

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

Reserved on: 9th February, 2012

Pronounced on: 2nd July, 2012

+ **CM(M) 1197/2011**

ORIENTAL INSURANCE CO LTD Petitioner

Through: Mr. Pradeep Gaur, Advocate

Ms. Mansi Gaur, Advocate

Mr. Dev Dutt, Advocate

versus

POOJA CHAWLA & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Petitioner is aggrieved by an order dated 16.09.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby the Petitioner's request for filing complete Detailed Accident Report (DAR) by the Investigating Officer and supply of proof of the Claimant's income was rejected and the Petitioner was directed to file the report of its designated officer within a period of three weeks. The Petitioner was also burdened with costs of ₹25,000/-.

2. The Petitioner states that by order dated 07.05.2011, the Claims Tribunal directed it to file the statement of facts in form G within ten days and required it to examine the DAR given by the Investigating Officer and take a decision in writing with regard to the quantum of compensation payable to the Claimant in accordance with law. The Petitioner submits that without the Claimant's salary certificate, Leave Certificate, Medical Bills, Discharge Summary and the Disability Certificate the quantum of compensation could not have been assessed by it and thus a reasoned decision for a legal offer could not have been given.
3. The Petitioner accordingly moved an application under Section 151 CPC read with Section 6 of the Claims Tribunal Agreed Procedure, requesting the Investigating Officer to provide all the documents stated above. For the sake of convenience, Paras 2,3,5,6 and 7 of the impugned order are extracted hereunder:-

“2. Brief facts necessary for the just adjudication of the present application are that after filing of Detailed Accident Report (DAR) in FIR No. 156/10, P.S. Rajouri Garden by the police on 07/05/11, the insurance company vide order dated 07/05/11 itself was directed to file the report of the designated officer within 30 days. The insurance company was under obligation to file the said report of the designated officer in terms of judgment of Hon'ble High Court of Delhi in case titled as Rajesh Tyagi Vs. Jaiveer Singh FAO No.842/2003 decided on 16.12.2009. Vide the said order dated 07/05/11, the insurance company was asked to examine the Detailed Accident Report and was further directed to take decision as to the quantum of the compensation payable to the claimants. The designated officer of the insurance

company was required to place the reasoned decision before this Tribunal within 30 days from 07/05/11.

3. On the next date of hearing i.e. on 20/07/11, the insurance company instead of filing of the report of the designated officer approached this court with this application u/s 151 CPC and under Section 6 of the Claims Tribunal Agreed Procedure to file the complete detailed accident report by the investigating officer and asked this court to direct the investigating agency to provide certain documents.

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5. Ld. Counsel for insurance company during the course of arguments submitted that company is not in a position to submit the report of the designated officer as the IO of the case FIR pertaining to the present case have not cared to provide certain important documents like salary documents etc to the insurance company. He requested this court that the IO be directed to provide the said documents.

6. After hearing Ld. Counsel for insurance company, it appears to me that the insurance company is deliberately avoiding the process of law and willfully avoiding the directions given by Hon'ble High Court of Delhi in the aforesaid judgment in order to save its money for which it had already taken the premium from the owner of the offending vehicle. It further appears to me that the insurance company wants to frustrate the very purpose of the directions were given by the Hon'ble High Court in the aforesaid judgment. The directions were given by the Hon'ble High court of Delhi in order to expedite the disbursal of the claims to the hapless victims of the road accident and also to accelerate the pace of the decision of the matters in the subordinate courts. I have given the aforesaid views on the basis of the rules and regulations which are discussed herein below.

7. As already said, the insurance company vide the aforesaid judgment was under obligation to file the report of the designated officer within 30 days. But it is not the intent of the law that insurance company will wholly depend upon the report of the designated officer or that it will provide the report of the designated officer only if the IO have duly done his duty . As discussed herein after, it was incumbent on the part of the insurance company also to have appointed its own investigator who could have investigated the case of his own. ”

4. It may be noticed that the instant case relates to a Claimant having suffered injuries in a motor accident which occurred on 30.05.2010.
5. Rule 3 of the Claims Tribunal Agreed Procedure deals with the duties of the Investigating Officer on receipt of information of an accident. The relevant portion is extracted hereunder:-

“3.Receipt of information of an accident and duties of the investigating police officer-

(1).....

(a).....

(b).....

(c).....

(d).....

(2) On receipt of the above information, it shall be the duty of the investigating police officer, as expeditiously as possible not later than 48 hours to-

(a).....

(b).....

(c).....

(d).....

(e).....

(f) *Gather full particulars, and seek the following documents from the parties as under:-*

(A).....

i.....

ii.....

iii.....

iv.....

v.....

vi.....

vii.....

viii.....

(B) *From the Claimant(s), victims of an accident or their legal representatives, as the case may be:*

(i) *In case of death;*

(a).....

(b).....

(c).....

a.....

b.....

c.....

(d).....

(e).....

(f).....

