



C.M.A.(MD)Nos.1084 & 1085 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 01.09.2023

PRONOUNCED ON: 24.01.2024

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

C.M.A.(MD)Nos.1084 & 1085 of 2016
and
C.M.P.(MD)Nos.9757 to 9759 of 2016

C.M.A.(MD)Nos.1084 of 2016:

The Branch Manager,
I.C.I.C.I. Lambord General Insurance Company Ltd.,
Having Office at
Door No.1545,
Trichy Salai,
Coimbatore Town,
Coimbatore District.

...Appellant

/Vs./

- 1.Rameela Devi
- 2.Minor Prasana
- 3.Malarkodi



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4.Karuppasamy

5.Muthukumar

6.Branch Manager,
Reliance General Insurance Company Ltd.,
1st Floor, Sri Meenakshi Plaza,
55, Anna Nagar,
80 Ft Road,
Madurai – 1.

7.The Inspector of Police,
Aviyur Police Station,
Kariyapatti (Taluk),
Virudhunagar District.

...Respondents

(R7 is impleaded as per the order of this Court dated 07.08.2023.)

C.M.A.(MD)Nos.1085 of 2016:

Branch Manager,
I.C.I.C.I. Lambord General Insurance Company Ltd. Office,
D.No.1545, Trichy Salai,
Coimbatore,
Coimbatore District.

...Appellant

/Vs./

1.Meena

2.Minor Keerthana

3.Minor Archana

4.Minor Suryaprakash



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5.Minor Marieswaran

6.Pappu

7.Kanthalingam

8.Karuppasamy

9.Muthukumar

10.Branch Manager,
Reliance General Insurance Company Ltd.,
1st Floor, Sri Meenakshi Plaza,
55, Anna Nagar,
60 Ft Road,
Madurai – 1.

11.The Inspector of Police,
Aviyur Police Station,
Kariyapatti (Taluk),
Virudhunagar District.

...Respondents

(R11 is impleaded as per the order of this Court dated 07.08.2023.)

COMMON PRAYER:- Appeals - filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree dated 15.10.2012 in MCOP No.6 of 2011 and MCOP No.88 of 2010 on the file of the Sub Court cum Motor Accident Claims Tribunal, Aruppukottai and allow above civil miscellaneous appeals.



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Appearance in C.M.A.(MD)Nos.1084 of 2016:

For Appellant : Mr.Lakshmanan
for Mr.V.Muthukamatchi
For Respondents : Mr.M.Saravanakumar (R1 to R3)
Mr.V.Sakthivel (R6)
for Mr.K.Gokul
Mr.V.Om Prakash (R7)
Government Advocate
No appearance (R4 & R5)

Appearance in C.M.A.(MD)Nos.1085 of 2016:

For Appellant : Mr.Lakshmanan
for Mr.V.Muthukamatchi
For Respondents : Mr.M.Saravanakumar (R1 to R7)
Mr.V.Sathivel (R10)
for Mr.K.Gokul
Mr.V.Om Prakash (R11)
Government Advocate
No appearance (R8)
Dismissed for default (R9)
(vide order dated 27.01.2019)



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COMMON JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH, J.**)

The appellant is the ICICI Lambord General Insurance Company Ltd. Motor Accident cases had been filed before the Motor Accident Claims Tribunal, Subordinate Court Arupukottai (in short 'Tribunal') by the legal heirs of one Mahendran (deceased 1, in short 'D1') (MCOP No.88 of 2010) as well as the legal heirs of Jayakumar (deceased 2 in short 'D2') (MCOP No.6 of 2011).

