

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

Reserved on: 6th July, 2012
Pronounced on: 30th July, 2012

+ **MAC.APP. 645/2012**

ICICI LOMBARD GENERAL INSURANCE CO. LTD..... Appellants
Through: Ms. Suman Bagga, Adv.

versus

KANTI DEVI & ORS. Respondents
Through: Mr. Pankaj Kumar Daval, Adv. for
R-1 to R-5.

CM (M) 651/2012

ORIENTAL INSURANCE CO. LTD. Petitioner
Through: Mr. Pradeep Gaur, Adv. with
Mr. Amit Gaur, Adv.,
Mr. Shashank Sharma, Adv.

versus

SAT PRAKASH & ORS. Respondents
Through: Nemo.

+ **MAC.APP. 655/2012**

NATIONAL INSURANCE CO. LTD. Appellant
Through: Ms. Shantha Dvi Raman, Adv.

versus

PRATAP SINGH & ORS. Respondents
Through: Mr. Ashok Popli, Adv. for
R-1 & R-2.

+ **MAC.APP. 594/2012**

FUTURE GENERAL INDIA INSURANCE CO. LTD. Appellant
Through: Ms. Suman Bagga, Adv.

versus

GEETA DEVI & ORS.

..... Respondents

Through: Mr. Abhishek Sharma, Adv. with
Mr. Rahul Rohtagi, Adv.

+ **MAC.APP. 588/2012**

FUTURE GENERAL INDIA INSURANCE CO. LTD..... Appellant

Through: Ms. Suman Bagga, Adv.

versus

RAMJI SAHGANI & ORS.

..... Respondents

Through: Mr. Abhishek Sharma, Adv. with
Mr. Rahul Rohtagi, Adv.

+ **MAC.APP. 689/2012**

NATIONAL INSURANCE CO. LTD. Appellant

Through: Ms. Shantha Dvi Raman, Adv.

versus

PRATAP SINGH & ORS.

..... Respondents

Through: Mr. Ashok Popli, Adv. for
R-1 & R-2.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. In these Appeals (MAC.APP. 645/2012, CM (M) 651/2012, MAC.APP.655/2012, MAC.APP.594/2012, MAC.APP. 588/2012, and MAC.APP. 689/2012), a common question of law and fact arises for consideration; whether the Claims Tribunal could have awarded the

Counsel's fee or out of pocket expenses while deciding a Claim Petition filed under Section 166/163-A of the Motor Vehicles Act, 1988 (the Act).

2. Since the Appellants do not dispute the award of compensation and challenge the judgment only on the question of award of counsel's fee and out of pocket expenses, it is not necessary to deal with the manner of accident and the quantum of compensation awarded. I would advert to the circumstances of awarding costs in each case a little later and would first deal with the general principles governing award of costs.
3. The common case set up by the Appellant Insurance Companies in these Appeals/Petition is that the Motor Vehicles Act, 1988 is a Code in itself which governs the payment of costs in certain situations. The Claims Tribunal cannot go beyond the provisions contained in the statute to award costs. The Insurance Companies rely on Section 172 of the Act, which is extracted hereunder:-

“172. Award of compensatory costs in certain cases.

(1) Any Claims Tribunal adjudicating upon any claim for compensation under this Act, may in any case where it is satisfied for reasons to be recorded by it in writing that-

(a) the policy of insurance is void on the ground that it was obtained by representation of fact which was false in any material particular, or

(b) any party or insurer has put forward a false or vexatious claim or defence, such Tribunal may make an order for the payment, by the party who is guilty of misrepresentation or by whom such claim or defence has been put forward of special costs by way of compensation to the insurer or, as the case may be, to the party against whom such claim or defence has been put forward.

(2) No Claims Tribunal shall pass an order for special costs under sub-section (1) for any amount exceeding one thousand rupees.

(3) No person or insurer against whom an order has been made under this section shall, by reason thereof be exempted from any criminal liability in respect of such mis-representation, claim or defence as is referred to in sub-section (1).

(4) Any amount awarded by way of compensation under this section in respect of any misrepresentation, claim or defence, shall be taken into account in any subsequent suit for damages for compensation in respect of such misrepresentation, claim or defence.”

