

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

Reserved on: 20th July, 2012
Pronounced on: 30th July, 2012

+ **CM (M) 749/2012**

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

versus

ASHA KALRA Respondent
Through: Mr. Joy Basu, *Amicus Curaie*.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant Oriental Insurance Company Limited is aggrieved by an order dated 04.05.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) directing personal presence of the Nodal Officer and issuing Show Cause Notice to him for not complying with the direction of the Claims Tribunal.
2. Asha Kalra (Smt.) suffered injuries in a motor vehicle accident which occurred on 15.10.2011 resulting into registration of a criminal case being FIR No.162/2011 under Section 279/337 IPC, Police Station K.N. Katju Marg, New Delhi. The

Investigating Officer (IO) filed Accident Information Report (AIR) No.28898 under Rule 150 (1) and (2) of the Central Motor Vehicles Rule. In addition to the AIR now a Detailed Accident Report (DAR) is being filed by the IO in pursuance of the Claims Tribunal Agreed Procedure laid down by a learned Single Judge of this Court and agreed to be followed by the Delhi Police and the Insurance Companies initially for a period of six months and now till further orders.

3. In pursuance of the DAR, an offer of ₹2,50,000/- towards payment of compensation in full and final settlement was made by the Appellant Insurance Company which was accepted by the First Respondent on 05.03.2012 and the Claim Petition was disposed of as settled.
4. It is the order of the Claims Tribunal insisting personal presence of the Nodal Officer in each and every case which is the subject matter of the instant Petition. I would like to extract the orders dated 16.01.2012, 06.02.2012, 30.03.2012 and 04.05.2012 as under:-

“16.01.2012

Counsel for the driver and owner filed his vakalatnama. Fresh DAR filed. It be checked and registered. Copies supplied to the parties as per rules. Fresh claim petition is filed. Copy Supplied. It be attached to the DAR file. Put up for filing of written statement on 06.02.2012.”

“06.02.2012

Written statement filed by R-1 and R-2. Copy supplied. None has appeared on behalf of Insurance Company at the time of filing of DAR Petition also. Show cause notice be issued to Nodal Officer of the Oriental Insurance Company Ltd. as to why action be not taken against them for not appearing despite directions given by the court to appear in person on the date when the DAR was filed and to file reply to DAR Petition. Nominee of the Insurance Company is not present. IO to produce the nominee of the Insurance Company on 05.03.2012.”

“30.03.2012

First installment of ₹45,000/- paid to the petitioner in presence of her counsel.

Counsel for Insurance Company filed an exemption application seeking exemption of Nodal Officer B.C. Sharma in reply to show cause notice. Matter be put up for appearance of Nodal Officer and report on payment of settlement amount 04.05.2012.”

“04.05.2012

Nodal Officer is present. Issue show cause notice to him why he is not complying the direction of the Hon’ble High Court and not appearing at the filing of any DAR. Reply be filed by the Nodal Officer.

Put up on 06.07.2012.”

5. A perusal of the orders passed by the Claims Tribunal would reveal that the Claims Tribunal was perturbed that the Nodal Officer was not appearing in person when the DAR is filed and to file reply to the DAR Petition. It is noteworthy that the Claim Petition was settled on 05.03.2012 and the compensation agreed to be paid by the Appellant Insurance Company, yet the

Claims Tribunal wanted to take action against the Nodal Officer as he failed to appear personally.

6. I have heard Mr. Pradeep Gaur, learned counsel for the Insurance Company and Mr. Joy Basu, Advocate who was appointed as Amicus Curiae to assist the Court on the issue whether The Claims Tribunal Agreed Procedure was violated by the Appellant and whether the Nodal Officer or for that matter the Insurance Company had given any cause to the Claims Tribunal to pass the order dated 06.02.2012 and 04.05.2012.
7. With the help of learned Amicus Curiae, I have gone through the Claims Tribunal Agreed Procedure which was agreed to be followed initially for a period of six months by the Delhi Police and the Insurance Companies in terms of the order passed by the learned Single Judge of this Court in *Rajesh Tyagi & Ors. v. Jaibir Singh & Ors.*, *FAO No.842/2003*, decided on 21.12.2009 (J.R. Midha, J.).
8. As per Rule 3 (2) of the Agreed Procedure on receipt of the information about a motor vehicle accident, the Investigating Officer (IO) is required to intimate the factum of accident within 48 hours to the Claims Tribunal as also the Insurance Companies about the accident. The insurance particulars are to be intimated by the IO through e-mail. The factum of accident is required to be updated on the website of the Delhi Police.

9. Rule 4 (2) of the Agreed Procedure for the first time talks about the Nodal Officer of an Insurance Company. Rule 4 and Rule 6 talks about the Nodal Officer, nominated counsel and Designated Officer of the Insurance Company and the role assigned to them. To understand the scheme under the Agreed Procedure, I would like to extract Rule 4 and Rule 6 hereunder:-

“4 Preparation and forwarding of the Detailed Accident Report (DAR):

*(1) After completion of the above collection and verification of the documents and investigation as may be required, the investigating police officer shall complete the preparation of a detailed accident report [hereinafter referred to as **DAR**] in Form “A” not later than thirty days from the date of the accident. In terms of Rule 3 (1)(c) such DAR shall be accompanied by requisite documents which shall include copy of the report under section 173 of the Code of Criminal Procedure, 1973(2 of 1974), medico legal certificate, post-mortem report (in case of death), first information report, photographs, site plan, mechanical inspection report, seizure memo, photocopies of documents mentioned in Clause 3(2) above, as also a report regarding confirmation of genuineness thereof, if received, or otherwise action taken.*

(2) Immediately on completion of the above DAR, the investigating police officer shall forward a copy of the DAR, under its seal, duly receipted:

(i) To the Claims Tribunal, under a duly attested affidavit of the investigating police officer-

-where a claim has already been preferred by the Claimant to such Claims Tribunal or

- where no such claim has been preferred, then before the Claims Tribunal in whose territorial jurisdiction the accident has occurred.

