

Navakumar and Another Vs. Senthil @ Senthilkumar and Another

Navakumar and Another Vs. Senthil @ Senthilkumar and Another

SooperKanoon Citation : sooperkanoon.com/1187293

Court : Chennai Madurai

Decided On : Nov-22-2016

Judge : S.M. Subramaniam

Appeal No. : CMA(MD)Nos. 1201 to 1214 of 2013 & M.P(MD)No. 1 of 2013(14 MPs)

Appellant : Navakumar and Another

Respondent : Senthil @ Senthilkumar and Another

Judgement :

(Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 28.02.2005 passed in MACOP.No.471 of 2002 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Karur.)

Common Judgment

1. The unfortunate accident took place on 27.02.2002 on Karur to Erode main road. There are fatal and injuries caused due to the accident and the heirs of the deceased and the injured claimants filed their respective applications before the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Karur, seeking compensation and the Tribunal, considering the facts and circumstances awarded compensation to the claimants. Challenging the award passed by the Tribunal, these batch of appeals are jointly filed by the owner of the Lorry which met with the

accident and its insurer/National Insurance Company Limited.

2. It is the contention of the appellant/National Insurance Company Limited that the Tribunal has committed an error in fixing 100% liability on the appellant insurance company and 50% liability ought to have been imposed on the Oriental Insurance Company Limited with whom, the Van met with the accident was insured. In fact, the claimants had travelled in the Van, which was insured with the Oriental Insurance Company.

3. The learned counsel for the appellants further contended that the Tribunal ought to have considered the rough sketch produced by the investigating officer, marked as a document before the Tribunal, which shows that the accident occurred on the middle of the road and therefore, 50% liability ought to have been imposed on the Oriental Insurance Company Limited.

4. Learned counsel for the respondent/Oriental Insurance Company Limited opposed the appeals, by stating that it is a case where all the victims were travelling in the Van and the Lorry which was insured with the appellant National Insurance Company coming in the opposite side dashed with the Van and the Van was capsized and consequently, some of the victims got injured and some died. Therefore, the liability cannot be fixed on the driver of the Van, because the driver of the Van had not committed any act of negligence. It is further contended that FIR was registered only against the driver of the Lorry, which was insured with the appellant National Insurance Company Limited. Therefore, no liability can be fixed on the Oriental Insurance Company Limited. Further, on reading of the findings of the Tribunal, it is clear some of the injured witnesses categorically deposed that the driver of the Lorry was at fault. The Tribunal also found that the Lorry driver was at fault and there is no fault on the side of the driver of the Van. Hence, no liability can be fixed on the respondent Oriental Insurance Company Limited.

5. In view of the facts and circumstances, this Court is of the view that the findings of the Tribunal is in order and there is no infirmity or error on record. Such being the position, this Court is not inclined to consider the grounds of appeal raised by the appellant in all these appeals.

6. The counsel for the appellants further argued on the point of quantum and this Court finds no reason to interfere with the quantum of compensation awarded by the Tribunal, in view of the fact that on account of this accident, some persons died and some got injured seriously.

7. In view of this factual situation, the award passed by the Tribunal in all these cases, are confirmed and the appellant insurance company is directed to deposit the entire award amount in all these cases with proportionate accrued interest and costs to the credit of the claim petitions, within a period of four weeks from the date of receipt of the copy of this judgment, if not deposited already. On such deposit, the major claimants in all the cases, are permitted to withdraw their respective shares as apportioned by the Tribunal, with proportionate accrued interest and costs, less the amount already withdrawn, if any, through RTGS, by filing necessary applications before the Tribunal. Insofar as the minor claimants are concerned, their respective shares as apportioned by the Tribunal with proportionate accrued interest and costs, shall be deposited in a Nationalised Bank in Fixed Deposit till they attain majority. On attainment of majority, it is for such minor claimants to approach the Tribunal concerned, for withdrawal of their shares, by making necessary applications.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com