

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

Date of decision: 31st October, 2012

+ **MAC.APP. 985/2012**

NATIONAL INSURANCE COMPANY Appellant
Through: Ms.Archana Gaur, Advocate

versus

MAMTA & ORS Respondents
Through: None.

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

C.M. APPL No.15665/2012(Delay)

There is a delay of 56 days in filing the Appeal.

For the reasons as stated in the application, the delay in filing the Appeal is condoned.

The application stands disposed of.

MAC APP No.985/2012 and C.M. APPL No.15664/2012(Stay)

1. The Appellant National Insurance Company Limited impugns a judgment dated 16th March, 2012 passed by the Claims Tribunal whereby a compensation of ₹19,94,000/- was awarded in favour of Respondents No.1 to 5 for the death of Vishal Kumar in a motor vehicle accident which occurred on 2.6.2011.
2. In DAR proceedings filed before the Claims Tribunal it was stated that the deceased was working as Caretaker in the Department of Social Welfare, Government of NCT of Delhi on contract basis and was getting a consolidated salary of ₹12,000/- per month. The Insurance Company

declined to take into consideration the income of the deceased as ₹12,000/- per month on the ground that the contract was for one year only which was going to come to an end on 6.5.2011. The legal offer given by the Appellant Insurance Company was not accepted by Respondents No.1 to 5. The Claims Tribunal, therefore, proceeded to award the compensation on the basis of the material on record.

3. It is urged by the learned counsel for the Appellant that once the legal offer given by the Appellant Insurance Company was not accepted by the legal representatives of deceased Vishal Kumar, the Claims Tribunal was under obligation to treat the DAR (Detailed Accident Report) as a claim petition and to try it in accordance with law. It is contended that the Claims Tribunal erred in awarding compensation without even affording any opportunity to the respective parties to prove their case.
4. I have before me the Trial Court Record. A DAR report was filed before the Claims Tribunal on 6.7.2011. A legal offer was submitted by the Appellant Insurance Company along with the written statement. Legal Offer of a sum of ₹3,38,536/- was made by the Appellant Insurance Company and simultaneously a written statement was also filed contesting the claim of Respondents No.1 to 5. Since the legal offer was rejected by Respondents No.1 to 5, the only option available to the Claims Tribunal was to proceed with the petition in accordance with law.
5. In this connection, I would like to refer to Rule 6 of the Claims Tribunal Agreed Procedure which 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. (emphasis supplied)

(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. 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.
7. Rule 6 (6) of the Agreed Procedure talks about the 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.

8. The Claims Tribunal without any evidence being produced on the basis of the Detailed Accident Report itself accepted deceased Vishal's salary as ₹12,000/- per month and awarded the compensation. Since the negligence and the deceased's income were disputed by the Appellant, the Claims Tribunal should have proceeded to decide the claim petition on merits.
9. The Claims Tribunal erred in relying on the DAR report and the documents filed along with it without affording an opportunity to the Appellant to examine the witnesses and to produce its own evidence. The impugned judgment, therefore, cannot be sustained. The same is, accordingly, set aside and the case is remanded back to the Claims Tribunal for its decision in accordance with law. The amount of compensation, if any, deposited in pursuance of the order dated 7.9.2012 shall refunded to the Appellant Insurance Company.
10. The parties are directed to appear before the Claims Tribunal on 03.12.2012.

G.P. MITTAL, J.

OCTOBER 31, 2012

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