the Motor Vehicle Act and the same is pending before the Judicial Magistrate Court, No.1, Cherrhala. After considering the evidence on record, the Tribunal held that the accident happened due to the negligence of the lorry driver and accordingly directed the appellant to pay the



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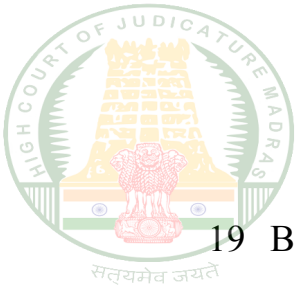
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compensation and dismissed the claim against the 3rd respondent and the fourth respondent. There is no grounds to dismiss the order of the Tribunal, he prayed to dismiss the Civil Miscellaneous Appeal and prayed to enhance the compensation.

6. Heard the learned counsel on either side and perused the materials available on records.

7. The 1st respondent is the petitioner before the Motor Accident Claims Tribunal filed a claim petition under Section 166 of the Motor Vehicles Amended Act with a prayer to award compensation of Rs.20,00,000/- with future interest at the rate of 12% with costs.

8. As per the averment contained in the petition, on 29.03.2016, at about 03.15 hours the petitioner was travelling in an Eicher van bearing registration No.KL 01 BM 2378 belonging to the 3rd respondent insured with the 4th respondent. He was the acting driver, seated near the driver. When the van was approaching Thuruvar on the Allapalay-Ernakulam main road near a Reliance petrol bunk at a slow speed, observing all the traffic rules, a lorry bearing registration No.KL



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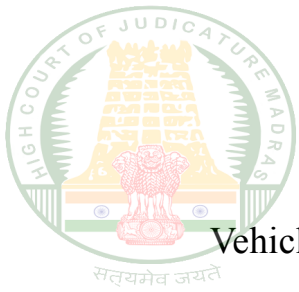
19 B 9507 belonging to the 1st respondent insured with the 2nd

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respondent was found negligently parked on the road without any indicator lamp or parking lamp illuminated to warn the approaching vehicle. As a result, the driver of the Eicher van failed to notice the parked lorry and collided with its rear side. As a result, the petitioner and the driver of the Eicher lorry sustained injuries. The Eicher lorry was also extensively damaged.

9. The 1st respondent /petitioner sustained multiple fractures on his both legs besides multiple injuries all over the body. Immediately, after the occurrence he was taken to a nearby hospital and taken to Sushrushah Hospital at Nagercoil and admitted as an inpatient from 29.03.2016 to 11.04.2016. In the said hospital, he underwent surgery and steel plates and screws were implanted in the affected areas on 30.03.2016. Even after his discharge, he continues to undergo treatment to date. A sum of Rs.5,00,000/- was incurred towards medicines and medical charges to him.

10. A criminal complaint was lodged against the driver of the Lorry under Sections 279, 338 of IPC & 134(A)(B) of the Motor



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Vehicles Act and registered before the Kuthaiathode Police Station in Crime No.387 of 2016. The said case was pending before the Judicial First Class Magistrate Court-I, Cherrhala against the respondent's driver.

11. The petitioner further stated that he was 36 years old at the time of the accident and was active. Due to the multiple fractures over both legs, the movements were completely affected. He is not able to stretch or fold his legs. He is not able to walk or stand for a long time without the help of the stick or others. Sitting and squatting is not possible for him. His both legs were shortened. Due to the injury, he is permanently disabled. He was a driver by profession and thereby earning monthly a sum of Rs.15,000/- which has been now deprived of. He is forced to be bedridden throughout his life. He is not able to continue his profession as before. Hence he is undergoing mental agony and physical suffering. Due to functional disability, he would not be able to do any work in future, hence prayed for compensation.

12. The second respondent filed counter by stating that the first respondent's lorry bearing registration number KL 19 B9507 was parked on the western side of the road on the Allepay-Ernakulam Road,



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opposite the reliance petrol bunk with indicator lamp and parking lamp.

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The driver of the first respondent entered the road after indication and signal with a sounding horn, the driver of the third respondent's Eicher van bearing Registration No.KL 01 BM 2378 was proceeding in the same direction in a rash and negligent manner without observing the traffic rules, the vehicle which was entering from the mud portion of the road to the main road hit against the side of the second respondent's lorry and invited the accident. The second respondent is in no way liable for the accident.

