

Devaram Vs. Prahlad Singh and ors.

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SooperKanoon Citation : sooperkanoon.com/765435

Court : Rajasthan

Decided On : Apr-17-2008

Reported in : RLW2008(3)Raj2344

Judge : Mohammad Rafiq, J.

Appellant : Devaram

Respondent : Prahlad Singh and ors.

Judgement :

Mohammad Rafiq, J.

1. This appeal is directed against the rejection of the claim petition No. 1340/99 (60/91) filed by the appellant merely on the ground of his non-examination as witness in support of claim.

2. Learned Counsel for the appellant has submitted that the appellant was minor at the time of accident being only 8 years and he could not contest for himself. There was otherwise sufficient evidence on record in the shape of injury report, FIR and X-ray report. Evidence of all other witnesses of the appellant, some of which were his relatives, was also produced. The learned Tribunal while dismissing the claim petition was therefore not correct when it stated that the appellant did not examine himself as a witness in support of his claim petition, nor did produce any other documentary evidence. Learned Counsel made reference to earlier part of the

award whereby the Tribunal itself noted the fact that the appellant Devaram has produced his injury report. It has therefore been prayed that taking note of the fact that the appellant was minor at the time of accident when claim petition was dismissed, he should be provided at least one opportunity to prove his case.

3. Learned Counsel for respondent insurance company has opposed the appeal and submitted that when the appellant has not pleaded his case before the Tribunal, nor did his natural guardian appeared for him in the witness box to prove his claim, he cannot at this stage be afforded an opportunity to lead his evidence. Learned Counsel however could not dispute the fact that the Tribunal in the self same award has also noticed the injury report of the appellant.

4. Considering the facts aforesaid and especially keeping in view the age of the appellant at the time of rejection of claim case, I deem it appropriate to grant one opportunity to the appellant to prove his case since there has been no decision on merits. The award of the Tribunal in so far as it rejected the claim petition No. 1340/99 (60/91) is therefore set aside and the matter is remanded back to the Tribunal to enable the appellant to produce his evidence and decide the matter in accordance with law. However, if eventually the Tribunal awards any compensation to the appellant, the period consumed before this Court during the pendency of the present appeal, would be liable to be excluded for calculation of interest on the amount of awarded compensation.