(ii) To the Claimant (s) or victims of the accident or their legal representative(s), as the case may be at the address supplied by the Claimant to the investigating police officer, free of charge;

(iii) To the owner/driver at the addressed supplied by the owner /driver to the police investigating officer, at a cost of Rs. Five per page;

(iv) To the nodal officer of the concerned Insurance Company at a cost of Rs. ten per page.

(3) The Investigating Officer of the Police shall also furnish a copy of Detailed Accident Report along with complete documents to Secretary, Delhi Legal Services Authority, Central Office, Pre-Fab Building, Patiala House Courts, New Delhi. Delhi Legal Services Authority shall examine each case and assist the Claims Tribunal in determination of the just compensation payable to the claimants in accordance with law.

(4) Where the Investigating Officer is unable to complete the investigation of the case within 30 days for reasons beyond his control, such as cases of hit and run accidents, cases where the parties reside outside the jurisdiction of the Court cases, where the driving licence is issued outside the jurisdiction of the Court, or where the victim has suffered grievous injuries and is undergoing treatment, the Investigating Officer shall approach the Claims Tribunal for extension of time whereupon the Claims Tribunal shall suitably extend the time in the facts of each case.

(5) The Investigating Officer shall produce the driver, owner, claimant and eye-witnesses before the Claims Tribunals along with the Detailed Accident Report. However, if the Police is unable to produce the owner, driver, claimant and eye-witnesses before the Claims Tribunal on the first date of hearing for the reasons beyond its control, the Claims Tribunal shall issue notice to them to be served through the Investigating Officer for a date for appearance not later than 30 days. The Investigating Officer shall give an advance notice to the concerned Insurance Company about the date of filing of the Detailed Accident Report before the Claims Tribunal so that the nominated counsel for the Insurance Company can remain present on the first date of hearing before the Claims Tribunal.

(6) The duties enumerated in Clause (3) and (4) above shall, as per Rule 3(2) of the 2008 Rules be construed as if they are included in Section 60 of the Delhi Police Act 1978 (34 of 1978) and any breach thereof shall entail consequences envisaged in that law, as provided for under Rule 3(2).”

“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.”

10. Thus, as per Rule 4 (2) of the Agreed Procedure, the IO is required to forward a copy of the DAR to the Nodal Officer of the Insurance Company on payment of charges @ ₹10/- per page.
11. Rule 4 (5) of the Agreed Procedure lays down that the IO shall give an advance notice to the Insurance Company about the date of filing of the DAR before the Claims Tribunal so that the nominated counsel for the Insurance Company can remain present on the first date of hearing before the Claims Tribunal.

12. Rule 6 (3) of the Agreed Procedure enjoins an Insurance Company to communicate its reasoned decision to the Claims Tribunal through its designated officer within a period of 30 days on receipt of DAR. This reasoned decision is basically a legal offer given by the Insurance Company to the Claimant. If the same is accepted by the Claimant, the matter comes to an end and an order is required to be passed by the Claims Tribunal in view of the offer by the Insurance Company and its acceptance by the Claimant.
13. Rule 6 (6) of the Agreed Procedure talks about situation where the legal offer is not acceptable to the Claimant or where the Insurance Company has a defence available to it under the law in that eventuality, the DAR has to be inquired into as a Claim Petition under Section 166 or 163-A of the Act.
14. A perusal of the Agreed Procedure clearly shows that these are in the shape of guidelines issued to the police officers, the Insurance Companies and the Claims Tribunal so that the compensation is determined and paid to a victim of a motor vehicle accident without any delay.
15. The Agreed Procedure nowhere talks about the personal presence of the Nodal Officer before the Claims Tribunal either on the date when the DAR is filed or when a legal offer is made. Rather, Rule 4 (5) extracted above shows that it is only the nominated counsel of the Insurance Company who is expected to be present.

16. It is urged by the learned counsel for the Appellant Insurance Company that there is only one Nodal Officer appointed by each of the Insurance Company and the Claims Tribunals are stationed at five District Court Complexes in nine Districts spread over in this Metropolitan City. It is, therefore, practically not possible for a Nodal Officer to be present before each and every Claims Tribunal.
17. I am in agreement with the learned counsel for the Appellant. Apart from the fact that the Agreed Procedure nowhere lays down that the Nodal Officer shall be present before the Claims Tribunal in person at the time of filing of the DAR or on any date thereafter. There is no requirement for the same. The Insurance Company can convey the reasoned decision which is a legal offer to the victims before the Claims Tribunal either through the nominated counsel as provided under Rule 4 (5) or through any other officer authorized in this behalf.
18. What is very intriguing is that the Claims Tribunal in this case was not concerned about the settlement of the case but about the personal presence of the Nodal Officer. A perusal of the Trial Court record reveals that on receipt of DAR on 06.02.2012 a legal offer was made by the Appellant Insurance Company which was accepted by the First Respondent (the Claimant before the Claims Tribunal).

19. The Claims Tribunal, therefore, acted illegally in insisting upon the personal presence of the Nodal Officer and issuing a show cause notice to him.
20. The impugned order, therefore, cannot be sustained; the same is accordingly set aside.
21. The Petition is allowed.
22. Before parting, I place on record my appreciation for the valuable assistance provided by Mr. Joy Basu who was appointed Amicus by this Court.
23. Pending Applications stand disposed of.
24. A copy of the order be sent to the District Judges to be communicated to all the Claims Tribunals.

(G.P. MITTAL)
JUDGE

JULY 30, 2012

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