

(2005) 07 MP CK 0027
In the Madhya Pradesh High Court

Bhawani and Others

APPELLANT

Vs

Rameshchandra and Others

RESPONDENT

Date of Decision : 20-07-2005

Acts Referred:

Citation : (2006) 2 ACC 54

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Judgement

N.K. Mody, J.—Being aggrieved by the award dated 18.5.2001 passed by MACT, Bioara, District Rajgarh in Claim Case No. 303/1997 whereby after awarding a compensation of Rs. 1,00,000, an amount of Rs. 50,000 has been awarded to the appellants, the present appeal has been filed.

2. Short facts of the case are that an accident took place on 13.5.1995 between the Metador bearing registration No. MIU/1545 and a bus bearing Registration No. MP-13/C/2689. In the accident one Naushad who was driver of the metador died and one Omprakash who was travelling in the metador also died. The present appellants filed the claim petition being dependent of deceased Omprakash. The claim petition was opposed by the respondents. By the impugned award learned Tribunal held that since there was a contributory negligence on the part of driver of both the vehicles, therefore, after assessing compensation Rs. 1,00,000 held that appellants are entitled for compensation of Rs. 50,000 as appellants failed to prove the ownership of respondent No. 4 of the other vehicle in which deceased was travelling.

3. Learned Counsel for the appellants submits that learned Tribunal has wrongly held that since it was a case of contributory negligence, therefore, the appellants are entitled for 50% amount of the compensation.

4. Learned Counsel for the respondent No. 3 submits that whether it is a case of contributory negligence or is a case of composite negligence, since the deceased Omprakash who was travelling in the Metador, therefore, deceased Omprakash

was a third party, therefore, even in case the respondent No. 3 is held liable for making the payment of compensation 50% then too the appellants are entitled to recover the 100% amount of compensation from respondent No. 3 and respondent No. 3 is at liberty to recover the amount of 50% of compensation from respondent No. 4 who is the owner of the metador. For this contention learned Counsel for the respondent No. 3 placed reliance on a decision in the matter of Mayaram v. Mehboob decided on 17.1.2005 in M.A. No. 179/2000 wherein Division Bench of this Court headed by Hon"ble the Chief Justice has observed as under:

Coming to the next contention we are of the view that the Claims Tribunal should not have restricted the liability of respondents to 50% of the compensation. The deceased was not the driver of the mini truck and, therefore, the case was not one of the contributory negligence, but was a case of composite negligence. It is now well settled that only in case of contributory negligence, Courts can apportion the liability between the drivers. As this is not a case of contributory negligence, the liability for the entire compensation is joint and several and the question of apportionment of liability does not arise. Therefore, the respondents are liable to the full extent of compensation subject to their right to seek contribution from the driver/owner/insurer of the mini truck (MP 7 D 2218).

5. Since the deceased Omparkash was a third party, therefore, the findings of learned Tribunal that appellants are entitled to recover 50% of the amount of compensation is not sustainable in law, in view of the law laid down by this Court in the matter of Mayaram (supra).

6. In view of this, the appeal deserves to be allowed and it is allowed. The award is modified to the extent that the respondent Nos. 1 to 3 shall be liable to make the payment of amount of compensation to the appellants with interest as awarded by the learned Tribunal.

7. With the aforesaid modifications, appeal stands disposed of. No order as to costs.