IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-4708-2016(O&M)

Jairam

...Appellant

Versus

Mahender Singh and others

...Respondents

(2) FAO-4732-2016(O&M)

Cholamandalam MS General Insurance Company Ltd.

...Appellant

Versus

Jairam and others

...Respondents

Reserved on:- 26.4.2023
Date of Pronouncement:-4.5.2023

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Rahul Vats, Advocate
for the appellant in FAO-4708-2016 and
for respondent No.1 in FAO-4732-2016.

Mr.Rajneesh Malhotra, Advocate
for the appellant in FAO-4732-2016 and
for respondent No.3 in FAO-4708-2016.

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H.S. MADAAN, J.

**CM-16205-CII of 2016 in
FAO-4732-2016**

For the reasons mentioned in the application, the same is allowed and delay of 61 days in filing of the appeal stands condoned.

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FAO-4708-2016(O&M) &
FAO-4732-2016(O&M)

1. By this order, I shall dispose of two FAOs i.e. FAO-4708-2016 filed on behalf of appellant/claimant Jairam and FAO-4732-2016 filed on behalf of appellant – Cholamandalam MS General Insurance Company Ltd. as both the appeals have arisen out of the same award.

2. Briefly stated, facts of the case are that petitioner/claimant Jairam son of Umrao, aged 25 years, resident of village Tajipur, Tehsil Narnaul, District Mohindergarh had suffered injuries in a motor vehicular accident, which took place on 8.8.2014 in the area within revenue estate of village Pavera, statedly caused on account of rash and negligent driving of Scorpio vehicle bearing registration No.HR-36U-1919 (hereinafter referred to as the offending vehicle) by respondent No.1 Mahender Singh. Jairam had suffered injuries on his spine and ribs also, which required hospitalization and surgeries.

3. Petitioner/claimant Jairam had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against Mahender Singh – driver, Hanuman – owner and Chola Mandlam MS General Insurance Company Ltd., Rewari – insurer of the offending vehicle before Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as the Tribunal), claiming compensation.

4. After contest, the Tribunal allowed the claim petition partly vide award dated 25.1.2016 and awarded compensation of Rs.91,100/- to the claimant along with interest @ 9% per annum from the date of filing of the petition till actual realization. The liability to pay this amount was

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held to be joint and several of all the respondents observing that compensation would be paid by respondent No.3 insurance company.

5. The petitioner/claimant as well as respondent No.3 insurance company felt aggrieved by the said award and they have filed separate appeals.

6. Notice to the respective respondents in both the appeals were given, who put in appearance through counsel.

7. I have heard learned counsel for the parties besides going through the record.

8. Learned counsel for the appellant insurance company has contended that the accident had taken place on 8.8.2014, however, the FIR with regard to the same was lodged with the police on 7.9.2014 when the claimant himself had been discharged from the hospital on 19.8.2014; the FIR was got registered after due deliberations and consultations, in connivance with the local police and the Scorpio vehicle in question has been wrongly involved in this case to get compensation. The Tribunal has erroneously ignored all these facts while allowing the claim petition.

9. These contentions were strongly rebutted by counsel for the claimant.

10. After considering the rival contentions, I find that though prompt reporting of the matter to the police in case of commission of cognizable offence is always desirable. However, delay in reporting the matter to the police cannot result in doubting the story set up in the FIR in all the cases because if the delay is adequately explained, then the suspicious circumstance also disappear. Furthermore, delay in reporting

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the matter to the police is certainly of relevance in a criminal case but too much significance cannot be attached to that aspect while deciding a claim petition under Section 166 of the Motor Vehicles Act, which as a matter of fact is a piece of welfare legislation. It was enacted by the Parliament to provide relief to the persons, who suffered injuries in the motor vehicular accident as well as to the legal representatives of the victims, who unfortunately lost their lives in such mishaps. Strict rules of evidence and procedure are not applicable while deciding a claim petition under Section 166 of the Act. Even if no FIR is there in that case also claim petition can be allowed if the claimant is successful in proving his/her case by bringing enough cogent and convincing evidence on record.

