

UNREPORTED

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) No.1367/2010 and CM No.19359/2010

**BAJAJ ALLIANZ GENERAL INSURANCE
CO. LTD.**

..... Appellant

Through: Ms. Rameeza Hakim,
Advocate

versus

PYARE LAL & ORS.

..... Respondents

Through: None

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Date of Decision : February 09, 2011

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

J U D G M E N T (ORAL)

: REVA KHETRAPAL, J.

By way of this petition, the petitioner, Bajaj Allianz General Insurance Company Limited seeks quashing and setting aside of the orders dated 6th October, 2010 and 20th October, 2010 passed by the learned Motor Accident Claims Tribunal.

2. The order dated 6th October, 2010 is being reproduced hereunder:-

“In the Court of Hon’ble Sh. Rajiv Mehra, Ld. Presiding Officer, Judge, MACT, Delhi

Suit No.224F/2010

6.10.10

Present : Shri N.K.Goel, counsel for the petitioner.
Mr.M.P.Shahi, counsel for Insurance company along with Ms.Sunanda Nimisha, Sr. Executive Legal

This is a fatal case of 12 years school going boy. The normal compensation as per the law laid down in the matter of R.K. Malik & Anr. V. Kiran pal & Ors. II (2009) ACC 705 (SC) is of the amount of Rs.3,75,000/-, out of which Rs.2,25,000/- for loss of dependency, Rs.75,000/- for non-pecuniary damages and Rs.75,000/- towards future prospects has been granted by the Court.

In the present case as per the counsel for the insurance company the verification is complete. The insurance company has been submitting an offer of the amount of Rs.2,25,000/- which is contrary to the legal position laid down in the judgment as stated above. No justification is found in the offer

so given by the insurance company. The insurance company is not giving a proper amount and may not take it like a bounty. Insurance company is not doing any charitable act. This conduct has only cause delay in disposal of the matter. It would defeat the basic purpose of the DAR proceedings as such. The counsel is sticking to the proposal submitted by him. Insurance company is imposed with a cost of Rs.25,000/- and Sr. Vice President of the company be remain present in person on the next date of hearing. Counsel submits that cost is on the higher side. Request decline. Adjourned for 13.09.10 at 2.00 p.m. Copy of the order be given dasti as prayed.

(RAJIV MEHRA)
PO, MACT, EAST DISTRICT DELHI
6.10.10

At this stage, Sh. M.P. Shai counsel for the insurance company appeared and request to change the date from 13.09.2010 to 20.09.10. On his request matter is adjourned for 20.09.10. He undertakes that he would inform the counsel for the petitioner about the change date.

Sd/-
(RAJIV MEHRA)
PO, MACT, EAST DISTRICT DELHI
6.10.10”

3. Aggrieved by the aforesaid order, the petitioner filed a review petition which was also dismissed by the learned Motor Accident Claims Tribunal on 20th October, 2010.

4. The sole contention of the counsel for the Insurance Company is that the proposal for settlement had been submitted by the Insurance Company in terms of “The Claims Tribunal Agreed Procedure”. Regulation 6 (2) and (3) were relied upon which are to the following effect:-

(2) The Claims Tribunals shall treat the Detailed Accident Report filed by the Investigating Officer as a claim petition under Section 166(4) of the Motor Vehicles Act. However, where the Police is unable to produce the claimants on the first date of hearing, the Claims Tribunal shall initially register the Detailed Accident Report as a miscellaneous application which shall be registered as a main claim petition after the appearance of the claimants.

(3) The Claims Tribunal shall grant 30 days time to the Insurance Company to examine the Detailed Accident Report and to take a decision as to the quantum of compensation payable to the claimants in accordance with law. The decision shall be taken by the Designated Officer of the Insurance Company in writing and it shall be a reasoned decision. The Designated officer of the Insurance Company shall place the written reasoned decision before the Claims Tribunal within 30 days of the date of complete Detailed Accident Report.

5. Learned counsel further relies upon Regulation 11 (2) and (3)

which reads as under:-

“(2) Without prejudice to its rights and contentions, where in the opinion of the Insurance Company, in a claim for death of a person, such a claim is payable it shall confirm the same to the Claims Tribunal within sixty days of receiving notice of the claim case from the Claims Tribunal, or on the first date of hearing of the application as contained in the notice issued by the Claims Tribunal, whichever is later, by way of an offer of settlement of claim, with a supporting computation/ calculation, under a duly attested affidavit of the Divisional Officer/ Officer appointed for such purpose.

(3) When on the date of hearing of such application and on receipt of such offer from the insurance Company, the Claimant(s) agree to the offer of settlement of the Insurance Company, the Claims Tribunal shall record such settlement by way of a consent decree and payment shall be made by the Insurance Company within a maximum period of thirty days from the date of receipt of a copy of the consent decree which shall be made available to the parties by the Claims Tribunal within a maximum period of seven working days from the passing of such decree. Where the Claimant(s) refuses to accept the offer of settlement, the Claims Tribunal shall give the Insurance Company a period of 30 days to file its written statement and the matter shall proceed as if in terms of sub Clause (4) onwards below.”

6. The submission of counsel for the petitioner is that assuming the offer of settlement made by the Insurance Company in terms of

“The Claims Tribunal Agreed Procedure” was not acceptable to the claimants or was not approved of by the Claims Tribunal, the Claims Tribunal ought to have given the Insurance Company a period of 30 days to file its written statement and then proceeded to hold the inquiry in terms of Clause (4) of Regulation (11) and under Section 168 of the Act. The imposition of costs was unjustified.

7. It may be observed at this juncture that “The Claims Tribunal Agreed Procedure” was formulated to expedite the disposal of claims where a claims petition had been filed and where even no claim petition had been filed, but a Detailed Accident Report had been submitted by the police. A duty was cast upon the Insurance Company to hold out an offer for settlement, so that the destitute legal representatives of the deceased in fatal accident cases and the victim himself in injury cases, received compensation on an early date. “The Claims Tribunal Agreed Procedure” was not meant to be used by the Claims Tribunal for the purpose of enforcing settlement when the same was not acceptable to either the claimant or the insurance company. This being so, and the Insurance Company

having held out a proposal for settlement, the Claims Tribunal, though it was well within its right to reject the same if it was not just, could not have imposed costs on the Insurance Company for not holding out an offer in terms of the expectations of the Claims Tribunal or the claimants.

8. It is stated at the Bar that an award has already been passed by the Learned Tribunal on 10th November, 2010. In this view of the matter, the orders dated 6th October, 2010 and 20th October, 2010 are set aside to the extent that the costs are waived.

9. Petition stands disposed of accordingly.

The petitioner shall be entitled to the release of the amount of costs, if already deposited by the petitioner.

**REVA KHETRAPAL
(JUDGE)**

February 09, 2011

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