2. The facts in brief, common to both appeals, are as follows:

i) On 01.09.2010, both the deceased had been travelling in a Bajaj Pulsar motorcycle (in short 'Bajaj Pulsar') bearing registration No.TN 59 AJ 7578 from Kariapatti to Mushtakurichi.

ii) While they were proceeding from West to East, at about 1.30 p.m., a Hero Hondo motorcycle bearing registration No.TN 67 AC 2878 (in short 'Hero Honda'), driven by one Karuppasamy, coming from southern direction from TVS Brake Lining Company (in short 'TVS



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company') proceeded towards the North initially, but suddenly turned towards East leading to a collision between the two vehicles.

iii) D1 sustained bodily injuries including head injury and was rushed to the Government Rajaji Hospital, Madurai, where he succumbed. D2 also succumbed.

iv) A case was registered in Crime No.77 of 2010.

v) MCOP No.88 of 2010 came to be filed by the widow, 4 minor children and the parents of D1 seeking compensation of Rs.25.00 lakhs from Karuppasamy, as they alleged that the accident had taken place on account of his rash and negligent driving.

vi) MCOP No.6 of 2011 came to be filed by the widow, minor child and mother of D2 seeking compensation of Rs.49,50,000/-.

3. The motorcycle on which D1 and D2 had been travelling belonged to one Muthukumaran, arrayed as R3 in both MCOPs. The defence taken by Karuppasamy, who denied liability in full was that D2 had been riding the vehicle in a rash and negligent manner. He would state that he had been proceeding from South to North turning East in a



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slow and steady manner when the vehicle ridden by D2 collided with his vehicle from the back.

4. He claimed no responsibility for the accident or for the demise of the individuals. Any claim raised by the deceased would have to be met, if at all, only by the Insurance Company. He passed the liability to the owner of the vehicle Muthukumaran, as well as Reliance General Insurance Company Ltd. who had also been arrayed as a respondent, which was the company guaranteeing insurance of the Bajaj Pulsar.

5. The defence of the Insurance Company was that the accident had happened only by reason of the negligence of D2. They would allege that when the Bajaj Pulsar had approached the Hero Honda at high speed, the rider of Hero Honda had applied a sudden brake hoping to avert the accident. D2, however, lost control of his vehicle and crashed into the Hero Honda. The accident would not have happened, but for the total negligence of D2 and hence the appellant disavowed all responsibility.



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6. As far as Muthukumaran, owner of Bajaj Pulsar, was concerned, he would aver that there was no negligence on the part of D2 in driving the vehicle. He would claim that it had been driven at a moderate speed observing all traffic rules and that the accident had occurred only on account of the negligence of Karuppasamy, who would have to bear the entire liability.

7. Before the Tribunal, on the side of both the claimants, 7 witnesses have been examined as P.W.1 to P.W.7 and 24 exhibits marked, Exs.P.1 to P.24. On the side of the respondents, 2 witnesses have been examined as R.W.1 and R.W.2 and 3 exhibits have been marked, Exs.R.1 to R3.

8. The issues that had been crystallized were

(i) Whether the accident had occurred on account of the rash and negligent act of D2 or not

(ii) To what compensation that the claimants are entitled and

(iii) Upon whom did the liability to pay compensation enure

9. The widow of D1 and D2 had been examined, though they



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were not eye witnesses to the accident. They deposed in terms of what they had heard, that on 01.09.2010, their husbands had met with an accident and were taken to the Government Hospital, where they had succumbed.

10. P.W.3 Malaichamy, the sole eye witness, deposed that on 01.09.2010, he had been searching for his cow that had been grazing in the village. When he found the cow and was guiding him along the Meenakshipuram to Mushtakurichi road towards his native village, he had stopped at a tea shop near TVS company to have a cup of tea.

11. He deposed that he saw the Bajaj Pulsar driven by D2 proceeding from West to East in a moderate and slow manner. At that time, he noticed another motorcycle come out of TVS company proceeding from South to North and turning to the East on the northern side of the road in a rash and negligent matter colliding against the Bajaj Pulsar. He identified the vehicles that were being driven by both the parties. He also stated that he knew D1 and D2 as they both belonged to Kanjamanayakanpatti village. He was the one who had seen them and



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WEB COM taken them to the hospital.

12. Karuppasamy, driver of Hero Honda vehicle, would depose to the contrary stating that the deposition of P.W.3 Malaichamy was incorrect. He had sustained injuries and lodged a complaint with Aviyur Police Station under Sections 379, 337, 304(A) of the IPC in Crime No.77 of 2010.