11. Learned counsel for the appellant insurance company has further contended that the driver of the Scorpio vehicle has since been acquitted by the trial Court vide judgment dated 15.2.2017, which creates a dent in the case of the claimant.

12. However, I am not in agreement with learned counsel for the insurance company in that regard. The yardstick for decision of a criminal case is certainly different from adjudication of claim petition under Section 166 of the Act. In case of former, the prosecution is required to prove its case beyond a shadow of reasonable doubt, whereas in case of later the yardstick to be used is preponderance of probabilities. The judgment of a criminal Court is certainly not binding upon the Tribunal because the Tribunal has to reach its own conclusion on the basis of pleadings of the parties and evidence brought on record by them. Therefore, the acquittal of respondent No.1 in the criminal case does not

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affect the merits of the case of the claimant.

13. The Tribunal on appreciation of the evidence produced before it had returned a clear finding that the accident in which Jairam had suffered injuries had taken place on account of rash and negligent driving of the offending vehicle by respondent No.1. It being so, the driver, owner and insurance company of the offending vehicle were held to be liable to pay compensation. Since no term and condition of the insurance policy was found to have been violated, which might have resulted in absolving the insurance company of its liability to pay compensation, the insurance company was directed to make such payment to the petitioner/claimant.

14. Now the question arises whether the compensation assessed by the Tribunal was sufficient or otherwise. In my considered view the compensation assessed by the Tribunal is on very low side. The Tribunal has awarded the compensation in a very casual and mechanical manner. The claimant had to be hospitalized for about 10 days in connection with surgery of the spinal cord. Spinal cord is a very delicate part of human body and injury to the same is to be viewed with all the seriousness. The Tribunal has found claimant entitled to receive Rs.76,098/- on account of medicines, hospital charges and transportation charges. The approach adopted by the Tribunal clubbing so many heads and then granting the meagre amount of Rs.15,000/- towards pain and suffering, special diet etc. was uncalled for.

15. The Tribunal has to be sensitive to the plight of a person, who had got injured in a road side accident suffering injuries on the vital parts of the body. A practical approach has to be adopted keeping in mind the

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fact that it is not possible to keep record of each and every paisa spent on medical treatment or to get bills/receipts on account of purchase of medicines for comparatively small amount for undergoing tests or for purchasing any medical equipment for the treatment of the injured. Therefore, amount of Rs.76,098/- claimed by the claimant could not be termed to be on higher side rather he deserve to be awarded a sum of Rs.1,00,000/-. I award amount of **Rs.1,00,000/-** to the claimant under this head.

16. The petitioner/claimant deserves to be compensated under various other conventional heads.

17. In my view considering the number of injuries suffered by the claimant, period of hospitalization, it is very difficult to quantify the pain and suffering undergone by a person suffering injury requiring long hospitalization, surgeries and follow up treatment. Keeping in view the facts and circumstances of the case, I award a sum of **Rs.50,000/-** under that head.

18. As regards special diet, a person suffering injuries does need special diet for early and proper recovery. A award a sum of **Rs.25,000/-** under that head.

19. Keeping in view the period of hospitalization and nature of injuries and that claimant would have gone to the hospital for follow up treatment also, a sum of **Rs.25,000/-** is awarded to him on account of transportation.

20. The claimant having suffered injuries did require help of an attendant during the period of his hospitalization and then going to

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hospital for follow up treatment. A sum of **Rs.20,000/-** is accordingly awarded to the appellant/claimant on that score.

21. Thus, the total compensation comes out to Rs.2,20,000/-.

22. The Tribunal has awarded compensation of Rs.91,100/-.

23. In this way, the enhanced amount comes out to Rs.1,28,900/- (2,20,000 – 91,100). The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization of the amount. The other terms and conditions given in the relief clause of the impugned award shall apply to the enhanced amount as well.

24. With the above modification, FAO-4708-2016 is disposed of accordingly.

25. Whereas FAO-4732-2016 filed by the insurance company seeking setting aside of the impugned award and resultant dismissal of the claim petition is dismissed accordingly.

Since the FAO-4708-2016 is disposed of with above modification and FAO-4732-2016 stands dismissed, the miscellaneous application(s), if any, in the appeals stand disposed of accordingly.

4.5.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

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