4. In view of the provision extracted above, it is urged by the learned counsels for the Insurance Companies that the Claims Tribunal is entitled to award costs only in two eventualities mentioned in Section 172 (1) (a) and (b) above. Thus, where an Insurer has not put up any false or vexatious defence, no costs can be imposed upon an Insurer.
5. In the alternative, it is contended that even if it is admitted that costs can be awarded by the Claims Tribunal like any other Civil Court, the same has to be in consonance with the provisions of the Code of Civil Procedure, 1908 (the Code) and the Rules framed by the Delhi High Court (the Rules) in this regard.
6. On the other hand, it is urged by the learned counsels for the Respondents that the provisions of the Code are applicable for conducting an inquiry in a Claim Petition under Sections 168 and 169 of the Act. Therefore, the provisions of Section 35 of the Code are impliedly extended to the proceeding before the Claims Tribunal. The Claims Tribunal and the High Court of Delhi while dealing with a Petition or an Appeal under the

Act thus have all the powers to award reasonable costs while deciding a Claim Petition or an Appeal.

7. In view of the submissions raised, the following questions need to be addressed:-

- (1) Whether any costs can be awarded by the Claims Tribunal holding an inquiry in a Claim Petition under Section 168 of the Act?
- (2) If so, what is the extent and limitation in awarding the costs including in the cases decided on merits or on the basis of Accident Information Report (AIR) or Detailed Accident Report (DAR) or before and after settlement of issues or otherwise on a settlement between the parties.

QUESTION NO.1:-

8. It is true that Section 172 of the Act empowers a Claims Tribunal to award compensatory costs only in the eventualities as mentioned in Clause (a) and (b) of Section 172 sub-Section (1). Section 35 (A) of the Code contains similar provisions regarding award of compensatory costs in respect of false or vexatious claims or defences.
9. A Claim Petition filed under Section 166 of the Act has to be inquired into and compensation must be awarded as provided under Section 168 of the Act. Section 169 (2) of the Act also lays down the procedure and powers of the Claims Tribunal. It is extracted hereunder:-

“169. Procedure and powers of Claims Tribunals.

(1) x x x x x

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) x x x x x ”

10. A bare reading of Section 169 (2) of the Act would show that the powers of Civil Courts have been conferred on a Claims Tribunal only for specific purposes as mentioned therein which certainly does not include the power to impose costs. However, Section 176 of the Act empowers the State Govt. to frame Rules for the purpose of carrying into effect the provisions given in Sections 165 to 174 of the Act and, in particular, as regard to the procedure to be followed by the Claims Tribunal and also with regard to the powers which are vested in a Civil Court which may be exercised by a Claims Tribunal.
11. Govt. of NCT of Delhi in exercise of its power under Section 176 and under other Sections of the Act framed Delhi Motor Vehicle Rules, 1993. Chapter IX of the Delhi Motor Vehicle Rules deals with the provisions in relation to the Claims Tribunal. Rule 118 of the Delhi Motor Vehicle Rules lays down the procedure to be adopted by the Claims Tribunal. Rule 119 of the Delhi Motor Vehicle Rules further makes applicable certain other provisions of the First Schedule of the Code to the proceedings before the Claims Tribunal. Rule 119 of the Delhi Motor Vehicle Rules reads as under:-

“119. Power vested in the Civil Court which may be exercised by Claims Tribunal.- The following provisions of the first schedule to the Code of Civil Procedure, 1908, shall, so far as may be, apply to proceedings before the Claims Tribunal, namely:-

(a) Order V, (Issue and Service of Summons) Rules 9 to 13 and 15 to 39;

(b) Order IX (Appearance of Parties and Consequence of Non-appearance);

(c) Order XIII (Production, Impounding and Return of Documents), Rules 3 to 10;

(d) Order XVI (Summoning and Attendance of Witnesses), Rules 2 to 21;

(e) Order XVII (Adjournments) and;

(f) Order XXIII (Withdrawal and Adjustment of Suits), Rules 1 to 3.”