13. The wife of D2 had objected to the complaint against her husband and had sought re-investigation. But the Tribunal records that no action had been taken in that regard. On the other hand, the Taluk Legal Aid Service Committee, Aruppukottai had conducted enquiry and sent a report to the Superintendent of Police, Virudhunagar to the effect that it was the rash and negligent driving of Karuppasamy that was the reason for the accident.

14. The deposition of Karuppasamy also included a statement that, at the junction of TVS company, several container lorries had been parked on the Western side of the North-South road and it would not possible for him to view the East-West road from the South while



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proceeding to turn to an easterly direction. Thus, it had been contended that when Karuppasamy had suddenly turned towards the right, he had failed to note the Bajaj Pulsar vehicle and had collided with the motorcycle. The police complaint ultimately came to be closed as abated.

15. The Tribunal analysed the conflict in the manner in which the accident had occurred as follows. While P.W.3 had deposed that he saw the accident and had attributed it to the rash and negligent driving of Karuppasamy, Karuppasamy had deposed to the contrary. The enquiry made by the Taluk Legal Services Committee had taken note of the deposition of Malaichamy, P.W.3. The rough sketch provided in the course of the hearing has also been referred to by the Tribunal.

16. The Tribunal records the trajectory of events as follows:

- (i) The accident took place before TVS company.
- (ii) Karuppasamy had come out of the TVS company at 1.30 p.m. after attending duty.
- (iii) D1 and D2 had been travelling on the Bajaj Pulsar



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proceeding from West to East.

- (iv) TVS company was located on the southern side of the East-West road.
- (v) Karuppasamy proceeded from South to North and admittedly turned East.

17. The Tribunal considered the fact that, admittedly, there were container lorries parked on the east-west road on the South side of the TVS company. Thus, as they pose obstruction to his view, the Tribunal concluded that there was every possibility that Karuppasamy could have crashed into the Bajaj Pulsar vehicle without noticing it proceeding from the east-west direction.

18. The liability for the accident was thus placed on Karuppasamy. Unfortunately, the perspective of the riders of the Bajaj Pulsar could not be ascertained as they passed away immediately after the accident. The Tribunal also considered the possibility that in such circumstances, it was but human nature for Karuppasamy to have shifted the blame to the deceased. If only the Aviyur Police authorities had



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continued the investigation, the truth could have been ascertained.

However, in this case, the complaint has been closed as abated and neither the Tribunal nor the Bench had the advantage of the police investigation.

19. The accident report filed under Ex.R.4 does not disclose the manner in which the police authorities came to the conclusion that the accident had occurred on account of the negligence of D2. No contributory negligence had been attributed to him as well. Thus, on the basis of this discussion, the Tribunal concludes that it was Karuppasamy who is responsible for the accident.

20. On the quantification of the compensation, the claimants in MCOP No.88 of 2010 were awarded a sum of Rs.17,11,000/- and the claimants in MCOP No. 6 of 2011 were awarded a sum of Rs.22,50,000/-, both with interests and costs. As against this award, the Insurance Company is in appeals before us.

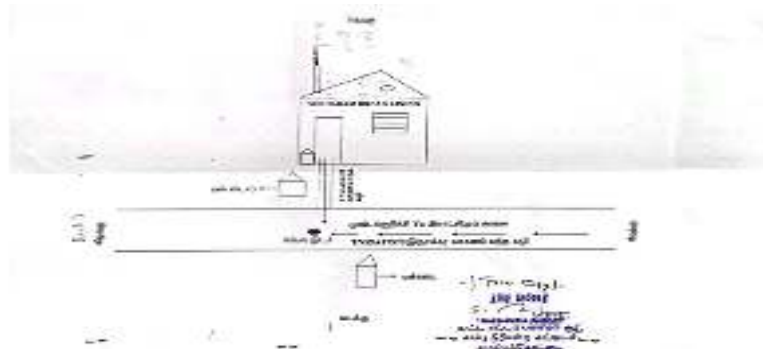
21. The appellants have nothing new to state in terms of the factual matrix itself. They also do not draw attention to any alleged



