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In the High Court of Judicature for Rajasthan  
At  
Jai pur Bench, Jai pur

JUDGMENT

In

S. B. Civil Misc. Appeal No. 196/1999  
Jagannath and others Vs. Shambhu Singh & Ors.

Date of Judgment :: 31<sup>st</sup> March, 2009

PRESIDENT  
Hon'ble Mr. Justice Guman Singh

Mr. C. K. Jain, for appellants.  
Mr. Gajananad Mishra Manav, Dy. Govt. Counsel  
for respondent State.

BY THE COURT (ORAL)

Heard.

This appeal has been preferred by the appellants against the judgment and award dated 12/10/1998 passed by the Motor Accident Claims Tribunal -II, Ajmer Camp at Kekri in MACT Case No. 56/1992 whereby the claim petition of the appellant-claimants was dismissed by the Tribunal on the basis of the finding on issue no. 1 whereby finding was given that respondent offending vehicle jeep was not found negligent in causing the accident.

2. Learned counsel for the appellants submitted that the Tribunal has failed to

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appreciate the evidence in right perspective giving the finding that driver of the offending vehicle jeep was not rash and negligent. Learned counsel submits that the jeep being a smaller and fast vehicle, it was not possible for the tractor to collide against the jeep unless the jeep driver himself was not negligent. Learned counsel further submitted that the Learned Tribunal has failed to appreciate the evidence of two eye witnesses namely Devi Lal and Jamal Khan in right perspective, though they had deposed that it was the driver of the jeep who was responsible for the accident and the Tribunal wrongly appreciated the evidence of DW1 Shambhu Singh, driver of the jeep, on the point.

3. Per contra, Learned Deputy Government Counsel on behalf of the State supported the judgment of the Tribunal on the ground that the Tribunal has given a finding which is just and proper on the point of negligence on the basis of the evidence collected during the enquiry and the same calls for no interference. Learned counsel further

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submitted that speed of the jeep was very slow and the Tribunal has given the finding against the driver of the tractor that he was negligent and he was also convicted.

4. Having considered the rival submissions and going through the award as well as the record of the case, it is revealed that this case pertains to the claim for the damage caused to the tractor. It is further revealed that the accident had taken place between the tractor and the jeep. In view of the arguments advanced by the learned counsel for the appellants that the jeep being smaller and fast vehicle, the last opportunity was with the driver of the jeep to avoid the accident and he failed to do so because he was rash and negligent, therefore the evidence adduced in the matter deserves to be appreciated in right perspective and the matter deserves to be remanded for fresh decision on all the issues.

6. Accordingly, the judgment and award passed by the learned Tribunal is set aside. The matter is remanded for fresh decision on all the issues after giving

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opportunity of hearing and leading the evidence, if any, to both the parties. Both the parties are directed to appear before the Learned Tribunal below on 21/5/2009. Record and file of the case be sent forthwith.

7. The appeal stands disposed of.

(Guman Singh), J.

VS Shekhawat/-  
Jr. P.A.  
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