

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1979 OF 2009
(Arising out of SLP(C)No. 7466/2005)

New India Assurance Co.Ltd.

...Appellant(s)



Versus

Satbir and Ors.

...Respondent(s)

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2 Challenge in these appeals is the order passed by the Division Bench of the Punjab and Haryana High Court dismissing the appeal filed by the appellant. The Ist FAO 5130/2003 was filed by the present appellant. Both the appeals were filed by the present appellant (hereinafter referred to as an Insurance Company).



3 Challenge was to the order passed by the Motor Accident Claims Tribunal, Hissar (in short MACT). The basic challenge was that the MACT while dealing with the claim petition filed, categorically hold that the accident took place due to the contributory negligence of TATA 407 vehicle and the bus driver of Haryana Roadways.



4. It is case of the appellant that there was some mistakes in the order of the MACT as both the present appellant and the National Insurance Co. Ltd. (in short the National Insurance were treated to be respondents Nos.4 and 5 in the claim petition No.80. It is also pointed out that having held that there was contributory negligence the ultimate direction of the MACT was as follows:

“As held above, since it is a case of contributory negligence, the petitioner are entitled to recover a sum of Rs.1,50,000/- as compensation in equal shares due to the death of Rajesh in the ill-fated accident. All the Respondents are liable to pay this amount of compensation jointly and severally.



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5. It is pointed out that if at all the amount was to be paid in respect of the death of Rajesh who was the deceased and the driver of the TATA 407 vehicle, the liability of the appellant – Assurance Company would be half of the amount awarded i.e. Rs.75,000/- out of Rs.1,50,000/-. It is pointed out that the owner and the insurer of the vehicle were not

impleaded as party in the claim petition. That being so, the question of their being liable for any amount in respect of the accident in respect of driver of the vehicle TATA 407 bearing registration No.HR-39-8008 does not arise. It appears that the High Court has not taken note of these relevant aspects. In the special circumstance we set aside the impugned order of the High Court and remit the matter back for fresh consideration.

6 The appeal is disposed of with no order as to costs.

7 It is to be noted that except National Insurance Company no other



respondent has appeared in the appeal.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(ASOK KUMAR GANGULY)

New Delhi,
March 27, 2009.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1982 OF 2009



(Arising out of SLP(C)No. 7471/2005)

New India Assurance Co.Ltd.

...Appellant(s)

Versus

Sanjay Kumar and Ors.

...Respondent(s)

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1 Leave granted.

2 The order passed today in the C.A. .../2009 arising out of SLP(C) No. 7466/2005 would have relevance so far as for the present appeal is concerned. The basic issue is that in respect of an own damage claim



relating to the vehicle a TATA 407 neither the insurer was not made a party but the concerned MACT fixed the liability on the appellant. This aspect has not been considered by the Division Bench of the High Court which dismissed the appeal filed by the appellant.

3 As has been done in the case of the connected appeal we set aside the impugned order and remit the matter to the High Court for fresh consideration.

4 The appeal is disposed of accordingly.



.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(ASOK KUMAR GANGULY)

New Delhi,
March 27, 2009.

SUPREME COURT OF INDIA



JUDGMENT