12. Rule 119, therefore, also does not confer any power upon the Claims Tribunal with respect to the imposition of costs. The Govt. of NCT of Delhi framed another set of Rules, namely, the Delhi Motor Accident Claims Tribunal Rules, 2008 (the Claims Tribunal Rules, 2008) in exercise of its power under Section 176 of the Act. The said Rules, however, superseded the provisions of the Delhi Motor Vehicle Rules, 1993 insofar as the provisions relating to the Claims Tribunal in Chapter IX are concerned.

13. The preamble to the Claims Tribunal Rules, 2008 reads as under:-

“In exercise of the powers conferred by section 176 read with clause (41) of section 2 and sub-section (1) of section 212 of Motor Vehicles Act, 1988 (59 of 1988), and in partial supersession of Chapter IX of the Delhi Motor Vehicles Rules, 1993 relating to Claims Tribunals, made vide this Government’s Notification No. F 2(1)/93-Law dated the 21st June, 1993, the Lieutenant Governor of

the National Capital Territory of Delhi is pleased to make the following rules, namely...”

14. Rule 32 of the Claims Tribunal Rules, 2008 vests the Claims Tribunal with all the powers of a Civil Court in discharging its function as laid down in the Code. The same is extracted hereunder:-

“32. Vesting of powers of Civil Court in the Claims Tribunal – Without prejudice to the provisions of Section 169 of the Act every Claims Tribunal shall exercise all the powers of a Civil Court, and in doing so for discharging its functions it shall follow the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908).”

15. Thus, by virtue of Rule 32 of the Claims Tribunal Rules, 2008, the Claims Tribunal can exercise all the powers of a Civil Court and in doing so it has to follow the procedure laid down in the Code. It can be seen that the scope of power exercisable by the Claims Tribunal has thus been completely widened by virtue of the Claims Tribunal Rules, 2008, which means that the Claims Tribunal can exercise the powers of a Civil Court as laid down in the Code. Therefore, it would not be correct to say that the Claims Tribunal is empowered only to order payment of compensatory costs in cases of vexatious claims and defences and not otherwise. In other words, the Claims Tribunal would be competent to award costs like any other Civil Court under Section 35 read with Order XXA of the Code and subject to the Rules framed by the Delhi High Court in this regard.

QUESTION No.2:-

16. Coming to the second question; it is urged by the learned counsels for the Appellant Insurance Companies that the Delhi High Court has framed

Rules with regard to the payment of costs including the Counsel's fee. Part B of Chapter 16 Volume 1 of the Delhi High Court Rules (the Rules) governs the payment of the Counsel's fee in addition to the costs incurred by a Claimant in pursuing the proceedings before a Civil Court.

17. Section 35 & Order XXA of the Code which deal with the payment of costs and Rule 1; Rule 1A; Rule 2; Rule 8; Rule 9; Rule 12 and Rule 16 of Chapter 16 Volume 1 Part B of the Delhi High Court Rules (for short the Rules), which deals with the Counsel's fee are extracted hereunder:-

“35. Costs.

(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of law for the time being in force, the costs of an incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing.”

“ORDER XXA. COSTS

Rule 1. Provisions relating to certain items:-

Without prejudice to the generality of the provisions of this Code relating to costs, the Court may award costs in respect of -

(a) expenditure incurred for the giving of any notice required to be given by law before the institution of the suit;

(b) expenditure incurred on any notice which, though not required to be given by law, has been given by any party to the suit to any other party before the institution of the suit;

(c) expenditure incurred on the typing, writing or printing of pleadings filed by any party;

(d) charges paid by a party for inspection of the records of the Court for the purposes of the suit;

(e) expenditure incurred by a party for producing witnesses, even though not summoned through Court, and

(f) in the case of appeals, charges incurred by a party for obtaining any copies of judgments and decrees which are required to be filed along with the memorandum of appeal.”

2. Costs to be awarded in accordance with the rules made by High Court- *The award of costs under this rule shall be in accordance with such rules as the High Court may make in that behalf.*

x x x x x x x x x x

“Rule 1. Suit for recovery of property, breach of contract or damages—*In suits for the recovery of money or of specific property or a share of specific property, whether immoveable or moveable, or for the breach of any contract or for damages:—*

(a) If the amount or value of property, debt or damages decreed shall not exceed Rs. 25,000/- at 10 per cent on the amount or value decreed.

