

\$~ 28

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

Date of Decision: 19th November, 2012

+ **MAC. APP. 870/2010**

RELIANCE GENERAL INSURANCE CO. LTD. Appellant
Through Mr. Pankaj Seth, Advocate

versus

KAVITA & ORS. Respondents
Through Mr. J.S. Mann, Advocate for the
Respondents No.1 to 5.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appeal is directed against a judgment dated 06.10.2010 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby a compensation of ₹15,77,000/- was awarded for the death of Rakesh who died in a motor vehicle accident which occurred on 25.06.2010.
2. A perusal of the Trial Court record reveals that a DAR(Detailed Accident Report) was filed by the Appellant Insurance Company whereby the Appellant made a legal offer of a sum of ₹8,75,000/- as full and final settlement. The offer was not considered to be reasonable and, therefore,

was rejected by the Respondents(Claimants). The Claims Tribunal proceeded to determine the quantum of compensation on merits. At the same time, the Claims Tribunal held that since the Appellant Insurance Company had given an offer of ₹8,75,000/-, the Claimants were not required to prove negligence. Thus, no issue was framed on negligence and on the basis of evidence led by the Claimants to prove the deceased's income and other relevant factors, compensation as stated earlier was awarded.

3. It is urged by the learned counsel for the Appellant that when the legal offer given by the Appellant Insurance Company was not accepted by the Claimants, the only option available to the Claims Tribunal was to treat the DAR as a Claim Petition and to decide not only the quantum of compensation but the issue of negligence as well.
4. The case was listed today for disposal of the Application (CM. APPL.19236/2012) for release of amount in favour of the Respondents. Since the liability to pay the compensation in the manner as adopted by the Claims Tribunal was disputed, the parties agreed for disposal of the Appeal finally.
5. A perusal of the Trial Court record shows that a DAR was filed on 23.07.2010 and a legal offer of a sum of ₹8,75,000/- was made by the Appellant Insurance Company. Since the legal offer was rejected by the Respondents No.1 to 5(Claimants), in my view, the only option available

to the Claims Tribunal was to treat the DAR as a Claim Petition and to proceed with it in accordance with law.

6. In *Rajesh Tyagi & Ors v. Jaibir Singh*, (FAO No.842/2003) decided on 21.12.2009 by J.R. Midha, J., the Delhi Police and Insurance Company agreed to follow the Claims Tribunal's Agreed Procedure initially for a period of six months. The same was subsequently extended. I would like to refer to Rule 6 of the Claims Tribunal Agreed Procedure with regard to the manner of acceptance and rejection of the legal offer by the Claimants, 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.”

7. 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.
8. 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.
9. Thus, the Claims Tribunal was under an obligation not only to determine the quantum of compensation but also to give a finding on negligence.
10. The impugned order, therefore, cannot be sustained. The same is accordingly set aside and the case is remanded back to the Claims Tribunal for its decision afresh in accordance with law. It is made clear

that the Claims Tribunal shall not be bound by the quantum of compensation determined vide judgment dated 06.10.2010. It shall be entitled to determine the compensation afresh on the basis of the evidence led by the parties in addition to the question of negligence.

11. The Appeal is allowed in above terms.
12. The compensation amount deposited shall be refunded to the Appellant Insurance Company along with the interest accrued, if any, during the pendency of the Appeal.
13. The parties are directed to appear before the Claims Tribunal on 21.12.2012.
14. Statutory amount of ₹25,000/-, if any, shall be refunded to the Appellant Insurance Company.
15. Pending Applications stand disposed of.
16. A copy of the judgment be sent to the concerned Claims Tribunal for information.

(G.P. MITTAL)
JUDGE

NOVEMBER 19, 2012
pst