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

Decided on: 27th January, 2015

+ MAC.APP. 1092/2013

ORIENTAL INSURANCE CO. LTD.

..... Appellant

Through: Mr.Sandeep Kumar, Advocate

versus

SHRI RAHUL SHARMA & ORS.

..... Respondents

Through: Ms. H. Bhargav, Advocate for Respondent no.1.
Mr. S.S. Mahaur, Advocate for Respondent no.3.

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

O R D E R

G. P. MITTAL, J. (ORAL)

1. The Appellant Oriental Insurance Co. Ltd. impugns judgment dated 26.08.2013 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby compensation of Rs.14,54,005/- was awarded in favour of Respondent no.1 for having suffered injuries in a motor vehicular accident which

occurred on 12.10.2011 at about 13:30 hrs.

2. It may be noted that the instant claim petition was filed under Section 166 of the Motor Vehicles Act, 1988(the Act). The Appellant Insurance Company in terms of the agreed procedure made an offer of Rs.6,90,000/- in full and final settlement of the claim of Respondent no.1. The said offer was however, not accepted. Thus, the Claims Tribunal proceeded to compute the compensation on merits without going into the proof of negligence.

3. It is urged by the learned counsel for the Appellant Insurance Company that once the offer was not accepted, the petition under Section 166 of the Act was to be decided on merits. Issue of negligence was also required to be framed and decided. This question was gone into by this Court in *Oriental Insurance Co. Ltd. v. Asha Kalra*, 2012 *Vol(131) DRJ 171*. Paras 8 to 13 of the report in *Asha Kalra*(*supra*) are extracted hereunder:

> *"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.*
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> *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, clamant 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."

4. In view of the above judgment, Detailed Accident Report(DAR) ought to have been treated as the claim petition under Section 166 of the Act and decided in accordance with law.

5. The impugned order therefore, cannot be sustained; the same is accordingly, set aside.

6. The appeal is allowed in above terms.

7. The parties are directed to appear before the Claims Tribunal on 27.02.2015.

8. Trial Court Record be returned through Special Messenger.

9. Since this accident occurred on 12.10.2011, a lot of time has been wasted on account of passing of the impugned order and the instant appeal. It is expected that the Claims Tribunal shall make an endeavour to decide the petition expeditiously.

10. Pending applications stand disposed of.

11. Statutory amount of Rs.25,000/-, if any, shall also be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

JANUARY 27, 2015
pst