(b) If the amount or value shall exceed Rs. 25,000/- and not exceed Rs. 50,000/-, on Rs. 25,000/- at 10 per cent and on the remainder at 8 per cent.

(c) If the amount or value shall exceed Rs. 50,000/- and not exceed Rs. one lakh, on Rs. 50,000/- as above and on the remainder at 4 per cent.

(d) If the amount or value shall exceed Rs. 1,00,000/- and not exceed Rs. 5,00,000/- on Rs. 1,00,000/- as above and on the remainder at 2 per cent.

(e) If the amount or value shall exceed Rs. 5,00,000/- on Rs. 5,00,000/- as above and on the remainder at one per cent subject, however, that in no case the amount of fee shall exceed Rs. 20,000/-."

"Rule 1A. In the case of:

(i) Summary suits under Order XXXVII of the first Schedule to the Code of Civil Procedure, 1908, where the defendant does not appear or where leave to defend is refused or where a decree is passed on the defendant failing to comply with the conditions on which leave to defend was granted and appeals against decrees in suits.

(ii) Suit, the claim in which is admitted but only time or instalment for payment is asked for.

(iii) Suit which is got dismissed by a plaintiff for want of prosecution before settlement of issues or recording of any evidence, except evidence under Rule 2 of Order X of the Code of Civil Procedure.

(iv) Suit which is withdrawn before the settlement of issues or recording of any evidence except evidence under Rule 2 of Order X of the Code of Civil Procedure.

(v) Suit in which judgment is given on admission under Rule 6 of Order XII in the First Schedule to the Code of Civil Procedure, 1908, before the settlement of issues or recording of any evidence except evidence under Rule 2 of Order X of the Code of Civil Procedure.

(vi) Short causes, commercial causes and long causes in which no written statement is filed and appeals from decrees in such suits.

(vii) Suits compromised before the settlement of issues or recording of evidence except evidence under Rule 2 of Order X of the Code of Civil Procedure.

(viii) Any formal party to a suit or appeal, e.g., a trustee or estate holder who only appears to submit to the orders of the Court and asks for his costs.

(ix) A suit or appeal which has abated.

(x) A Plaint returned for presentation to the proper Court, the amount of Advocate's fees to be allowed shall be fixed by the Court disposing of the matter and shall not exceed 1/2 of that payable according to the rate specified in sub-rule (l) above:

Provided that in no case falling under this sub-rule the Advocate's fee shall be less than Rs. 500/- "

Rule 2. Others Suits—In suits for injuries to the person or character of the plaintiff, such as for assault or defamation or for injuries to the property, or to enforce rights where the pecuniary value of such injury or right cannot be exactly defined, as in suits for the partition of joint property where partition is improperly resisted or any other suit of the kinds specified in the rules made by the High Court under Section 9 of the Suits Valuation Act, 1887 for the valuation of suits which do not admit of being satisfactorily valued, if the plaintiff succeeds, the Court may order the fee allowed to the plaintiff to be calculated with reference either to the amount decreed or according to the valuation of the suit according to such a sum as the Court shall think reasonable and shall fix with reference to the importance of the subject of dispute but the same shall not be less than Rs. 500/- and shall not exceed Rs. 5,000/-.

Rule 8. Miscellaneous proceedings—In any miscellaneous proceedings or for any matter other than that of appearing, acting or pleading in a suit prior to decree, the fee shall not exceed:

(i) rupees two hundred and forty in the Court of a District Judge or of an officer exercising the powers of a Subordinate Judge of the 1st, 2nd, 3rd and 4th class or in a Court of Small Causes; and

(ii) rupees forty-eight in the Court of an officer exercising the powers of a Subordinate Judge in respect of cases the value of which is below Rs. 1,000.

