

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO No. 6463 of 2016 (O&M)

Date of decision : 09.01.2023

...

Magma HDI General Insurance Company Limited

.....Appellant

VS.

Gaurav Mahant and others

.....Respondents

2) FAO No. 2071 of 2017 (O&M)

...

Gaurav Mahant

.....Appellant

VS.

Kala @ Satbir and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Sachin Ohri, Advocate

for the appellant-Insurance company in FAO 6463 of 2016
and for respondent No.3 in FAO 2071 of 2017

Mr. Ashish Gupta, Advocate

for the appellant in FAO 2071 of 2017 and
for respondent No. 1 in FAO 6463 of 2016

...

H. S. Madaan, J. (Oral)

By this common order, I intend to dispose of two appeals,

bearing FAO-6463-2016 titled as 'Magma HDI General Insurance

Company Limited vs. Gaurav Mahant and others' and FAO 2071-2017 titled as 'Gaurav Mahant vs. Kala @ Satbir and others', as both these appeals have arisen out of the same award.

Briefly stated, facts of the case as pleaded by petitioner-claimant Gaurav Mahant, aged about 29 years, son of Ravinder Mahant, resident of village Ranwar, Tehsil and District Karnal, are that he had suffered injuries in a motor vehicular accident, which took place on 28.11.2014 at about 7.00 P.M., near village Ranwar, District Karnal, within jurisdiction of Police Station Madhuban, statedly, on account of rash and negligent driving of Canter bearing Registration No. HR 65-4350, by respondent No. 1 – Kala @ Satbir. Resultantly, he had suffered injuries for which he was hospitalized and got treatment and he has become permanently disabled. He had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, against Kala @ Satbir – driver, Satish Kumar – owner and Magma HDI General Insurance Company, Industrial Estate Karnal – insurer of offending canter bearing Registration No. HR 65-4350.

On getting notice, all the three respondents appeared and contested the claim petition. Issues on merits were framed. Parties were given opportunities to lead evidence. Then, vide detailed award dated 2.9.2016, the claim petition was accepted and compensation of Rs.6,95,800/- with interest @ 7% per annum, from the date of filing of claim petition till actual realization was awarded to the petitioner-claimant, payable by all the three respondents, jointly and severally.

The petitioner -claimant was not satisfied with the amount of compensation awarded to him by the Motor Accidents Claims

Tribunal, Karnal and found it to be on lower side. Therefore, he has approached this Court by way of filing FAO 2071-2017 seeking enhancement of compensation, whereas respondent No.3 – Insurance company was aggrieved by the quantum of compensation awarded to the petitioner -claimant and such insurance company having been held liable to pay the same, therefore, it has also come up with a separate appeal bearing FAO 6463-2016.

In appeal filed by the appellant-claimant Gaurav Mahant, notice was issued to the Insurance company, which has put in appearance through counsel, whereas in the appeal filed by the Insurance company, notice was issued to the petitioner -claimant, who has also appeared through counsel.

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

Learned counsel for the claimant has contended that the claimant was medically examined at PGI, Chandigarh and as per disability certificate issued therefrom, he is suffering from permanent disability to the extent of 77%, in that way the compensation awarded to him by the Tribunal is on very low side, since he has almost been rendered a cripple and is unable to move and do his daily chores of his own. Whereas learned counsel for the Insurance company states that this disability certificate cannot be taken into consideration in appeal without the same being proved in accordance with law and offering an opportunity to cross examine the witness who come forward to prove such certificate. He has further pointed out that the disability certificate is of the year 2018, whereas the accident had

taken place on 28.11.2014.

After hearing the counsel and going through the record, I find that the disability certificate of claimant, issued by the PGI, Chandigarh, is an important piece of evidence, to decide the claim petition, but it has to be got proved in accordance with law, by summoning the doctor who had examined the claimant injured and assessed the disability, issuing the certificate in that regard. The respondent-Insurance company also deserves to be given an opportunity to cross examine that witness, so that a clear picture emerges on the issue. For that an exercise has to be done by the Motor Accidents Claims Tribunal, Karnal.

Therefore, both the appeals are disposed of, in as much as, the impugned award is set aside with regard to the grant of compensation and the matter is remanded to Motor Accidents Claims Tribunal, Karnal, with a direction to allow the claimant to lead evidence to prove the disability certificate by summoning of the concerned doctor and permit the respondent -Insurance company to cross examine that witness. The respondent -Insurance company be also allowed to lead evidence in rebuttal, if it so desires and then after hearing arguments afresh, finding be given with regard to issue No.2 only, without disturbing the findings given on other issues earlier.

Accordingly, the parties are directed to appear before the Motor Accidents Claims Tribunal, Karnal, on 27.1.2023. Since the case is quite old, the Tribunal shall make an earnest endeavour to conclude recording of evidence and pass a fresh award within three months from the date of receipt of a copy of order there.

It is stated that the Insurance company has deposited the entire compensation amount with the Tribunal in terms of the original award, though 50% thereof has been ordered to be released to the claimant. The amount already released to the claimant may not be got recovered from him, during pendency of the proceedings before the Tribunal.

09.01.2023
chugh

(H.S. Madaan)
Judge

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No