



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.1716 of 2018 and
CMP No.13298 of 2018

Tata AIG General Insurance Company Ltd.,
Having its office at May Flower Castle,
1st Floor, No.72, Dr. Balasundaram Road,
Coimbatore - 641 018

... Appellant

Vs.

1. Amudha
2. Minor R.Hariharan
3. Minor Harshini
(Minors represented by next friend,
guardian mother Amudha, the 1st respondent herein)
4. Mythili Kalaivani
5. Minor Mahasuvetha
(minor rep. by guardian mother Mythili Kalaivani)
6. Kaveri
7. V.Ranjithkumar

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 08.03.2018, made in M.C.O.P.No.454 of 2015, on the file of the Motor Accident Claims Tribunal (Special District Court), Erode.

For Appellant : Mr.K.Vinod

For Respondents : Mr.R.Nalliyappan for R1 to R3



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JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the decree and judgment dated 08.03.2018, made in M.C.O.P.No.454 of 2015, on the file of the Motor Accident Claims Tribunal (Special District Court), Erode.

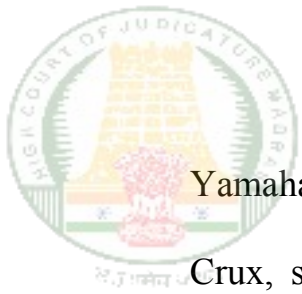
2. The appellant is the insurer of the motor-cycle bearing Regn. No.TN-33-AJ-2851 (Yamaha Crux) in the deceased Ravi alias Ravichandran travelled as a pillion rider, rode by the deceased Karthikeyan. The respondents 1 to 3 who are the dependants of the deceased Ravi alias Ravichandran/pillion rider, are the claimants. The respondents 4 to 6 are the legal representatives of the deceased Karthikeyan/rider of the Yamaha Crux bearing Regn. No.TN-33-AJ-2851. The 7th respondent who is the owner cum rider of the opposite vehicle bearing Regn. No.TN-33-BA-6967 (Pulsar).

3. The case of the claimants is that on 12.04.2015, at about 3.30 p.m., the deceased Ravi alias Ravichandran, was travelling as a pillion rider in a motor cycle bearing Regn. No.TN-33-AJ-2851 (Yamaha Crux), ridden by the deceased Karthikeyan, from south to north, in a rash and negligent manner, without adhering the Road Traffic Rules and Regulations and



suddenly crossed the Erode to Perundurai, east-west road, opposite to Senthil Hero Honda Show Room, Kumalankuttai. At that time, the 7th respondent was coming from east to west by motor cycle bearing Regn. No.TN-33-BA-6967 (Pulsar) in a slow speed, cautious manner and adhering the Road Traffic Rules and Regulations. But due to the uncontrollable speed and sudden crossing without any signal, the motor cycle (Yamaha Crux) of the deceased Karthikeyan, dashed against the 7th respondent's motorcycle (Pulsar). In the said accident, the rider of the Yamaha Crux namely Karthikeyan died on the way to hospital and the pillion rider of the Yamaha Crux namely Ravi alias Ravichandran, was given first aid in the Government Hospital, Erode and then shifted to Mohanakumaramangalam Government Medical College Hospital, Salem, where further treatment was given. However, he died on the same day due to the accidental injuries.

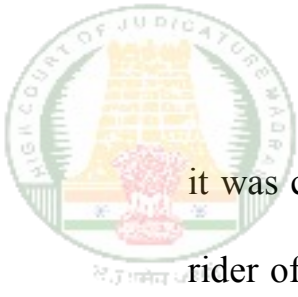
4. The wife, son and daughter of the deceased Ravi alias Ravichandran/pillion rider, filed a claim petition in M.C.O.P.No.454 of 2015, on the file of the Motor Accident Claims Tribunal (Special District Court), Erode, claiming compensation of Rs.15,00,000/- for the death of the Ravi alias Ravichandran, against the legal representatives of the rider of the



Yamaha Crux namely Karthikeyan (deceased) and the insurer of the Yamaha Crux, since the accident had occurred only due to the rash and negligent riding of the rider of the Yamaha Crux bearing Regn. No.TN-33-AJ-2851 namely Karthikeyan (deceased). The rider cum owner of the motor cycle bearing Regn. No.TN-33-BA-6967 (Pulsar) was added as a formal party.

5. In order to substantiate the claim, on the side of the claimants, 2 witnesses were examined as P.W.1 and P.W.2 and 13 documents were marked as Ex.P.1 to Ex.P.13. On the side of the 4th respondent/Insurance Company, 2 witnesses were examined as R.W.1 and R.W.2 and 2 documents were marked as Ex.R1 and Ex.R2.

6. The Tribunal after enquiry, awarded compensation of Rs.14,15,000/- with interest at 7.5% per annum from the date of application till the date of deposit, less for period of default if any along with proportionate cost of Rs.34,884/- to be paid by the respondents 1 to 4/ respondents 4 to 6 herein and the appellant herein. The appellant Insurance Company was directed to deposit the said amount on behalf of the respondents 1 to 3/respondents 4 to 6 herein. Since in the claim petition itself



it was claimed that the 7th respondent/5th respondent who is the owner cum rider of the opposite vehicle bearing Regn. No.TN-33-BA-6967 (Pulsar) was added as a formal party and already the Tribunal found that the appellant/Insurance company is liable to compensate the claimants, the claim against the 7th respondent/5th respondent/owner cum rider of the Pulsar vehicle was dismissed.

