

(2005) 01 MP CK 0039
In the Madhya Pradesh High Court

Mayaram and Another

APPELLANT

Vs

Mehboob and Another

RESPONDENT

Date of Decision : 17-01-2005

Acts Referred:

Citation : (2007) ACJ 918

Hon'ble Judges : R.V. Raveendran, C.J;S.S. Kemkar, J

Bench : Division Bench

Judgement

Shantanu Kemkar, J.—This appeal is directed against the award dated 21.10.1999 passed by Motor Accidents Claims Tribunal, West Nimar, Mandleshwar in Claim Case No. 201 of 1998.

2. It is not in dispute that Hemraj, son of appellants died in an accident which occurred due to head-on collision of mini-truck No. MP 7-D 2218 and truck No. MP 11-A 7219. The appellants (parents of the deceased Hemraj) filed a claim petition against the owner-cum-driver, respondent No. 1 and the insurer, respondent No. 2, of truck No. MP 11-A 7219, seeking compensation of Rs. 4,10,000. Respondent No. 1, remained exparte. New India Assurance Co. Ltd., respondent No. 2, resisted the claim and stated that the accident occurred due to rash and negligent driving of mini-truck in which the deceased was travelling, therefore, they cannot be made liable to pay the compensation.

3. The Tribunal held that the accident occurred due to composite negligence of the drivers of both the trucks. Deceased was the cleaner of the mini-truck and his income was assessed by the Tribunal to be Rs. 2,000 per month. The Claims Tribunal after deducting Rs. 700 for his personal and living expenses, assessed the dependency as Rs. 1,300 per month or Rs. 15,600 per annum. Multiplier of 12 was applied on the basis of the age of the mother, who was of 40 years. The loss of dependency was thus assessed to Rs. 1,87,200 and a sum of Rs. 5,000 (under conventional heads and funeral expenses was added). After arriving at the compensation to Rs. 1,92,200 the Tribunal apportioned the liability to the extent of 50 per cent each between each set of driver, owner and insurer of the

trucks. Since, the driver, owner and insurance company of mini-truck No. MP 7-D 2218 were not made parties, the Tribunal held that the appellants would be entitled to get compensation of only Rs. 96,100 that is 50 per cent of Rs. 1,92,200 along with interest at the rate of 12 per cent per annum from the date of filing of the claim petition from the respondents, i.e., owner, driver and insurer of truck No. MP 11-A 7219.

4. Feeling aggrieved the appellants have filed this appeal. Appellants contended that the compensation awarded by the Tribunal is not adequate and deserves to be enhanced. It is also contended that Claims Tribunal was not justified in directing that only 50 per cent should be payable by the respondents, as it was not a case of contributory negligence, but a case of composite negligence.

5. We find that deceased was working as a cleaner and his income has rightly been assessed to Rs. 2,000 per month. We find that broadly, the deduction towards personal and living expenses of deceased and calculation of the compensation of Rs. 1,92,200 by the Tribunal is just and proper and needs no interference.

6. Coming to the next contention we are of the view that the Claims Tribunal should not have restricted the liability of respondents to 50 per cent of the compensation. The deceased was not the driver of the mini-truck and, therefore, the case was not one of 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, 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 No. MP 7-D 2218.

7. In view of the above, the appeal is allowed in part. The award is modified to the extent that the liability of respondents is held to be in respect of the entire compensation of Rs. 1,92,200, with interest as awarded by the Tribunal to the appellants. Respondents shall, however, have right to recover a part of compensation from the owner, driver and insurer of the mini-truck by taking appropriate steps in accordance with law. With the aforesaid modification this appeal is partly allowed, No order as to costs.