IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No.1439 of 2000 (O&M)
Date of decision : 05.07.2017

National Insurance Co. Ltd.

...Appellant

Versus

Jaskaran Singh and another

...Respondents

2. FAO No.1440 of 2000 (O&M)
Date of decision : 05.07.2017

National Insurance Co. Ltd.

...Appellant

Versus

Rameshwari Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. N.K. Manchanda, Advocate for the appellant.

Mr. Vijay Dahiya, Advocate
for respondent Nos.1 to 5 in FAO No.1439 of 2000.

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AMIT RAWAL, J. (Oral)

This order of mine shall dispose of aforementioned two appeals.

The National Insurance Company is against the award dated 14.01.2000 passed by MACT entertaining the claim petition filed on account of injuries suffered by claimants in FAO No.1439 of 2000 and on account of death of Ram Lal in FAO No.1440 of 2000.

The case set out by the claimants in claim petition is that on 12.08.1997, Jaskaran Singh respondent (injured) along with Harpal Singh, Gurbachan Singh, Ram Lal (since deceased) and 35-40 other persons including ladies and children were going from Ellenabad to Chanpurana in vehicle make Tata 407 Canter bearing registration No.RJ-31-G/0590 driven by Jeet Singh driver. Owing to the rash and negligent driving of the aforementioned person, met with an accident resulting into death and injuries caused to the passengers travelling on Canter. Resultantly, FIR No.74 dated 12.08.1997 under Sections 415, 279, 337, 338 and 304A of the Indian Penal Code was registered with the Police Station, Jaito.

The arguments of Mr. Manchanda, counsel appearing on behalf of Insurance Company is that pleaded case of the claimants and as well as the information recorded in the aforementioned FIR is synonymous, in essence, 35-40 passengers were travelling on Canter. However, Ld. MACT has not granted the recovery rights to the Insurance Company on the premise that during the evidence, witnesses have come out with the different version i.e. the testimony of Jaskaran Singh that only few persons were travelling on Canter and submits that such statement cannot be made basis being afterthought, much less, even acquittal of the driver cannot be a ground for non-suiting the insurance company giving the recovery rights. In fact, there was/is breach of terms and conditions of the insurance policy as the vehicle is meant for being plied for commercial purposes and not for carrying the passengers and, therefore, the Insurance Company should have been absolved.

Learned counsel appearing on behalf of respondents submits that Insurance Company has not been able to cause dent in the testimony of Jaskaran Singh after extensive cross-examination and it is on this premise the MACT had been justified in fastening the liability upon insurance company instead of driver and owner of the vehicle. The contents of the FIR cannot be treated as evidence being first information, when even resulted into acquittal of driver and, therefore, only solitary evidence of the claimants cannot be treated as evidence vis-a-vis statement of Jaskaran Singh. Even award of MACT is perfectly legal and justified.

The other respondents i.e. driver and owner vide order dated 21.11.2014 have already been proceeded ex parte.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and merit in the submissions of Mr. Manchanda, for, it is categoric case of the claimants that they were travelling on a canter, in para No.10 of claim petition titled as Rameshwar DeviVs. Jeet Singh and others, which reads as under:-

> *"Shri Ram Lal son of Shri Ram Jas, since deceased alongwith other 35/40 persons were going from Ellenabad to Village Chanpurana Distt. Moga in a Tata-407 Canter No.RJ-31-G/0590 which was being driven by respondent No.l in a very fast speed. When they reached near Bajakhera then the tyre of the vehicle was burst and vehicle turned turtle and the impact was caused and Ram Lal deceased succumbed to the injured on the spot."*

In view of such averments in the plaint, no such independent evidence was required to be led, much less, claimants are not been able to belie the statement in the proceedings. The FIR is also on the same lines.

The statement of Jaskaran Singh being afterthought is an attempt to bail out the driver and owner from the liability. Prima facie in my view there is breach of terms and conditions of insurance policy. Concededly the Insurance policy was issued only for using the vehicle for commercial purposes and not for carrying the passengers. The public money cannot be allowed to be fritted away in such a manner as insurance company indemnifies the owner only in case there is no breach of terms and conditions of the policy.

I am of the view that driver and owner cannot be permitted to cause breach with immunity and get away from the liability.

Resultantly, order dated 14.01.2000 of MACT fastened the liability on the insurance company is modified by giving recovery rights to them to recover the amount from the owner and driver in accordance with law.

Award of MACT dated 14.01.2000 is accordingly modified.

Accordingly, present appeals are allowed.

05.07.2017 **(AMIT RAWAL)**
pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**