Rule 9. Undefended suits—*If a suit in any Court of original jurisdiction be undefended, the fee shall be calculated at one-half the sum at which it would have been charged had the suit been defended.*

x x x x x x x x x

Rule 12. Appeals—*In appeals the fee shall be half of the fee calculated on the same scale as in the original suits and the principles of the above rules as to original suits shall be applied, as nearly as may be.*

x x x x x x x x x

Rule 16. Certificate as to fees to be filled by counsel in the Court of District Judges—*Notwithstanding anything contained in the rules and notwithstanding any order of the Presiding Officer, no fee to any legal practitioner appearing in civil appeals, or original suits in the Court of District Judges shall except, as in these rules hereinafter provided, be allowed on taxation between party and party, or shall be included in any decree or order, unless the party claiming to have such fee allowed shall, before the final hearing, fill in the Court, a certificate signed by the legal practitioner certifying the amount of the fee or fees actually paid by or on behalf of his client to him or to any other legal practitioner in whose place he may have appeared.”*

18. A perusal of Section 35 read with Order XXA of the Code would show that normally the costs shall follow the event and in case the Court directs otherwise, it is required to state reasons in writing. It is further revealed that expenditure in serving any notice required by law or even otherwise; expenditure incurred on typing, writing and printing of pleadings; charges paid by party for inspection of the Court’s record; expenditure incurred by a party for producing witnesses; and in case of Appeal the charges incurred by a party for obtaining copy of the judgment and decree; are broadly payable without limiting the scope of the costs.

19. It is urged on behalf of the Appellant Insurance Companies that the proceedings in a Petition under Section 166 of the Act or for that matter under Section 163-A of the Act are miscellaneous proceedings covered under Rule 8 of the Rules and the Counsel's fee shall be payable on the scale as mentioned in Rule 8. Rule 8 extracted earlier apply to misc. proceedings or for any matter other than that of appearing, pleading etc. in a suit prior to the decree.
20. On the other hand, Rule 1 of Chapter 16 Volume 1 Part B of the Rules is very widely worded and also includes Suit for damages. A Claim Petition under Section 166/163-A is in respect of damages for the injuries caused to the Claimant payable by the driver, the owner and the Insurer. Thus, in my view Rule 1 is the appropriate Rule which would apply to the Claim Petition under the Act. In the circumstances, apart from the award of costs under other heads, as mentioned under Order XXA, the Counsel's fee shall be payable on the scale as given in Rule 1.
21. It may be mentioned that the inquiry conducted by a Claims Tribunal is not more complex than a recovery suit or a suit for breach of contract or for damages. Thus, the scale of fees in Rule 1 of the Rules would be more than adequate to meet the expenses towards the Counsel's fee.
22. Moreover, as per Rule 1A in case of a decision made in a Claim Petition decided without contest, the payment of fees is not to exceed one-half of what is provided in Rule 1, as extracted earlier.
23. Section 158 (6) of the Act provides for filing of AIR by the police officer investigating the accident case or by the Officer In-Charge of the Police Station to the concerned Claims Tribunal. Under Section 166 (4) of the

Act, the AIR forwarded by the police officer can be treated as an Application for compensation under the Act.

24. The learned Single Judge of this Court in *Rajesh Tyagi & Ors. v. Jaibir Singh & Ors.*, *FAO No.842/2003*, decided on 21.12.2009 issued certain guidelines whereby the Delhi Police and the Insurance Companies agreed to follow certain set of procedures called the Claims Tribunal Agreed Procedure (the Agreed Procedure) in which the Delhi High Court extended the scope of Section 158 (6) of the Act and enjoined upon the police officer to furnish the DAR within 30 days of the accident and to forward it to the Claims Tribunal with duly verified documents (copy of the report under Section 173 of the Code, FIR, photographs, site plan, mechanical inspection report, seizure memo, photocopies of documents mentioned in Clause 3 (2) of the Agreed Procedure etc. etc.). A copy of the DAR is also to be made available to the Nodal Officer appointed by the Insurance Company on payment of certain charges. As per Chapter 3, Rule 6(3) of the Agreed Procedure, the Insurance Company is expected to make a reasoned offer within 30 days. The said reasoned offer which is to be treated as a legal offer can be accepted by the Claimant immediately or within the prescribed period. There is no embargo in extending the legal offer by the Insurance Company either through the nominated counsel or otherwise. In other words, the Insurance Company can make an offer of a just compensation in accordance with law which may be accepted by the Claimant without there being any requirement to hold an inquiry by the Claims Tribunal under Section 168 of the Act. Obviously, there is no contest between the parties and no Claim Petition has been filed in such a case. Even when DAR filed by the IO is treated as a Claim Petition and the offer of compensation is accepted by the Claimant on any later date;

