

IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
BENCH AT JAI PUR.

O R D E R

S. B. CIVIL MIS. APPEAL NO. 7075/2011.

The Oriental Insurance Company Ltd.

Vs.

Smt. Santra Devi & ors.

Date of Order :-

November 30, 2011.

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Shri Rishipal Agrawal for the appellant-Insurance Company.

BY THE COURT: -

1) This appeal has been filed by the appellant-Oriental Insurance Co. Ltd. assailing the award of the Motor Accident Claims Tribunal Dausa dated 9/9/2011 on the ground that the compensation of Rs. 6,49,470/- granted by the learned Tribunal in the impugned award is excessive and deserves to be reduced.

2) Contentions of the learned counsel for the appellant-insurance company is that the learned Tribunal erred in law while recording a perverse and erroneous finding on Issue No. 1. Though the charge-sheet was filed by the police against the driver of the offending vehicle, which was insured with the appellant-insurance company but report of the investigating officer and the finding of the

court of sessions are not binding upon the appellant insurance company in a motor accident claims case. Learned Tribunal ought to have analyzed the facts and evidence independently thereof. There were several contradictions in the pleadings of the claim petition and the documents relied on by the claimant. The appeal therefore be allowed and the impugned award be set-aside.

3) Having heard learned counsel for the appellant and perused the award, I find that insurance company failed to prove Issue No. 1, which was to the effect "whether deceased-Budhram died due to the negligent driving of the offending vehicle by the driver?". Burden of proving Issue No. 3 regarding liability of the insurance company to pay compensation was also upon the appellant-insurance company, which it failed to prove, whereas it was found proved from the evidence of AW2 Bhol a @ Bhagwansahay, who in his examination-in-chief while giving affidavit clearly stated that on 12/5/2007 he was talking with deceased-Budhram on national highway no. 11 of village Patoli on the side of the road and when he was returning after purchasing the 'bidhi' & 'tobacco' from the next side situated shop, he saw the vehicle i.e. TATA-407 RJ. 29. G. 0786 hitting deceased-Budhram, who was standing with his motorcycle on the 'kacchha side' of the road, due to which, deceased-Budhram became

unconscious and died in hospital during treatment. Site plan prepared by the police also shows that deceased-Budhram was standing on his correct side at place 'x' and the offending vehicle hit him by driving the offending vehicle in a rash and negligent manner. Police therefore rightly filed charge-sheet against the driver. This evidence was not rebutted by the counsel appearing for the insurance company before the Tribunal. Medical evidence i.e. injury report Exh. 8 and post-mortem report Exh. 9 also proved that the deceased died due to the injuries sustained by him in an accident, which medical-evidence was also not rebutted by the insurance company. The driver of the offending was also found possessing a valid licence Exh. 13 and therefore the insurance company was rightly held liable for indemnifying the owner of the vehicle to make payment of compensation.

4) The Learned Tribunal in my considered view, did not commit any error in holding the appellant - insurance company liable for indemnifying the owner of the vehicle to make payment of compensation.

5) The appeal is accordingly dismissed.

ani I (MOHAMMAD RAFIQ), J.