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

Date of decision: 20th July, 2012

+ **MAC.APP. 375/2012**

SHRIRAM GENERAL INSURANCE CO LTD Appellant
Through Mr. K.L. Nandwani, Advocate

versus

SMT BHAWAN MADHOK & ORS. Respondent
Through Mr. S.N. Parashar, Advocate

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant impugns a judgment dated 26th November, 2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) on the basis of Detailed Accident Report (DAR).
2. Deceased Karan Madhok suffered fatal injuries in a motor vehicle accident which occurred on 21st June, 2011. Along with DAR (detailed accident report), the IO filed an Income Tax Return for the Assessment Year 2010-11. No Income Tax Return for the Assessment Year 2011-12 has been filed.
3. No offer of any compensation on the basis of DAR was made by the Appellant/Insurance Company. The Motor Accident

Claims Tribunal accepted the Income Tax Return on the basis of the judgment of this Court in *Dalvinder Kaur and Ors. v. United India Insurance Co. Limited*, 2011 ACJ 2133, and made addition of 50% towards future prospects without any evidence, as no evidence had been produced as the DAR was not even registered as a Claim Petition. All the more, there was a report of the IO that the permit was fake.

4. The Claims Tribunal, without giving an opportunity to the owner to produce the permit in respect of the vehicle involved in the accident, proceeded to grant recovery rights against the owner. The entire approach of the Claims Tribunal was not in consonance with the Motor Accident Claims Tribunal Agreed Procedure and the settled law with regard to the breach of terms of the policy as laid down in *Sohan Lal Passi v. P. Sesh Reddy*, (1996) 5 SCC 21.
5. Rule 6 of the Claims Tribunal Agreed Procedure (the Agreed Procedure) is extracted hereunder:-

“6. Procedure on receipt of the detailed accident report:-

(1) The Claims Tribunals shall examine whether the Detailed Accident Report is complete in all respects and shall pass appropriate order in this regard. If the Detailed Accident Report is not complete in any particular respect, the Claims Tribunal shall direct the Investigating Officer to complete the same and shall fix a date for the said completion.

(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.

(4) The compensation assessed by the Designated Officer of the Insurance Company in his written reasoned decision shall constitute a legal offer to the claimants and if the claimants accept the said offer, the Claims Tribunal shall pass a consent award and shall provide 30 days time to the Insurance Company to make the payment of the award amount. However, before passing the consent award, the Claims Tribunal shall ensure that the claimants are awarded just compensation in accordance with law. The Claims Tribunal shall also pass an order with respect to the shares of the claimants and the mode of disbursement.

(5) If the claimants are not in a position to immediately respond to the offer of the Insurance Company, the

Claims Tribunals shall grant them time not later than 30 days to respond to the said offer.

(6) If the offer of the Insurance Company is not acceptable to the claimants or if the Insurance Company has any defence available to it under law, the Claims Tribunal shall proceed to conduct an inquiry under Sections 168 and 169 of the Motor Vehicles Act and shall pass an award in accordance with law within a period of 30 days thereafter.

(7) Where the Claims Tribunal finds that the D.A.R. and in particular the report under Section 173, The Criminal Procedure Code, 1974 annexed to such D.A.R. has brought a charge of rash and negligent driving, or the causing of hurt or grievous hurt the Claims Tribunal shall register the claim case under Section 166 of The Motor Vehicles Act, 1988. In cases where the DAR does not bring a charge of negligence or despite the charge of negligence the Claimant(s) before the court chose to claim on a no-fault basis, the Claims Tribunal shall register a claim case under Section 163A, The Motor Vehicles Act, 1988;

(8) Provided that in cases where the accident in question involves more than one vehicle and persons connected to all such vehicles stake a claim for compensation, the D.A.R. shall be treated as an application for compensation claim case shall be presumed to be a claim case preferred by each of them.”

6. As per Rule 6 (3) of the Agreed Procedure, the Claims Tribunal is required to grant 30 days time to the Insurance Company to examine the DAR and take a decision as to the quantum of compensation payable to the Claimants in accordance with law. It further enjoins the designated officer of the Insurance

Company to place the written reasoned decision before the Claims Tribunal within the aforesaid period. A perusal of Rule 6 (6) extracted above makes it clear that if the offer of the Insurance Company is not acceptable to the Claimants or if the Insurance Company has any defence available to it under law, the Claims Tribunal is expected to conduct an inquiry as provided under Sections 168 and 169 of the Act and pass an award in accordance with law within a period of 30 days thereafter. Thus, it is not necessary as per the Claims Tribunal Agreed Procedure that the designated officer must make an offer for settlement to the Claimants.

7. In the instant case, the Insurance Company did not make any offer of compensation. Moreover, it informed the Claims Tribunal that the owner did not possess a valid permit and thus, it was entitled to avoid liability under Section 149 (2) of the Act. When owner of a vehicle obtains an Insurance policy covering third party risk as mandated under Section 147 of the Act, the onus to prove a conscious and willful breach of the terms of policy lies on the Insurance Company. Obviously, the owner also has to be put to notice whenever any such defence is taken by the Insurance Company. In the instant case, the Claims Tribunal awarded compensation and also granted recovery rights on the ground that the owner did not have a valid permit and thus, there was breach of the terms of policy under Section 149 (2) (a) (i) (c) of the Act. Admittedly, the

owner of the vehicle was not present before the Claims Tribunal nor any notice was issued to him as no Claim Petition was filed by the Claimants. This can result into a very anomalous situation as the owner who was fastened with the liability, can approach the Court when the Insurance Company seeks recovery of the compensation paid, on the ground that the compensation is excessive and that the same was awarded to the Claimants without any notice having been sent to him, apart from pleading that he did not commit any conscious or willful breach of the terms of policy.

8. It is also noteworthy that the deceased had a small child Lavanya, whose name was initially not mentioned in the DAR. By a subsequent Order dated 2nd March, 2012, her name was incorporated as one of the LR's.
9. The impugned order, therefore, cannot be sustained and the same is accordingly set aside.
10. The case is remanded back to the Claims Tribunal for treating the DAR as the Claim Petition and deciding it in accordance with law.
11. The Respondents/Claimants shall be at liberty to file a Petition under Section 166 of the Act.
12. The award amount deposited by the Appellant shall be refunded to it.

13. The statutory deposit of ₹25000/- shall also be refunded to the Appellant Insurance Company.
14. CM APPL. 6395/2012 and 6393/2012 stand disposed of.
15. Parties are directed to appear before the Claims Tribunal on 13th August, 2012.
16. A copy of the order may be given Dasti to the counsel for the parties.
17. A copy of the judgment be transmitted to all the District Judges for bringing it to the notice of all the Motor Accident Claims Tribunals.

(G.P. MITTAL)
JUDGE

JULY 20, 2012

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