obviously, the offer given by the Insurance Company shall govern the payment of costs. In other words, no amount shall be payable towards the costs of the proceedings including the Counsel's fee except when specifically agreed to by the parties when any Claim Petition is decided on the basis of a mutual settlement.

25. No formal procedure is required for an amicable settlement between the parties. There may not be any legal offer by the Insurance Company for want of verification of any document or for want of any document or because it has any statutory defence available or even otherwise if the Insurance Company is not inclined to settle. The Claimant/Claimants and the driver, owner or the Insurer may enter into any settlement or compromise during the course of inquiry held by a Claims Tribunal. The Claims Tribunal is empowered to ensure that the compensation offered is just and reasonable. If it is found to be just, an award can be passed on the basis of the settlement reached between the parties. If the Claims Tribunal finds that the compensation is not just, the Claims Tribunal may be entitled to proceed further with the inquiry to arrive at the just compensation payable to the Claimant/Claimants. At the same time, it is not within the domain of the Claims Tribunal to accept the settlement and hold the compensation to be just and at the same time award costs over and above the compensation agreed to by the parties and costs, if any, offered by the driver, owner or the Insurer.
26. It is also a grievance of the Insurance Companies in some of the Appeals that it is not permissible to pay the Counsel's fee directly to the Counsel as it may be difficult to have a separate account of the Counsel.

27. It is urged that the Insurance Company is statutorily liable to pay the compensation only to the Claimant and the costs of litigation, if any, including the Counsel's fee is also payable to the Claimant/Claimants. The Counsel's fee cannot be ordered to be paid to the Counsel.
28. In the case of *Sat Prakash & Ors. v. Jagdish & Ors. FAO No.365/1999*, decided on 26.03.2010, a learned Single Judge of this Court echoed the sentiments that the lawyers are the officers of the Court and they must be paid their fee with dignity. It was observed that whenever the lawyer client agreement is filed before or at the time of final hearing of the case, the cost equivalent to the reasonable fee may be awarded and may be paid to the counsel directly by the Insurance Company. Para 11 of the *Sat Prakash* is extracted hereunder:-

“11. Considering that the lawyers are the officers of the Court and they are entitled to their legal fees with dignity and so far as the claimants are concerned, they are entitled to the reasonable cost of litigation, it is desirable that wherever the lawyer – client agreement is filed before or at the time of final hearing of the case, the cost equivalent to the reasonable fee may be awarded and the Insurance Companies be directed to deposit the said cost by means of a separate cheque in the name of the claimant's counsel to be deposited with the Bank along with the award amount to be released by the Bank directly to the counsel. The Insurance companies should also deposit the fee of their counsel by means of a separate cheque drawn in the name of their counsel with the Bank simultaneously along with the award amount to be released by the Bank to the Insurance Company's counsel.”

29. In *Sat Prakash* the question of payment of costs was not directly before the Court. The Rules and the provisions regarding payment and extent of the Counsel's fee were not examined by the learned Single Judge. It has

to borne in mind that there is no statutory provision for payment of the Counsel's fee directly to the Counsel by an opposite party.