13. The third respondent filed a counter by stating that the accident occurred only due to the negligent act of the second respondent's driver as his vehicle was parked without any indicator lamp, or parking lamp and not due to the negligent act of the driver of the Eicher lorry. The third respondent insured the vehicle with the fourth respondent and the same was valid at the time of the accident

14. The fourth respondent filed a counter stating that the accident happened solely due to the negligent act of the lorry driver. FIR and charge sheet were filed against the driver of the lorry. The third

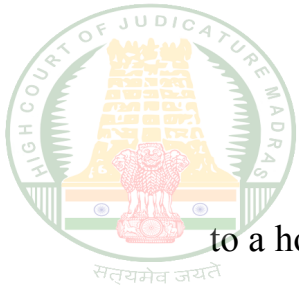


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respondent's vehicle is not responsible for the accident and the fourth respondent is not liable to pay any compensation.

15. During the trial, on the side of the petitioner, P.W.1 Balamurugan, the petitioner and P.W.2, Dr. Suresh Kumar, Government Medical College Hospital, Tirunelveli were examined. Ex.P.1 to Ex.P.9 were marked and Ex.X1, Xerox copy of the charge sheet (with consent) was marked on the side of the 4th respondent. No witnesses were examined on the side of the respondents. Disability Certificate of the petitioner (92%) issued by the Medical Board was marked as Ex.C1.

16. Ex.P.1, is the First Information Report in that the driver of the lorry bearing Registration No.KL 19 B 9507, has been shown as the accused. It was alleged in the FIR that the accused being the driver of the lorry had driven the lorry No.KL 19 B 9507 in a rash and negligent manner, thereby endangering human life. Furthermore, it was contended that the accused had parked the vehicle on the Alleppey -Ernakulam main road in front of the Reliance petrol Bunk. The driver of the Eicher van who did not notice the improper parking of the above collided with it. The driver of the Eicher van sustained multiple injuries and was admitted



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to a hospital.

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17. A copy of the charge sheet was also marked with the consent of both parties in which the lorry driver has been shown as accused. The Investigating Agency after investigation observed that on the date of the accident viz., 29.3.2016 at about 3.15 a.m., the vehicle bearing Registration No.KL 19 B 9507 was parked on the western side of the road, without an indicator, suddenly turned to its right and entering the National Highways road carelessly and in negligent manner as the accused was attempting to drive towards North side Road hit behind/on the rear side of the Eicher van bearing Registration No.KL 01 BM 2378 which was plying from South to North on the same road. Due to the Accident, the driver and another person of Eicher van were injured. After the accident, without stopping the vehicle and giving first aid to the injured or without informing the Police, the accused/driver of the lorry was driven away, indulging in the offences under Sections 279, 338 of IPC & 134(A)(B) of the Motor Vehicles Act. It was further noticed that that accused was appeared before the Police and released on bail. The vehicle that caused the accident was taken into custody and the test drive was done by the Assistant Vehicle Inspector (sixth witness) and issued a



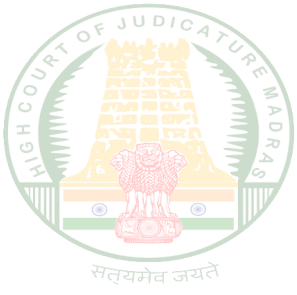
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certificate.

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18. The petitioner in his petition stated that the driver of the Lorry (insured vehicle) parked the lorry negligently, and without noticing the same driver of the Eicher van hit the rear side of the lorry, causing the accident. But during the chief examination, stated that the vehicle Eicher van No.KL 01 BM 2378 was driven on the Allaphey-Ernakulam National Highways when the vehicle neared a reliance petrol bunk, the lorry bearing Registration No.KL 19 B 9507 belonging to the 1st respondent was driven in a rash and negligent manner and tried to overtake the Eicher van, suddenly applied brake, the driver of the Eicher van also drove the vehicle in a rash and negligent manner and dashed against the rear side lorry and he sustained injury. He stated that both drivers were negligent for the accident.

19. The learned counsel appearing for the appellant, therefore, argued that the driver of the Eicher van is alone responsible for the accident and the insurance company of the above van is liable to pay compensation and he should be absolved from the liability.



