

Krishnaveni and Another Vs. Manokaran and Others

Krishnaveni and Another Vs. Manokaran and Others

SooperKanoon Citation : sooperkanoon.com/953976

Court : Chennai

Decided On : Oct-16-2012

Reported in : 2012(8)MLJ94

Judge : P. Devadass

Appeal No. : C.M.A.No.2559 of 2009

Appellant : Krishnaveni and Another

Respondent : Manokaran and Others

Advocate for Pet/Ap. : For the Appellants: S. Sounthar, Advocate. For the Respondents: R3, S. Jayasankar, R1, R2 Exparte, Advocate.

Judgement :

(Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 13.03.2009 made in M.A.C.T.O.P No.232 of 2007 on the file of the Motor Accident Claims Tribunal, (Additional District Judge), Puducherry, Karaikal.)

1. The dependents of a deceased in a road accident dissatisfied with reducing half of the quantified compensation amount have directed this appeal.
2. On 24.07.2006, in a road accident, Kanagaraj lost his life. The Tribunal assessed loss of dependency at Rs.6,48,000/-. The Tribunal holding that the

deceased was not having a valid driving license, thus, contributed to the accident, fastened 50% of negligence on the deceased, reduced the amount to Rs.3,24,000/-, deducted 1/3 and took Rs.2,16,000/- and added Rs.10,000, Rs.5,000, Rs.20,000 towards cremation expenses, loss of consortium of the widow and for loss of love and affection, thus, totally awarded Rs.2,51,000/-.

3. According to the learned counsel for the appellants/claimants, there was no independent evidence that the deceased had also contributed to the accident, in such circumstances, holding that the deceased has also contributed to the accident is not in accordance with law.

4. On the other hand, the learned counsel for third respondent/Insurance Company would contend that the Tribunal had taken such a view on the appreciation of evidence.

5. I have considered the rival submissions, perused the materials on record and the impugned judgment of the Tribunal.

6. The concept of negligence presupposes a reckless, careless act. 'Negligence' has different connotations. They are 'Negligence proper', 'composite negligence' and 'contributory negligence'. 'Contributory negligence' implies contribution of a material act by a person to the accident. Like any other fact, it must be proved by relevant and legal evidence. Thus, contributory negligence cannot be a matter of presumption, and conjecture. So, by mere possessing of a driving license the deceased cannot be said to have contributed to the accident, unless there is independent and acceptable evidence to that effect.

7. In the case before us, by the evidence of P.W.1. the Tribunal found that at the time of accident, the deceased was not having driving license and thus came to the conclusion that the deceased also contributed to the accident. This finding of the Tribunal is not based on any evidence. Thus, this finding of the Tribunal is flawed. Thus, its decisions to deduct 50% of the amount, namely, Rs.2,16,000 is not correct. The appellants are entitled to full compensation.

8. In the result, the award of the Tribunal is modified. The appellants are awarded a total compensation of Rs.4,67,000/- with 7.5% interest p.a. from the date of filing the original petition till deposit. Within four weeks from the date of receipt of a copy of this Judgment, the third respondent shall deposit the entire modified compensation amount less amount, if any already deposited. On such deposit, the adult appellant is permitted to withdraw her share of amount, less amount, if any already withdrawn. The share of the minor appellant shall continue to be kept in the bank deposit upto his 18 years of age. The accrued interest thereon shall be regularly paid to the first appellant. This Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs.

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