30. There is no privity of contract with the Counsel and there is no statutory obligation for a party to pay the costs of proceedings to the Counsel. If a lawyer client agreement is filed before the conclusion of the case and it provides for direct payment of the counsel's fee to him only then the Claims Tribunal can order for payment of counsel's fee directly to the counsel.
31. Further, in an Appeal, the Superior Court may set aside or vary the order passed by the Claims Tribunal under any head including the Counsel's fee. How the driver, the owner or the Insurance Company will recover the Counsels fee or part thereof if the order with regard to it is set aside or varied. Moreover, an aggrieved party may challenge an award passed by the Claims Tribunal on negligence, quantum of compensation, liability or even the payment of the costs. Such an order may be detrimental to the Claimant and the Counsel may doubly benefit. For instance, a Claimant may enter into an agreement for payment of the Counsel's fee either at the time of filing of the Claims Petition or in installments during the various stages of the proceedings. Thus, a Claimant may have paid the full fee to the Counsel and may be entitled to the payment of the said fees (as costs) in accordance with the scale as provided in the Delhi High Court Rules. But, because of the order passed by a Claims Tribunal, the Counsel may also get the fee over and above the agreement between the Claimant and the Counsel. Instances have come to the notice of this Court where very exorbitant fee was awarded to the Counsel for the Claimant

by the Claims Tribunal, the amount was attached and Counsel's fee was paid before any Appeal could be filed by the opposite party.

32. To sum up, it is directed :-

- (i) The Claims Tribunal is empowered to award costs in a Claim Petition in terms of Section 35 read with Order XXA of the Code.
- (ii) The Claims Tribunal is entitled to award the Counsel's fee in accordance with Rule 1 read with Rule 1A and Rule 9 of Chapter 16 Volume I of the Rules extracted earlier.
- (iii) In case of compromise/settlement of the claims, the Claims Tribunal is not entitled to go beyond the settlement reached between the parties. If the settlement does not provide for payment of any Counsel's fee, it shall not be within the domain of the Claims Tribunal to award the Counsel's fee.
- (iv) If the compensation is awarded on the basis of DAR in pursuance of the legal offer made by the Insurer, the Claims Tribunal is not empowered to award any costs unless it forms part of the legal offer.
- (v) The counsel fee can be directly paid to the counsel only when a specific agreement is filed and the Claimant requires payment of fee directly to the counsel because only then the Claimant would be liable to reimburse the fee or part thereof in case the award is set aside or varied.

33. Now it is time to turn to each of the case:

MAC APP.645/2012

34. This Appeal relates to an award of compensation of ₹7,90,000/-. It appears that a DAR was filed on 08.12.2010. The Presiding Officer of the Claims Tribunal was on leave on the next date i.e. 24.01.2011. Thereafter, an offer of settlement was given on the next date i.e. 14.02.2011. A Claim Petition was filed on 25.04.2011 and DAR was attached with the Claim Petition.
35. The written statement was filed by the Appellant Insurance Company on 25.04.2011. On 14.07.2011, the learned Presiding Officer of the Claims Tribunal observed that the Insurance Company had already given the offer of settlement in writing to the Claimants. As the offer did not materialize the case was fixed for evidence. Ultimately on, 12.04.2012 the parties reached a settlement which was recorded by the Claims Tribunal.
36. While disposing of the Claim Petition on the basis of settlement and directing the payment of compensation, the Claims Tribunal directed that a sum of ₹21,000/- shall be paid to the Counsel for the Respondent (the Claimant) as the Counsel's fee. This is not in consonance with the Delhi High Court Rules on two grounds; firstly, that the dispute between the parties was amicably settled and there was no agreement to pay the counsel's fee and secondly, no certificate of fee was filed before the final hearing as provided under Rule 16 of Chapter 16 Volume I Part B of the Delhi High Court Rules.
37. The impugned order so far as it awards a sum of ₹21,000/- towards Counsel's fee is hereby set aside.

38. The statutory deposit of ₹25,000/-, if any, be refunded to the Appellant Insurance Company.
39. Pending Applications stand disposed of.

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40. In this case, a settlement was reached between the parties to pay the compensation of ₹60,000/- in full and final settlement. Thereafter, the Claims Tribunal awarded a sum of ₹5,000/- towards Counsel's fee which was paid after deducting the TDS.
41. The Claims Tribunal very strangely by its order dated 18.05.2012 issued Show Cause Notice to the Managing Director of the Insurance Company for violating the directions of the Claims Tribunal.
42. Since the order directing the payment towards the Counsel's fee, without there being any agreement in this regard, could not have been passed by the Claims Tribunal, there was no ground to issue any show cause notice for deducting TDS on the Counsel's fee. I need not go into the question whether the Petitioner Insurance Company was competent to deduct the TDS or not.
43. In view of my observations that the order directing payment of Counsel's fee itself was illegal, the impugned order dated 18.05.2012 is set aside.
44. The Petition is allowed in above terms.
45. The statutory deposit of ₹25,000/-, if any, be refunded to the Petitioner Insurance Company.
46. Pending Applications stand disposed of.