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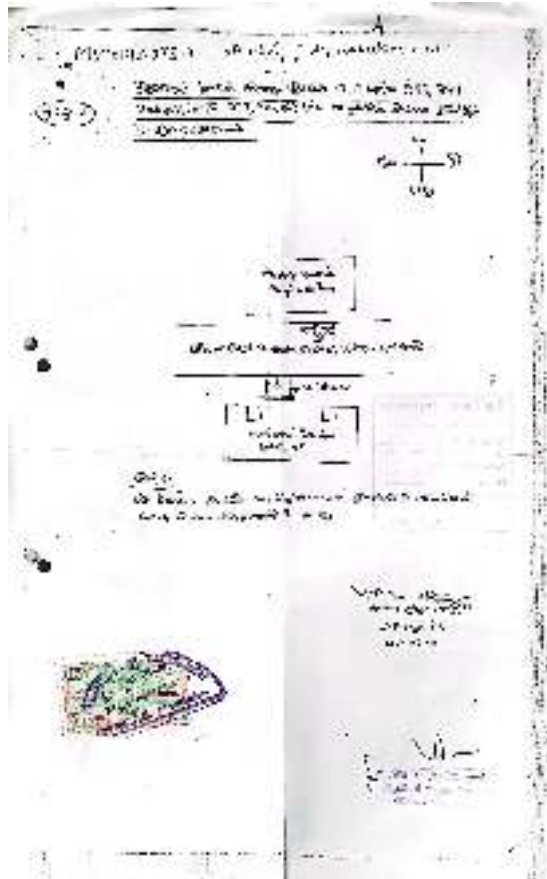
perversity in the order of the Tribunal. We have devoted our anxious consideration to the facts that arise in the matter, studying the rough sketch closely to determine how the events could have unfolded. We set out below the rough sketches that have been filed by the petitioners under Ex.P.12 and Ex.R.3:

Ex.P.12





Ex.R.3



23. The rough sketches do not show the trajectory of Karuppasamy's motor bike. One relevant pointer that could have aided us in coming to a decision would be the point of impact on the motorcycles



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which detail we are, unfortunately, unable to glean from the records.

24. Apart from the rough sketches, there are really no other exhibits that would be of any assistance in this case. The rough sketches are also of limited utility. We would thus proceed to examine whether the reasoning adduced by the Tribunal is acceptable. The Tribunal had come to the conclusion that the liability would fall on Karuppasamy for the reason that it was his vehicle that was turning into the main road.

25. The observation of the Tribunal that more caution must be exercised by him rather than by the other riders is appropriate, as it is he who has turned on to the main highway from the opposite side of the road. The deposition of the eye witness Malaichamy is also supportive of this position.

26. It is also possible, as the Tribunal notes, that his vision was blocked by the container lorries parked on the south side of TVS company. Therefore, while attempting to turn right, there was an obstruction that was caused by the container lorries and we find the conclusion of the Tribunal in regard to the obstruction also well taken.



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27. In this view of the matter, we see no merit in these appeals necessitating intervention and the same are dismissed. No costs.

28. This Court vide order dated 17.10.2016 directed the appellants to deposit 50% of the award amount and permitted the major claimants to withdraw the same. The appellants are now directed to deposit the balance award amount with interest and costs, as directed by the Tribunal, if not already deposited, within a period of four weeks from date of receipt of a copy of this order.

29. Upon such deposit, the major claimants are permitted to withdraw the same. The share of the minors shall be deposited in an interest bearing Fixed Deposit in any Nationalised Bank, initially for a period of five years and the interest accrued shall be payable to the respective first claimant once in six months. Connected MPs are closed.

[A.S.M.J.] & [R.V.J.]
24.01.2024

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



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TO

- 1.The Inspector of Police,
Aviyur Police Station,
Kariyapatti (Taluk),
Virudhunagar District.
- 2.The Sub Court cum Motor Accident
Claims Tribunal, Aruppukottai.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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Pre-delivery Common Judgment delivered in
C.M.A.(MD)Nos.1084 & 1085 of 2016

Dated: 24.01.2024