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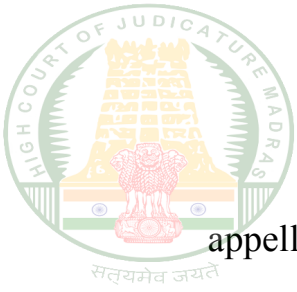
20. However, in the counter affidavit filed by the owner of

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the lorry admitted that the lorry bearing Registration No.KL 19 B 9507 was parked on the western side of the road on the Allappey-Ernakulam road opposite to the Reliance petrol bunk, while the driver entering the road, the driver of the Eicher van bearing Registration No.KL 01 BM 2378 who was proceeding in the same direction hit the rear side of the first respondent's lorry and invited the accident. Therefore, the deposition of the petitioner that the vehicle belonging to the lorry tried to overtake the Eicher van and suddenly applied brakes appears to be incorrect contrary to the statement contained in the claimant petition.

21. Now the insurance company seeks to take undue advantage of the petitioner's evidence to disclaim its liability. However, a party who has made an admission in the pleading is estopped from subsequently traversing it to overcome deficiencies in his case and is to exploit weakness in the case of the opposite party. Therefore, the argument of the appellant that he should be absolved from the liability is not sustainable.

22. From the available evidence, it appears that the



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appellant's insurance vehicle which was parked opposite the western side of Ernakulam Road, on the date of occurrence at 3.15 a.m. (midnight), suddenly entered into the northern side Road collided with the petitioner's lorry which was plying on the same road and caused the accident.

23. Normally the vehicle entering into highway is required to adhere to traffic rules. It is the duty of the driver of the vehicle entering the highway to switch on the indicator light to alert the vehicles already on the road and allow them to adjust their moments for the entire journey. In the present case it appears that the lorry driver failed to comply with these mandatory traffic norms., and therefore after the accident, the driver of the eicher vehicle filed a complaint against the insured vehicle of the appellant. After receipt of the complaint, an FIR was registered and a chargesheet was also filed and the case is pending. If the accident occurred due to the negligence act of the driver of the Eicher van, the lorry driver would have filed a complaint against the driver of the Eicher van. No such complaint was filed, but as per the chargesheet, the driver of the insured lorry escaped from the scene of the occurrence. No witness was examined by the Appellant side to prove that



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the driver of the Eicher lorry was responsible for the accident.

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24. The trial Court after considering the entire record and evidence held that the 1st respondent driver is negligent, we hold it is proper.

25. The Medical Board assessed disability at 92% for the claimant. The claimant has not produced any document to prove his monthly income. In the claim application, he claimed a sum of Rs.20,00,000/- as compensation, but the Motor Accident Claims Tribunal after considering the entire record fixed the monthly income at Rs.9,800/- (Rs.7000 & Rs.2800) and awarded Rs.17,64,00/- for loss of future earning based on medical bills awarded a sum of Rs.4,79,554/- for medical expenses, Rs.1,00,000/- loss of conveyance, Rs.1,00,000/- for pain and suffering, Rs.20,000/- for transport expenditure, Rs.50,000/- attendant charges, Rs.20,000/- for extra nourishment, after taking into consideration of the medical report and age of the petitioner, which is not on the higher side or the lower side as stated in cross objection but nominal and therefore, there is no ground available to enhance the compensation.



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26. There are no other serious lapses in the order passed by the Tribunal, to set aside the order of the Tribunal and no material available to enhance the award amount. Therefore, we do not find any merit in the Civil Miscellaneous Appeal, and hence, the Civil Miscellaneous Appeal is liable to be dismissed and the Cross objection in Cros.Obj.(MD)No.13 of 2025 is also liable to be dismissed.

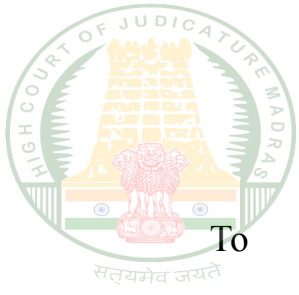
27. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

28. The Cross objection in Cros.Obj.(MD)No.13 of 2025 is dismissed. No costs.

(G.J., J.) & (R.P., J.)
30.04.2025

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

GVN/RM



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To

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1. The Special Sub Judge,
Motor Accident Claims Tribunal/
Special Sub Court dealing with MCOP Cases
Tirunelveli.

Copy to

1. The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN, J.
AND
R.POORNIMA, J.

gvn/ RM

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