(g).....

(ii) *In case of an injury case*

(a) *Proof of age and a Photo of injured, address and other contact details of the injured at the time of accident;*

(b) *Proof of income of the Injured at the time of the accident,*

a. *In the form of pay slip/salary certificate in the case of a government/semi-government employee,*

b. *Certificate of the employer and bank statements of the last six months of the injured reflecting payment of salary in the case of a private employee,*

c. *I.T. returns in the case of a self-employed person;*

(c) *Disability certificate issued by a Government Hospital or a recognized private hospital;*

(d) *MLC/accident register extract of the hospital and MLR*

(e) *Details and copies of medical bills and expenses; in case of long term treatment the Investigating Police officer shall record the details of the same and the Claimant may furnish such bills before the Claims Tribunal;*

(f) Proof of absence from work [where loss of income on account of injury is being claimed] i.e. certificate from the employer and extracts from the attendance register or log record or like records;

(g) A brief statement of the facts surrounding and quantum of compensation intended to be claimed;

(h) Details of the claims tribunal, where the Claimants have preferred an application under Section 163A or Section 166, if any, as on the date of such verification or investigation by the investigating police officer;

and thereupon the police investigating officer shall either to (sic take) the above documents in possession against receipt, or retain the photocopies of the same, after attestation thereof by the person producing the same;

(3) The investigating police officer shall verify the genuineness of the documents mentioned in Clause 3(2) by obtaining confirmation in writing from the office or authority or person purporting to have issued the same or by such further investigation or verification as may be necessary for arriving at a conclusion of genuineness of the document or information in question, including but not limited to verifying the license of the driver and permit of the vehicle, where applicable, from the registering authority.”

6. Rule 4 of the Claims Tribunal Agreed Procedure deals with preparation and forwarding of DAR to the Claims Tribunal within a period of 30 days from the date of the accident. Rule 4

enjoins the Investigating Officer not only to collect the documents as required but also to verify the same.

7. The Claims Tribunal did not deal with the question raised in the Application. The Application under Section 151 CPC which was dismissed by the Claims Tribunal by the impugned order is extracted hereunder:-

“APPLICATION UNDER SECTION 151 CPC AND SECTION 6 OF “THE CLAIMS TRIBUNAL AGREED PROCEDURE” ON BEHALF OF RESPONDENT INSURANCE COMPANY TO FILE COMPLETE DETAILED ACCIDENT REPORT BY THE INVESTIGATING OFFICER

The applicant /respondent/ Oriental Insurance Company Ltd. respectfully submits as under:-

- 1. That the concerned Investigating Officer has filed the DAR before the Hon’ble Tribunal on 7.5.2011 and case is fixed on 20.7.2011 for filing the written reasoned decision/legal officer/compensation payable to the claimant.*
- 2. That the concerned Investigating Officer has not filed the following information, documents, investigation and verification reports, certificate:-*
 - i) Salary Certificate/proof of income*
 - ii) Leave certificate*
 - iii) Medical bills*
 - iv) Discharge summary*
 - v) Disability certificate*
- 3. That the applicant/Respondent/The Oriental Insurance Company is unable to file the written*

reasoned decision/legal offer in absence of the above said documents, information, investigations and verifications report, certificates.

It is, prayed that directions be given to the investigating officer to furnish the copy of the aforesaid 1) Salary certificate/proof of income, ii) Leave Certificate, iii) Medical Bills, iv) Discharge summary and v) Disability certificate reports/investigation and verification reports, certificates or complete Detailed Accident Report as per the Claims Tribunal Agreed Procedure.”

8. The Claims Tribunal instead of going into the question whether the documents sought by the Appellant Insurance Company were essential for making a genuine and reasonable offer with regard to the quantum of compensation, went on to add that the information could have been obtained by the Insurance Company by moving an application in form C before the IO as provided under Rule 5 of the Delhi Motor Accident Claims Tribunal Rules, 2008. The information which the Insurance Company can seek from the IO under Rule 5 is not sufficient to make an offer with regard to the quantum of compensation. It was only on the basis of the complete DAR that such an offer could have been made. The Claims Tribunal acted in hot haste in directing the Petitioner to file the report of the designated officer within three weeks and imposing costs of ₹25,000/-. It is not the purport of the judgment of the learned Single Judge in *Rajesh Tyagi & Ors. v. Jaibir Singh & Ors. FAO 842/2003* decided on 16.12.2009 and the Claims Tribunal Agreed Procedure laid down by this Court in *Rajesh Tyagi (supra)*.

9. If the Investigating Officer is unable to produce all the documents as mentioned in Rule 3 (2) (f) (ii) and the Insurance Company is unable to make an offer with regard to the compensation, the Claims Tribunal is under an obligation to hold an inquiry envisaged under Section 168 of the Motor Vehicles Act.
10. The impugned order, therefore, cannot be sustained. The same is accordingly set aside.
11. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

JULY 02, 2012

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