

IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JAIPUR BENCH, JAIPUR.

**

S. B. CIVIL MISC. APPEAL NO. 279/2007
(Shishpal Mehra and ors. Vs. Hansraj and
ors.)

Date of Judgment : 31.08.2009

HON'BLE MR. JUSTICE GUMAN SINGH

Mr. B. C. Rawat, for the appellants.

Mr. Dinesh Kala & Mr. R. S. Sharma, for the
respondents.

With the consent of both the parties,
this matter is being finally disposed of at
admission stage.

2. Heard learned counsel for the parties.

3. This appeal has been preferred on behalf
of appellants-dependents of deceased Rajesh
@ Kailash against the judgment and award
passed by learned Motor Accident Claims
Tribunal-cum-Addl. Distt. Judge No. 7, Jaipur
city, Jaipur vide judgment dated 21.7.06
whereby claim petition of the appellants was
dismissed for want of sufficient evidence as
stated in issue no.5 and no other issue was
decided.

4. The learned counsel for the appellant
submits that he had produced sufficient
evidence in support of his claim petition,

but the Learned Tribunal has not appreciated the evidence and documents available on record and erred in not deciding all the issues on the basis of evidence and has also erred in deciding issue no.5 against him by dismissing claim petition for want of sufficient evidence.

5. Per contra, learned counsel for the respondent-Insurance Company has submitted that the Learned Tribunal has rightly observed that no sufficient evidence was produced on issue no.1 to 4 and as such the claim petition was dismissed for want of sufficient evidence by observing so in issue no.5. Learned counsel for the respondent-owner & driver also supported the judgment of the Tribunal and submitted that he has filed an application under O.41 R.27 CPC for taking driving license on record and also submitted that in case, matter is remanded, he may be permitted to produce the documents on record.

6. On hearing rival contentions, and going through the award as also record of the case, it is revealed that the issues framed

on the points of quantum, negligence as well as pertaining to dependency of the deceased have not been decided for want of sufficient evidence and claim petition has been summarily dismissed, therefore, the matter deserves to be remanded for fresh decision after giving opportunity of hearing and to adduce evidence to all the parties including documentary evidence.

7. Accordingly, appeal of the appellants is allowed. The impugned Judgment & award dated 21.7.06 is set aside and the matter is remanded to the Tribunal with a direction to decide all the issues afresh after giving opportunity of hearing to all the parties and to adduce evidence including documentary evidence. All the parties are directed to remain present before the Tribunal on 15.10.2009. Record be sent forthwith.

(GUMAN SINGH), J.