7. Challenging the Award of the Tribunal, the insurer of the Yamaha Crux vehicle, has filed the present appeal questioning the liability.

8. The learned counsel for the appellant/Insurance Company would submit that originally, the case was registered against the rider of the opposite vehicle i.e. Pulsar, bearing Regn. No.TN-33-BA-6967. However, since the said Pulsar vehicle was not insured with any Insurance Companies, in order to get the compensation, the claimants fastened the liability on the rider of the Yamaha Crux vehicle and since the Yamaha Crux vehicle was insured with the appellant/Insurance Company, the Tribunal also without appreciating the evidence properly, fixed the liability on the appellant. He would submit that the accident had occurred only due to the rash and



negligent riding of the rider of the Pulsar vehicle. P.W.2 who is alleged to be the eyewitness, is only a chance witness and he had never seen the accident.

Only in order to get the compensation, they have put up the case. The Tribunal also ignored the FIR which was registered against the rider of the Pulsar vehicle. Even the Police have not recorded any evidence from P.W.2. The Tribunal, only relying on the evidence of P.W.2, fixed the liability on the rider of Yamaha Crux and directed the appellant/Insurance Company to pay the compensation. There is no material to show that the accident had occurred only due to the rash and negligent riding of the rider of the Yamaha Crux vehicle. Therefore, it warrants interference.

9. The learned counsel for the respondents/claimants submitted that though the FIR was registered against the rider of the Pulsar, P.W.2 who is the eyewitness to the accident, has clearly stated that the accident had happened due to the rash and negligent riding of the rider of the Yamaha Crux vehicle. The Tribunal rightly appreciated the oral and documentary evidence and fixed the liability and there is no merit in the appeal and the appeal is liable to be dismissed.



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record.

10. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 3 and perused the materials available on

11. The accident is admitted. Due to the accident, the rider and pillion rider of Yamaha Crux vehicle died and the said fact is also admitted. Though the FIR was registered against the rider of the Pulsar vehicle, according to the appellant/Insurance Company, since the Pulsar vehicle was not insured with any Insurance Companies, in order to get the compensation, the rider of the Yamaha Crux vehicle was shown as a tort-feasor and the appellant/Insurance Company is disputing the liability and the manner of accident. However, the quantum is not disputed.

12. A perusal of the record shows that admittedly the FIR was registered against the rider of the Pulsar vehicle. However, the person who informed to the police for registering the FIR, was not examined in this case. The claimants are only the dependants of the deceased pillion rider and the pillion rider is a 3rd party.



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13. Now the question to be decided by this Court is that due to whose negligence, the accident had occurred. Either, solely the negligence has to be fixed on the rider of Yamaha Crux vehicle or on the rider of the Pulsar vehicle. Though FIR was registered against the rider of the Pulsar vehicle, it is settled proposition of law that, the FIR is not an Encyclopedia. Admittedly, none of the eye-witnesses have given the First Information to the police. Since the rider and pillion rider of the Yamaha Crux vehicle died, some 3rd party has given the first information to the police against the rider of the Pulsar vehicle. But P.W.2 was examined as an eye-witness in order to prove the manner of the accident and he has clearly stated that the accident had occurred only due to rash and negligent riding of the rider of the Yamaha Crux vehicle. The report of the Motor Vehicle Inspector clearly shows that both the vehicle are two wheelers and the front side of both the two wheelers got damaged. Since the front side of the Yamaha Crux vehicle damaged heavily, both the rider and pillion rider of the Yamaha Crux died. Admittedly, they have not given any complaint or information to the police or to the hospital authority.

14. It is settled proposition of law that the Tribunal need not take



into consideration the FIR to fix the liability, as it is not an Encyclopedia.

The Tribunal has to look into the materials placed before it for fixing the liability. In this case, P.W.2 is the eyewitness. The report of the Motor Vehicle Inspector clearly shows that both the vehicles got damaged in the front side almost in a similar manner. Therefore, it is head on collision. If any one of the rider of the two wheelers was cautious, they could have avoided the accident or the death of the persons.

15. Though the Tribunal fixed the entire liability on the appellant/Insurance Company only based on the evidence of P.W.2, there is no other corroborative evidence. Therefore, considering the evidence of P.W.2 and the Motor Vehicle Inspector's Report which shows that both the two wheelers got damaged similarly almost with equal proposition, this Court finds that it is head on collision and therefore, the riders of both the two wheelers, have contributed their negligence equally to the accident due to which, the rider and the pillion rider of the Yamaha Crux vehicle died. Since both the riders have equally contributed their negligence, they both are equally liable to pay. However, the Yamaha Crux vehicle only insured with the appellant/Insurance Company. Therefore, the appellant/Insurance



Company is liable to pay 50% of the Award passed by the Tribunal. Since, the Pulsar vehicle was not insured with any Insurance Companies, the owner of the Pulsar is liable to pay the balance 50% of the Award amount to the claimants.

16. Accordingly, the appellant/Insurance Company is directed to pay 50% of the Award amount to the claimants and the balance 50% of the compensation shall be paid by the owner of the Pulsar vehicle.

17. The liability fixed by the Tribunal is modified as stated above. If the appellant/Insurance Company had already deposited the entire Award amount, they are at liberty to withdraw 50% of the Award amount.

18. Accordingly, this Civil Miscellaneous Petition is partly allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

21.08.2023

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



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To

1.The Motor Accident Claims Tribunal (Special District Court),
Erode.

2.The Section Officer,
VR Section,
High Court,
Madras.



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P.VELMURUGAN, J

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