

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.6320 of 2018 (O&M)

Date of Decision: 22.11.2018

Magma HDI General Insurance Co. ltd.Appellant

Vs.

Karamjit Singh and othersRespondents

CORAM: HON'BLE MR.JUSTICE DR. RAVI RANJAN

Present:- Mr.Sachin Ohri, Advocate, for the
appellant/Insurance Company.

DR. RAVI RANJAN, J.

I have heard counsel for the appellant.

The respondent/claimant filed a claim petition under Section 166 of the Motor Vehicles Act for grant of compensation of Rs.15 lacs on account of injuries received in a motor vehicular accident. According to the claimant, who was 45 years old at the time of accident and was an agriculturist by profession, he used to earn Rs.30,000/- per month. On the fateful day i.e. on 26.05.2017 at about 8:00 a.m. in the morning, he was going from his village Bir Lalan to bus stand, Cheema on his motorcycle to drop his daughter Ramandeep Kaur who was pursuing her B.Sc. non-medical at Sunam. When they reached near Aara (Saw mil) of one Surinder Kumar at T-point, Hero Kalan, a tractor with trolley bearing registration No.PB-13AR-7302 suddenly appeared from Cheema side at very high speed in a rash and negligent manner and hit the motorcycle and

almost crushing the claimant. The claimant suffered multiple injuries on

his legs and body parts. He was rushed to Civil Hospital, Sunam from where he was referred to DMC Hospital, Ludhiana, where he remained admitted from 26.05.2017 to 14.06.2017 and had spent about Rs.6 Lacs on his treatment. The accident has disabled him 100% so far his occupation is concerned. First Information Report No.38 dated 31.05.2017 for the offence under Sections 279, 337, 338 and 427 of Indian Penal Code was registered at Police Station, Cheema. The injured claimed that at the time of accident, he was enjoying good health and was sole bread winner of his family. Due to this accident, claimant has suffered great loss and is unable to do any agriculture work and has to engage a labourer @ Rs.6,000/- per month for doing his agriculture work and he is also paying Rs.8,000/- per month to an attendant for himself. He further claimed that he had spent Rs.20,000/- on transport and Rs.50,000/- on special diet and thus, claimed Rs.15 lacs along with interest as compensation amount.

Upon notice, the respondent No.1 i.e. driver of the offending vehicle appeared and filed written reply questioning the maintainability of the claim petition and *locus-standi* of the claimant and the cause of action available to him for filing the claim petition. Respondent No.1 claimed that he had valid and effective driving licence but denied the claim. He had also denied the accident as alleged by the claimant and has stated that FIR has falsely been registered by the police at the instance of claimant. He also deposed that he was not the owner of the tractor.

Respondent No.2, owner of the tractor also filed written reply

However, it was further claimed that the tractor in question was insured with Magma HDI General Insurance Company Limited and was having valid and effective registration certificate etc. at the time of alleged accident.

Respondent No.3 i.e. Insurance Company also appeared in this case and filed its written reply denying the claim of the claimant. The age, occupation and income of claimant was also denied. However, it was conceded that the tractor bearing registration No.PB-13AR-7302 was insured with the answering respondent for the period commencing from 23.06.2016 to 22.06.2017. It was also alleged that amount claimed by the claimant is excessive and unreasonable and further that the answering respondent does not have any liability to pay. All the averments in the claim petition were denied and the maintainability of the claim petition under present form was questioned. It was stated that liability of the company, if any, would be in accordance with the terms and conditions of the Insurance policy as well as according to the provisions of Motor Vehicles Act but such liability shall arise only if the driver was holding a valid driving license.

On consideration of the pleadings of the parties, following issues were framed by the Tribunal:

1. Whether on 26.05.2017, Karamjit Singh met with an accident with tractor bearing registration No.PB-13AR-7302 driven by respondent No.1 rashly and negligently, which resulted to his injuries? OPA
2. Whether the claimant is entitled to receive compensation. If so to what amount and from whom?

OPA.

3. Whether the claim petition is not maintainable in the present form? OPR.
4. Whether respondent No.1 was not holding valid and effective driving licence and other documents at the time of accident? OPR-3.
5. Relief.

The claimant-Karamjit Singh himself stepped into witness box as CW-1 and also examined CW-2 Ramandeep Kaur. The claimant has tendered into evidence medical bills of DMC Hospital, Ludhiana Exhibit C1 to Exhibit C113 and bill of Civil Hospital, Sunam Exhibit C114. The claimant has also tendered into evidence OPD slip of DMC Hospital, Ludhiana Exhibit C116, discharge summary Exhibit 117, OPD cards of DMC Hospital, Ludhiana, Ex.C118 & Exhibit C119, treatment record of Civil Hospital, Sunam Exhibit C120, copy of jamabandi for the year 2015-16 Mark-A to Mark-F, temporary disability certificate Mark-G, bill issued by Payal Drug Store Mark-H to Mark-J and bill of Cheema Tour Travels Mark-K to Mark-M.

Respondent No.1 Jagjit Singh has tendered into evidence copy of insurance policy Ex.R1, copy of his driving licence Exhibit R2 and copy of registration certificate of offending tractor Exhibit R3. The insurance company has tendered in evidence copy of insurance cover note (Exhibit R4).

The Tribunal, while considering the issues No.1 and 2, has found sufficient evidence regarding the rash and negligent driving by the driver of the offending tractor also considering the FIR lodged in this

regard in Police Station Cheema, due to which both legs of the claimant got fractured. It has also noticed that claimant was sole bread winner of the family and has got 100% functional disability. It is also noticed that testimony of Ramandeep Kaur i.e. the daughter of the claimant who was pillion rider at the time of accident, has fully supported the version of the claimant and also accepted the medical bills as well as temporary disability certificate. The Tribunal held that accident has occurred due to rash and negligent driving of tractor and has allowed the medical bills to the extent of Rs.5,12,613/- and, for pain and suffering on account of 52% of temporary disability for one year, the compensation amount has been assessed at Rs.1 Lac and total loss of income has been assessed at Rs.20,000/-. Transportation cost at Rs.7,755/- and cost of special diet at Rs.10,000/- has been allowed. In total, the compensation amount has been assessed at Rs.6,50,368/-.

Learned counsel for the appellant has submitted that in fact fraud has been played in connivance with the tractor owner and thus, compensation amount should not have been allowed. It is also urged that tractor was being driven on the road in place of agricultural field therefore, it would not be covered under the insurance scheme. It is also stated that bills have not been proved and Rs.1 Lacs for pain and suffering is an excessive amount.

The aforesaid submissions made on behalf of learned counsel for the appellant are noted only to be rejected inasmuch as, after going through the pleadings and written statement of Respondent No.3, it emerges that there is no such pleading in the written statement regarding

plying of tractor on road and regarding fraud or forgery by the claimant in connivance with the owner of the tractor. In the absence of such, aforesaid submission has to be rejected. Further, it appears from the record that the medical bills were exhibited without any objection, therefore, such limb of argument that medical bill are inflated would not be available to the insurance company. So far as the compensation awarded against the pain and suffering on 52% of temporary disability is concerned, a lump sum amount of Rs.1 Lac has been assessed which cannot be taken to be inflated amount from any angle and, thus, this submission of the counsel for the appellant is also rejected.

In the result, the appeal being devoid of any merits is dismissed.

(DR.RAVI RANJAN)
JUDGE

22.11.2018
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No