

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

O R D E R

S. B. CIVIL MISC. APPEAL NO. 732/2001.

Ram Swaroop
Vs.
Santra & Ors.

Date of Order :- November 30, 2011.

HON' BLE MR. JUSTICE MOHAMMAD RAFIQ

Shri R.N. Sharma for the non-claimant-appellant.

BY THE COURT: -

1) This appeal has been preferred by the non-claimant-appellant with the prayer to set-aside the award dated 21/9/2000 passed by the Motor Accident Claims Tribunal, Malpura, District Tonk whereby, Rs. 1,58,000/- has been awarded as compensation to the respondent-claimants.

2) Contention of the learned counsel for the non-claimant-appellant is that the learned Tribunal erred in law while not framing the separate issue on the point 'as to who was driving the offending vehicle i.e. motorcycle whether it was Ram Swaroop non-claimant-appellant or deceased-Jitram@ Jitram?' and in the absence of this particular and separate issue being framed, the non-claimant-appellant, who was sitting on the motorcycle as a pillion rider being driven by deceased-Jitram @Jitram, cannot be held

responsible for the accident. The appeal therefore be allowed and the impugned award be set-aside.

3) Upon hearing learned counsel for the non-claimant-appellant and perusing the award, I find that learned Tribunal framed a specific issue i.e. Issue no.3 regarding objection raised by the appellant as to the maintainability of the claim petition and the burden to prove this issue was upon the non-claimant-appellant, which he failed to prove. Appellant failed to prove the fact that in fact he was not driving the motorcycle and it was deceased-Jeetram, who was driving the vehicle at the time of accident and further that Trilok Singh-respondent No.5 sold the motorcycle to the non-claimant-appellant prior to the accident took place. Therefore, relying on the statement of AW5-Narendra Singh Rathore, who lodged the first information report as well as copy of the charge-sheet Exh.2 proving fact that non-claimant-appellant was in fact driving the motorcycle in a rash and negligent manner, held him liable for the accident and accordingly passed the award.

4) I do not find any error in the impugned award.

5) The appeal has no merit, which is accordingly dismissed.

(MOHAMMAD RAFIQ), J.

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