MAC APP.655/2012

47. This Appeal relates to a Claim Petition which was fixed for evidence. On 27.04.2012, the parties sought an adjournment to explore the possibility of an amicable settlement. Ultimately on 01.05.2012 the settlement was reached whereby, the First Respondent agreed to accept a sum of ₹4,50,000/- in full and final settlement for having suffered injuries in a motor vehicle accident.
48. The Appellant Insurance Company is aggrieved by the order for payment of Counsel's fee of ₹25,000/- which was not in consonance with the law as it was beyond the terms of settlement and no certificate towards the Counsel's fee was placed on record before the Claims Tribunal.
49. The order dated 01.05.2012 to the extent it relates to the Counsel's fee of ₹25,000/- is set aside.
50. The Appeal is allowed in above terms.
51. The statutory deposit of ₹25,000/-, if any, be refunded to the Petitioner Insurance Company.
52. Pending Applications stand disposed of.

MAC APP.594/2012

53. This Appeal relates to the death of one Sunder Lal. Respondents No.1 to 5 agreed to accept a compensation of ₹9,00,000/- towards full and final settlement. The order so far as it directs payment of Counsel's fee of ₹50,000/- is set aside, for the reasons stated earlier.
54. The Appeal is allowed in above terms.

55. The statutory deposit of ₹25,000/-, if any, be refunded to the Petitioner Insurance Company.

56. Pending Applications stand disposed of.

MAC APP.588/2012

57. The Appeal relates to a motor vehicle accident which occurred on 10.11.2011. The First Respondent Ramji Sahani suffered injuries in the accident. A DAR was filed on 01.03.2012. The Appellant filed a written statement admitting the factum of accident and validity of the driving licence. The First Respondent accepted a sum of ₹90,000/- towards full and final settlement on account of the injuries suffered in the accident. It was not part of the settlement that a sum of ₹10,000/- was to be paid by the Appellant Insurance Company to Mr. A.K. Singh, Advocate as Counsel's fee, as had been directed by the Claims Tribunal.

58. In view of my findings in the earlier part of the judgment, the First Respondent was not entitled to the Counsel's fee. Moreover, as stated earlier, the Appellant Insurance Company cannot be directed to pay fees directly to the Counsel.

59. The impugned order is accordingly set aside.

60. The Appeal is allowed in above terms.

61. The statutory deposit of ₹ 25,000/- be refunded to the Appellant Insurance Company.

62. Pending Applications stands disposed of.

MAC APP.689/2012

63. In this case, the Claim Petition was settled on payment of ₹4,50,000/- as compensation towards full and final settlement. A separate order was passed on payment of ₹25,000/- towards Counsel's fee, which was stayed by this Court by order dated 01.06.2012.
64. A Review Petition was filed before the Claims Tribunal for waiving the Counsel's fee of ₹25,000/-. While dismissing the said Review Petition, the costs of ₹25,000/- was imposed upon Mr. Harinder Kumar, Authorized Officer of the Insurance Company. It was directed to recover the amount of ₹25,000/- from the salary of said Mr. Harinder Kumar.
65. I have already held above as to the eventualities and the extent to which the Counsel's fee is payable. The Claims Tribunal acted in hot haste in imposing the costs of ₹25,000/- on an official of the Insurance Company without any reasonable ground.
66. Order dated 30.05.2012 imposing costs of ₹25,000/- on Mr. Harinder Kumar is set aside.
67. The Appeal is allowed in above terms.
68. The statutory deposit of ₹25,000/-, if any, be refunded to the Appellant Insurance Company.
69. Pending Applications stand disposed of.
70. A copy of the judgment be transmitted to the District Judges for information of the Claims Tribunal.

(G.P. MITTAL)
JUDGE

JULY 30, 2012/vk